

## OPINION OF THE CAHDI

### ON RECOMMENDATION 2037 (2014) OF THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE – “ACCOUNTABILITY OF INTERNATIONAL ORGANISATIONS FOR HUMAN RIGHTS VIOLATIONS”

1. On 12-13 February 2014, the Ministers' Deputies communicated Recommendation 2037 (2014) of the Parliamentary Assembly of the Council of Europe (see appendix) to the Committee of Legal Advisers on Public International Law (CAHDI) for information and possible comments by 18 April 2014. The Ministers' Deputies have also communicated this Recommendation to the Steering Committee for Human Rights (CDDH).
2. The CAHDI examined the above-mentioned Recommendation at its 47<sup>th</sup> meeting (Strasbourg, 20-21 March 2014) and adopted the following comments which concern aspects of the recommendation which are of particular relevance to the mandate of the CAHDI.
3. From the outset, the CAHDI notes that the protection and promotion of human rights form part of the foundations of the Council of Europe, the European Union (EU), the United Nations (UN) and its specialised agencies, as enshrined in the Statute of the Council of Europe (Article 1), the Treaty on European Union (Article 2) and the Charter of the United Nations (Article 1). In accordance with these constituent treaties, the protection and respect of human rights must be an integral part of any action and activities of these organisations.
4. The CAHDI also notes that in the framework of these international organisations, the most relevant international legal instruments and human rights standards have been developed, such as the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the Convention on the Rights of the Child (1989), the European Convention on Human Rights (1950), the European Social Charter (1961) as well as the Charter of Fundamental Rights of the European Union (2000).
5. The CAHDI also points out that over the years, international organisations and the European Union have developed mechanisms, bodies and entities with a view to ensuring respect for universal human rights standards, including to prevent possible infringements of human rights derived from the application of certain targeted sanctions resolutions, such as the setting up of the Office of the Ombudsperson of the Security Council's 1267 Committee. It recalls in this regard the exchange of views that it had with the Ombudsperson at its 41<sup>st</sup> meeting and welcomes the enhancement of the Ombudsperson mandate in Security Council resolutions 1989 (2011) and 2083 (2012).
6. To the extent that international organisations, and in particular the UN, are also increasingly being called upon to provide support to non-UN security forces, the CAHDI underlines the existence of a Human Rights Due Diligence Policy endorsed by the UN Secretary-General in July 2011<sup>1</sup>. This policy sets out measures that all UN entities must take in order to ensure that any support that they may provide to non-UN forces is consistent with the purposes and principles as set out in the Charter of the UN and with its responsibility to respect, promote and encourage respect for international humanitarian, human rights and refugee law. The CAHDI would therefore welcome any development aiming at further implementing the Policy's requirements.

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<sup>1</sup> See documents A/67/775 and S/2013/110.

7. Regarding the issue of the “status” of international organisations within national legal systems and in particular the question of the immunities of international organisations, the CAHDI underlines that the privileges and immunities enjoyed by international organisations are essential elements for the fulfilment of their mission. The privileges and immunities of international organisations are governed by international law such as constituent instruments (e.g. Article 40 of the Statute of the Council of Europe, Article 105 of the UN Charter), multilateral agreements (e.g. Convention on the Privileges and Immunities of the United Nations of 1946, General Agreement on Privileges and Immunities of the Council of Europe of 1949) or bilateral agreements, i.e. headquarters or host agreements (e.g. Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations of 1947). The CAHDI invites international organisations, which according to international law have the exclusive competence to decide to waive their immunity or not, to consider waiver of immunity in individual cases where appropriate.

8. The CAHDI underlines that it regularly discusses the issue of the immunity of international organisations and has noted in this respect an increase in the practice and case-law related to the scope of this immunity and to the question of the availability of “reasonable alternative means”<sup>2</sup> in the framework of the relevant organisation for an effective protection of the rights under the European Convention on Human Rights. It furthermore underlines that these issues can be considered alongside the procedures for dispute settlement involving international organisations and points out that a reflection on this specific topic is currently taking place within the Committee.

