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AD HOC COMMITTEE OF LEGAL ADVISERS
ON PUBLIC INTERNATIONAL LAW
(CAHDI)

19th Meeting
Berlin, 13-14 March 2000

DECISIONS OF THE COMMITTEE OF MINISTERS CONCERNING THE CAHDI:
RECOMMENDATION 1427 (1999) OF THE PARLIAMENTARY ASSEMBLY ON RESPECT
FOR INTERNATIONAL HUMANITARIAN LAW IN EUROPE

DRAFT OPINION OF THE CAHDI

Document prepared by the
Directorate General of Legal Affairs

Foreword

At their 682nd meeting (Strasbourg, 6 October 1999), the Committee of Ministers at Deputies' level examined Parliamentary Assembly Recommendation 1427 (1999) on Respect for international humanitarian law in Europe (in Appendix I).

The Ministers' Deputies decided to bring it to the attention of their governments and issued ad hoc terms of reference to the Committee of Legal Advisers on Public International Law (CAHDI) asking it to give an opinion on this Recommendation (see Appendix III). These terms of reference are due to expire on 30 June 2000. Moreover, identical terms of reference were given to the European Committee on Crime Problems (CDPC).

In its Recommendation 1427 (1999), the Parliamentary Assembly recommends that the Committee of Ministers:

i. invite the appropriate bodies:

- a. to give greater emphasis to international humanitarian law in drawing up programmes of legal co-operation and training;*
- b. to include compliance with international humanitarian law in monitoring activities;*
- c. to study the role the Council of Europe can play in the development of international humanitarian law, and in particular the possibility of helping the victims of violations of international humanitarian law through the mechanisms of the European Convention on Human Rights;*

ii. invite the governments of the member states:

- a. to ratify, if they have not already done so, Additional Protocols I and II of 1977 to the Geneva Conventions of 1949, and to lift any reservations they may have to these instruments;*
- b. to sign and ratify the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes adopted in 1974;*
- c. to ensure that all their obligations arising from these instruments are systematically reviewed and carried out;*
- d. to establish, if they have not already done so, national interministerial commissions responsible for monitoring the compliance with and implementing international humanitarian law;*
- e. to recognise the jurisdiction without prior agreement of the International Fact-Finding Commission established pursuant to Additional Protocol I to the Geneva Conventions and to submit enquiries to it;*
- f. to increase resources devoted to the dissemination of the principles of international humanitarian law, particularly among the armed forces, police and prison staff;*
- g. to grant the International Committee of the Red Cross unrestricted access to persons deprived of liberty in connection with armed conflict or internal strife;*
- h. to increase their financial support for the International Committee of the Red Cross;*
- i. to introduce the aut dedere aut iudicare principle in their criminal law;*
- j. to sign and ratify as soon as possible the United Nations Convention of 1997 prohibiting anti-personnel mines.*

Further to that the Assembly calls on the parliaments of the member states, if they have not already done so, to initiate and enact legislation with a view to ratify Additional Protocols I and II of 1977 to the Geneva Conventions of 1949, and lifting any reservations they may have thereto, and to grant the International Committee of the Red Cross unrestricted access to persons deprived of liberty in connection with armed conflict or internal strife.

With reference to its recommendation, the Parliamentary Assembly subsequently adopted Order No. 556 (1999)¹ (see Appendix II) by means of which it resolved to intensify its own monitoring of compliance with international humanitarian law and instructs its Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) to include investigations into such compliance in its activities and instructed its Committee on Rules of Procedure and Immunities to amend its Rules of Procedure to include respect for international humanitarian law among the conditions for granting observer or special guest status with the Assembly.

A draft opinion appears in Appendix IV to this document.

Action required

In accordance with the ad hoc terms of reference received by the Committee of Ministers, the CAHDI is invited to give its opinion on Recommendation 1427 (1999) and to transmit it to the Committee of Ministers.

