

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

1. The *Ad Hoc* Committee of Legal Advisers on Public International Law (CAHDI) held its 19th meeting in Berlin on 14-14 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*.
2. 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 is understood to be the public international law issues connected with the Recommendation and adopted the following:

OPINION

3. International Humanitarian Law, being of the utmost importance for the protection of the victims of armed conflicts and for the international community as a whole, is an important component of international law. Universal respect for international humanitarian law and compliance with it are vital. Recent years have seen continuing serious violations of international humanitarian law and the need to ensure compliance has become ever more essential.
4. In the course of its work the CAHDI has been following developments in this field of international humanitarian law. In pursuance of United Nations General Assembly resolution 52/154 of 15 December 1997, at its 17th meeting (Vienna, 8-9 March 1999) the CAHDI considered a preliminary report on International Humanitarian Law and the Laws of War, prepared by Professor Greenwood, Rapporteur for the Centennial of the first international peace conference. The members of the CAHDI held an exchange of views and agreed with Professor Greenwood that the emphasis should be on improving and extending respect for existing international instruments rather than on adopting new ones.
5. The CAHDI takes note of the adoption by the Parliamentary Assembly of Recommendation 1427 (1999) which acknowledges the importance of international humanitarian law and proposes certain measures which would enhance its effectiveness.
6. In its Recommendation, the Assembly refers to a role for the Council of Europe in this field. The CAHDI recalls the initiatives relating to the implementation of the ECHR 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 on Human Rights.

7. With regards to section 8 (i) of the Assembly Recommendation, the CAHDI supports giving greater emphasis to international humanitarian law in drawing up programs for training and for legal co-operation (a) and including compliance with it in monitoring activities where appropriate (b), with a view to preventing breaches rather than having to deal with them *a posteriori*. The CAHDI is willing to advise in this connection. Equally, the CAHDI would be able to assist where appropriate in studying the role that the Council of Europe could play in enhancing the effective implementation of international humanitarian law (c).
8. Moreover, the CAHDI recalls that in addition to the specific mechanisms provided for under international humanitarian law, the mechanisms contained in the European Convention on Human Rights may contribute to ensuring respect for human rights in particular situations where the European Convention of Human Rights is applicable. For example the CAHDI wishes to point to Article 33 ECHR¹ and Article 52 ECHR².
9. As regards section 8 (ii) (a, b, j) the CAHDI would welcome any increase in the number of States, including member States of the Council of Europe, accepting the relevant instruments. Such an increase would not only further the effectiveness of those agreements but would also encourage non-member States to follow suit and consider ratifying them as well. In this context the CAHDI would like to stress the importance of the early entry into force of the Rome Statute of the International Criminal Court.
10. The CAHDI agrees that governments should be invited to keep the implementation of their obligations under review whenever necessary (c). The recommendations under (e) and (g) will facilitate the monitoring of the commitments undertaken by States under international humanitarian law but they are matters for the sovereign decision of individual states.
11. The CAHDI would welcome the establishment of national commissions responsible for international humanitarian law (d).
12. The CAHDI considers the recommendations under (f) and (h) are not within its mandat.
13. As regards (i), the CAHDI considers that the European Committee on Crime Problems (CDPC) is the more appropriate body to give an opinion.
14. The CAHDI is not competent to advise on section 9 which concerns national legislatures.
15. The CAHDI wishes to bring the attention of the Committee of Ministers the Plan of Action adopted by the 27th International Conference of the Red Cross and Red Crescent (Geneva, 31 October – 6 November 1999) which is of particular relevance to the subject matter of the recommendations of the Parliamentary Assembly.

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 General

On receipt of a request from the Secretary General of the Council of the 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.