9. With regard to the invitation of the Committee of Ministers to engage in a reflection on the accountability issues concerning international organisations, the CAHDI can only encourage any initiative in this respect as this issue, on the one hand, raises several questions which deserve special attention and on the other hand, is important for ensuring the full enjoyment of human rights and fundamental freedoms. It refers in this regard to the recent case-law on the attribution of responsibility to a State or an international organisation<sup>3</sup> with regard to the implementation of international organisations’ norms as well as to the work of the International Law Commission (ILC) on “The responsibility of States for internationally wrongful acts” and on “The responsibility of international organisations”.

10. Concerning the latter topic of the ILC, the CAHDI recalls that in 2011, the Directorate of Legal Advice and Public International Law of the Council of Europe submitted a contribution to the ILC on the Draft Articles on “Responsibility of International Organisations” and which were presented to the CAHDI for information. It also notes that, as it appears in the General Commentary of the Articles, “*the fact that several of the present draft articles are based on limited practice moves the border between codification and progressive development in the direction of the latter.*”<sup>4</sup> It is thus the view of the CAHDI that discussions should continue on these questions in order to participate in their development.

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<sup>2</sup> European Court of Human Rights, *Beer and Regan v. Germany*, application No. 28934/95, judgment delivered on 18 February 1999; European Court of Human Rights, *Waite and Kennedy v. Germany*, application No. 26083/94, judgment delivered on 18 February 1999; European Court of Human Rights, *Chapman v. Belgium*, application No. 39619/06, judgment delivered on 5 March 2013.

<sup>3</sup> European Court of Human Rights, *Nada v. Switzerland*, application No. 10593/08, judgment delivered on 12 September 2012; Judgment of the Court of Justice of the European Union of 18 July 2013 in Joined Cases C-584/10 P, C-593/10 P and C-595/10 P, *Commission, Council, United Kingdom v. Yassin Abdullah Kadi*; European Court of Human Rights, *Al-Dulimi and Montana Management Inc. v. Switzerland*, application No. 5809/08, judgment delivered on 26 November 2013.

<sup>4</sup> General Commentary, paragraph 5.

### Appendix to the opinion

#### Recommendation 2037 (2014) of the Parliamentary Assembly of the Council of Europe – “Accountability of International Organisations for Human Rights Violations”<sup>1</sup>

1. The Parliamentary Assembly refers to its Resolution 1979 (2014) on accountability of international organisations for human rights violations, which stresses the importance of appropriate mechanisms to ensure the accountability of such organisations for any human rights violations that may occur as a consequence of their activities.

2. The Assembly invites the Committee of Ministers to:

2.1. encourage international organisations of which member States are a part, including the United Nations and its specialised agencies, as well as the European Union and the International Monetary Fund, to examine the quality and effectiveness of mechanisms aimed at ensuring compliance with their human rights obligations and to further develop legal standards in this area;

2.2. recommend that member States examine the status of international organisations within their national legal systems and ensure that arrangements be envisaged for waiver of immunity when this is required;

2.3. engage in a reflection on the accountability issues raised by the phenomenon of international organisations taking on responsibilities traditionally held by States with respect to which the European Court of Human Rights does not have jurisdiction, with a view to closing the resulting lack of accountability.

3. The Assembly also considers it appropriate that the Council of Europe, as an international organisation specialising in human rights matters, reflect on how to respond to the call in United Nations General Assembly Resolution 66/100 (2011) relating to the International Law Commission’s text on the responsibility of international organisations, and ensure follow-up thereto within the remit of its competence both with respect to its own accountability as well as that of other international organisations.

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<sup>1</sup> *Assembly debate* on 31 January 2014 (9th Sitting) (see [Doc. 13370](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr José María Beneyto). *Text adopted by the Assembly* on 31 January 2014 (9th Sitting).