Appendix I

Provisional edition

Respect for international humanitarian law in Europe

Recommendation 1427 (1999)¹

1. The year 1999 marks the fiftieth anniversary of the four Geneva Conventions of 1949 which, together with their two Additional Protocols of 1977, are the principal instruments of international humanitarian law. This "law of Geneva", as it is sometimes called, comprises rules which, in times of armed conflict, seek to protect persons who are not, or are no longer, taking part in the hostilities, and to restrict the means and methods of warfare employed.
2. Coincidentally, 1999 is also the centenary of the First Hague Peace Conference, which adopted the first of the "Hague Conventions" (also known as "the law of war") establishing the rights and obligations of belligerents in the conduct of military operations and seeking to limit the means of harming the enemy.
3. Tragically, it must also be said that 1999, the year in which the Council of Europe celebrates its own fiftieth anniversary, marks one of the lowest points in the history of respect for international humanitarian law in Europe. The conflict in Kosovo has seen some of the worst reported abuses in recent years, coming in the wake of previous wars in the territory of the former Yugoslavia and also in the Caucasus. Hence the world, and Europe not least, more than ever needs the protection afforded by international humanitarian law and the institutions set up to implement it.
4. It is essential that the Council of Europe member states do everything possible to promulgate as widely as possible and to ensure respect for international humanitarian law. It is an obligation for all states parties to the Geneva Conventions and the Additional Protocols to adapt their national legislation so that these texts can be implemented and penalties for violations be established by law. Parliamentarians have a particular responsibility in this regard.
5. The Parliamentary Assembly considers it essential that violations of humanitarian law are punished so as to ensure that a "culture of impunity" does not take root. The permanent International Criminal Court with universal jurisdiction is to be welcomed, and the Assembly reaffirms its Recommendation 1408 (1999) on the International Criminal Court, calling in particular on the member states to ratify the Court's Statute as soon as possible. Pending the start of its deliberations everything must be done to ensure that the International Criminal Tribunals for the former Yugoslavia and Rwanda are able to carry out their work.
6. However, no international tribunal can take the place of states in meeting their obligation to ensure the proper enforcement of international humanitarian law in regard to persons committing violations of that law, ordering others to commit them or condoning these actions, wherever they take place and irrespective of the nationality of their author.
7. The Assembly pays tribute to the International Committee of the Red Cross (ICRC) for its unique efforts to protect and assist the victims of armed conflicts all over the world and to promote respect for international humanitarian law as guardian of the Geneva Conventions and their Additional Protocols.
8. The Assembly recommends that the Committee of Ministers:
 - i. invite the appropriate bodies:
 - a. to give greater emphasis to international humanitarian law in drawing up programmes of legal co-operation and training;

¹ Assembly debate on 23 September 1999 (31st Sitting). See Doc. 8462, report of the Committee on migration, Refugees and Demography (rapporteur: Mr Jurgens) and Doc. 8510, opinion of the Committee on Legal Affairs and Human Rights (rapporteur: Mrs Jääteenmäki). Text adopted by the Assembly on 23 September 1999 (31st Sitting).

- b. to include compliance with international humanitarian law in monitoring activities;
- c. to study the role the Council of Europe can play in the development of international humanitarian law, and in particular the possibility of helping the victims of violations of international humanitarian law through the mechanisms of the European Convention on Human Rights;

ii. invite the governments of the member states:

- a. to ratify, if they have not already done so, Additional Protocols I and II of 1977 to the Geneva Conventions of 1949, and to lift any reservations they may have to these instruments;
- b. to sign and ratify the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes adopted in 1974;
- c. to ensure that all their obligations arising from these instruments are systematically reviewed and carried out;
- d. to establish, if they have not already done so, national interministerial commissions responsible for monitoring the compliance with and implementing international humanitarian law;
- e. to recognise the jurisdiction without prior agreement of the International Fact-Finding Commission established pursuant to Additional Protocol I to the Geneva Conventions and to submit enquiries to it;
- f. to increase resources devoted to the dissemination of the principles of international humanitarian law, particularly among the armed forces, police and prison staff;
- g. to grant the International Committee of the Red Cross unrestricted access to persons deprived of liberty in connection with armed conflict or internal strife;
- h. to increase their financial support for the International Committee of the Red Cross;
- i. to introduce the *aut dedere aut iudicare* principle in their criminal law;
- j. to sign and ratify as soon as possible the United Nations Convention of 1997 prohibiting anti-personnel mines.

9. The Assembly calls on the parliaments of the member states, if they have not already done so, to initiate and enact legislation:

- a. ratifying Additional Protocols I and II of 1977 to the Geneva Conventions of 1949, and lifting any reservations they may have to these instruments;
- b. granting the International Committee of the Red Cross unrestricted access to persons deprived of liberty in connection with armed conflict or internal strife.

Appendix II

Provisional edition

Respect for international humanitarian law in Europe**Order No. 556 (1999)¹**

With reference to its Recommendation 1427 (1999), the Assembly

1. resolves to intensify its own monitoring of compliance with international humanitarian law and instructs its Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) to include investigations into such compliance in its activities;
2. instructs its Committee on Rules of Procedure and Immunities to amend its Rules of Procedure to include respect for international humanitarian law among the conditions for granting observer or special guest status with the Assembly.

¹ Assembly debate on 23 September 1999 (31st Sitting). See Doc. 8462, report of the Committee on Migration, Refugees and Demography (rapporteur: Mr Jurgens) and Doc. 8510, opinion of the Committee on Legal Affairs and Human Rights (rapporteur: Mrs Jäättienmäki) et Doc. 8511, motion for an order (Mrs Jäättienmäki). Text adopted by the Assembly on 23 September 1999 (31st Sitting).

Appendix III

Decisions of the Committee of Ministers

682nd meeting, 6 October 1999

(Document CM/Del/Dec(99)682)

Item 3.1 PARLIAMENTARY ASSEMBLY, 4th Part of the 1999 Session (Strasbourg, 20-24 September 1999), Texts adopted, (CM/Del/Dec(99)676/3.1b, 1999 Session (Provisional compendium of texts adopted))

Decisions

The Deputies

(...)

concerning Recommendation 1427 (1999) on respect for international humanitarian law in Europe

15. decided to bring it to the attention of their governments;

16. adopted Decision No. CM/730/061099 issuing ad hoc terms of reference to the European Committee on Crime Problems (CDPC) and to the Committee of Legal Advisers on Public International Law (CAHDI) as it appears at Appendix 9 to the present volume of Decisions;

Appendix 9

(item 3.1)

Decision No. CM/730/061099

Ad hoc Terms of Reference

1. Name of Committee: European Committee on Crime Problems (CDPC) Committee of Legal Advisers on Public International Law (CAHDI)

2. Source: Committee of Ministers

3. Completion date: 30 June 2000

4. Terms of Reference:

To give an opinion on Parliamentary Assembly Recommendation 1427 (1999) on respect for international humanitarian law in Europe

5. Committee(s) informed of the terms of reference for information:

Appendix IV

DRAFT OPINION OF THE CAHDI ON PARLIAMENTARY ASSEMBLY RECOMMENDATION 1427 (1999) ON RESPECT FOR INTERNATIONAL HUMANITARIAN LAW IN EUROPE

The *Ad Hoc* Committee of Legal Advisers on Public International Law (CAHDI) held its 19th meeting in Berlin on 13-14 March 2000. The agenda included an item on "Decisions of the Committee of Ministers concerning the CAHDI". In the framework of this item, pursuant to the Council of Ministers' decision at their 682nd meeting (Strasbourg, 6 October 1999) members of the CAHDI examined Parliamentary Assembly Recommendation 1427 (1999) *on Respect for International Humanitarian Law in Europe*.

The CAHDI held an exchange of views and, in accordance with its terms of reference and its role in the Council of Europe intergovernmental structure, concentrated on what it understood to be the public international law issues connected with the Recommendation and adopted the following

OPINION

International humanitarian law, being of the utmost importance for the stability of the international community, is a key component of international law and so universal respect for it and compliance with it are vital. Recent years have seen a continued violation of international humanitarian law and the need for ensuing compliance with its basic rules has become even more essential.

The CAHDI has been following developments in this field closely. In pursuance of United Nations General Assembly Recommendation 52/154 of 15 December 1997, at its 17th Meeting (Vienna, 8-9 March 1999) the CADHI considered a preliminary report on *International Humanitarian Law and the Laws of War*, prepared by Professor Greenwood, Special Rapporteur of the UN for the Centennial of the first International Peace Conference. The CADHI held an exchange of views with the Special Rapporteur and agreed with him that new international instruments are not required but rather that compliance with existing ones needs improving and extending.

The CAHDI therefore welcomes the adoption by the Parliamentary Assembly of Recommendation 1427 (1999) which acknowledges the importance of international humanitarian law and proposes measures which would be extremely useful in ensuring its effectiveness.

In its Recommendation, the Assembly rightly provides a role for the Council of Europe in this field. Recent developments have provided examples of how this role can operate, for example, the initiatives taken by the Commissioner of Human Rights of the Council of Europe in pursuance of resolution (99) 50 of the Committee of Ministers and by the Secretary General in accordance with article 52 of the European Convention of Human Rights. Both initiatives can to be seen namely as efforts directed towards ensuring respect for international humanitarian law.

With regards to section 8 (i) of the Assembly Recommendation, the CAHDI wholeheartedly supports giving greater emphasis to international humanitarian law in drawing up programmes for training and for legal co-operation (a) and including compliance with it in monitoring activities (b), with a view to preventing breaches through education rather than trying deal with them *a posteriori*. The CAHDI is willing to help in advising on international humanitarian law in connection with these activities. Equally, the CAHDI would be able to assist where appropriate in studying the role the Council of Europe could play in developing by means of legal instruments this area of international law (c). However, as mentioned above the CAHDI considers that a sufficient number of international instruments exist in this field with only a few areas still needing attention, such as the application of international humanitarian law to internal conflicts and the obligations of those involved in UN operations.

Moreover, the CAHDI wishes to stress that existing international humanitarian law already provides for specific monitoring mechanisms. The mechanisms contained in the European Convention of Human Rights may provide a further contribution towards ensuring respect for human rights in cases where international humanitarian law is not exhaustive. For example, in the case of internal

armed conflicts both inter-State cases (Art. 33 ECHR¹) and the power of inquiry attributed to the Secretary General of the Council of Europe (Art. 52 ECHR²) are possibilities provided that the States concerned are parties to the ECHR.

As regards section 8 (ii), the CAHDI would welcome any increase in the number of States, particularly member States of the Council of Europe, ratifying: the Additional Protocols I and II of 1977 to the Geneva Conventions of 1949 and lifting any reservations to it (a); the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes of 1974 (b), and the United Nations Convention of 1997 prohibiting anti-personnel mines (j). Such an increase would not only further the effectiveness of those agreements but would also put pressure on non-member States to follow suit and ratify them as well. However, the CAHDI acknowledges that this falls within the sovereignty of the individual states concerned as international law provides that they are free to sign and ratify treaties as they please.

The ongoing activity of the CAHDI on reservations to international treaties and its operation as a European Observatory of Reservations to International Treaties may provide a frame for considering and exchanging views on existing reservations to the above-mentioned conventions.

Furthermore, the CAHDI considers that the aims pursued within the recommendations referred to in the above paragraph can only be attained by ensuring compliance and possibly review of the obligations contained therein, where appropriate (c). In connection with this, the recommendations under (e) and (g) will facilitate the monitoring of the commitments undertaken by States under international humanitarian law but, as stated above, they fall within the sovereignty of the individual states as it relates to changing internal legislation.

The CAHDI is not competent to advise on paragraphs (d), (f) and (h) which are within the sphere of internal affairs and discretion.

As regards (i), the CAHDI acknowledges that the European Committee on Crime Problems (CDPC) is more suitable to give an opinion but wishes to stress that the principle of *aut dedere aut iudicare* is a long standing principle of criminal law which is part of the *acquis* of international law as enshrined in the Council of Europe conventions in the criminal field.

The CAHDI is not competent to advise on section 9 which concerns national legislatures. However, the arguments presented above, regarding section 8(ii) paragraphs (a), (b) and (j) and (e) and (g) apply *mutatis mutandi* to the paragraphs (a) and (b) in this section.

¹ ECHR, Article 33 – Inter-State cases

Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the protocols thereto by another High Contracting Party.

² ECHR Article 52 – Inquiries by the Secretary General¹

On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.