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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)

**Presentation by Ms Marta Requena,
Secretary to the Committee of Legal Advisers on Public
International Law (CAHDI)**

at the 67th Session of the International Law Commission

50th meeting
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**Presentation by Ms Marta Requena,
Secretary to the Committee of Legal Advisers on Public International Law (CAHDI)**

at the 67th Session of the International Law Commission

Geneva, 10 July 2015

Mr President,
Members of the International Law Commission,
Ladies and Gentlemen,

First of all I would like to thank the International Law Commission (ILC) for allowing the Council of Europe to present every year our main activities in the field of public international law. Furthermore, I would also like to thank the President of the ILC for having accepted our invitation to participate in the forthcoming CAHDI meeting in September of this year.

On behalf of the Council of Europe I would like to express our appreciation for these annual exchanges of views and underline the importance that our Organisation attaches to them as well as to the close links developed between our two entities in the field of public international law.

These links between the Council of Europe and the United Nations in the field of public international law are increasingly developed through the participation of the Legal Adviser of our Organisation – Mr Jörg Polakiewicz – and myself at the so called “International Law Week” in the framework of the meetings of the Sixth Committee of the United Nations General Assembly. In particular, last year on the occasion of the 25th Legal Advisers Meeting (27-28 October 2014), Mr Polakiewicz participated in the *Panel on extraterritorial access to information: rights and duties of states* and presented the theme “*How to reconcile effective law enforcement and data protection*”.¹ (eg. Extraterritorial access under the Council of Europe Convention on Cybercrime, case law of the European Court of Human Rights etc...).

Allow me, now, to provide an overview of the latest developments related to public international law which have taken place within the Council of Europe since we met last time in July 2014:

- firstly, I would like to inform you about the recent developments within the Council of Europe, in particular the appointment of our Deputy Secretary General and the priorities of the current chairmanship of the Committee of Ministers;
- secondly, I would like to inform you on the latest news concerning the Council of Europe's Conventions;
- thirdly, I would like to inform you about the Council of Europe action to combat terrorism;
- finally, I would also like to provide you with some information concerning the Parliamentary Assembly of the Council of Europe.

I. Recent developments within the Council of Europe

A. Election of the Deputy Secretary General

The Parliamentary Assembly of the Council of Europe re-elected on 23 June 2015 Ms Gabriella Battaini-Dragoni (Italy) as Deputy Secretary General of the Council of Europe (by an absolute majority of the votes cast) for a five-year term of office starting on 1 September 2015. It is her second mandate in this post.

¹ The speech can be found at <http://www.coe.int/en/web/dlapil/director-dlapil>.

For the past two and a half years, Mrs Battaini-Dragoni has served as the Council of Europe's Deputy Secretary General. She is the first person to have held the post under its revised mandate, which gives the role a strong operational remit. As such she has been responsible for implementing the measures needed to support the Secretary General's reform agenda, in line with the decisions of the Committee of Ministers.

B. Chairmanships of the Committee of Ministers

The handover of the Chairmanship of the Committee of Ministers from Azerbaijan to Belgium took place on 13 November 2014 and from Belgium to the current Bosnia-Herzegovina Chairmanship took place on 19 May 2015 and will be handed over to Bulgaria on 10 November 2015.

The main priorities of the current Bosnia and Herzegovina's Chairmanship of the Committee of Ministers are the following:

- The promotion of the ratification and implementation of the *Council of Europe Convention on preventing and combating violence against women and domestic violence* (CETS No. 210) which entered into force on 1 August 2014;
- The Council of Europe policy towards neighbouring regions: neighbourhood partnerships with Jordan, Morocco and Tunisia for 2015-2017 and development of co-operation with Kazakhstan and the Kyrgyzstan;
- Activities of the Council of Europe in the sphere of culture with special emphasis on the *European Cultural Convention* (ETS No. 018) and on the activities of the Council of Europe through the European Cinema Support Fund (EURIMAGES);
- Enhancing the Council of Europe's action with respect to the religious dimension of intercultural dialogue.

II. **Recent developments concerning Treaty Law within the Council of Europe**

A. The amendment to Article 26 of the Statute of the Council of Europe

Following the Turkish Government's decision to support the strengthening of the Council of Europe's capacities and resources by offering to become a major contributor to the Organisation's budgets from 1 January 2016, the Committee of Ministers has approved the amendment to Article 26 of the Statute of the Council of Europe by the adoption on 3 June 2015 of Resolution CM/Res(2015)7. The Parliamentary Assembly had approved the same amendment on 22 May 2015 (Recommendation 2072 (2015)). Both organs of the Council of Europe having thus approved it, the amendment will come into force this 16 June 2015.

This amendment of the Statute of the Council of Europe aims to increase the number of Representatives of Turkey in the Parliamentary Assembly from 12 to 18, similar to the other five major contributors of the Organisation (France, Germany, Italy, Russia and the United Kingdom).

As the Parliamentary Assembly noted in its Recommendation 2072 (2015) " Turkey has seen the highest population growth in Europe in recent decades and now has Europe's third-largest population, [the Parliamentary Assembly] believes that an end should be put to the under-representation of the Turkish Parliament in the Assembly and that, given recent population statistics, it is entirely justified and fair to increase the number of seats allocated to the Turkish national delegation in the Assembly".

B. Ukraine's derogation to the Convention for the Protection of Human Rights and Fundamentals Freedoms (ETS No.5)

On 9 June, the Secretary General of the Council of Europe was notified by the Government of Ukraine their decision to have recourse to Article 15 of the *Convention for the Protection of Human*

Rights and Fundamentals Freedoms (hereinafter the ECHR). In our capacity as Depositary of the Convention, the Treaty Office notified this declaration to all High Contracting Parties.

The Declaration underlines that on 21st May 2015, the Verkhovna Rada of Ukraine approved the Resolution №462-VIII by which it adopted the Declaration “*On Derogation from Certain Obligations under the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms*”.

The declaration made under Article 15 of the ECHR indicates that, given the public emergency threatening the life of the nation, the Ukrainian authorities had to take measures introducing special restrictions to the rights guaranteed by Articles 5 (right to liberty and security), 6 (right to a fair trial), 8 (right to respect for private and family life), and 13 (right to an effective remedy) of the *European Convention on Human Rights* as well as Article 2 (freedom of movement) of Protocol No.4 to the ECHR.

These measures are introduced by laws, adopted by the Verkhovna Rada, and relate to the conduct of the “Anti-terrorist operations” in some areas of the Donetsk and Luhansk districts. The Ukrainian authorities have indicated that these measures would apply only in the zones where such operations are conducted. They will keep the Secretary General of the Council of Europe fully informed of any change in the implementation of these measures, including in their territorial application.

The derogation “in time of war or other public emergency threatening the life of the nation” is expressly foreseen by Article 15 of the ECHR itself and has been used in the past by several States Parties to the ECHR (Albania, Armenia, France, Georgia, Greece, Ireland, Turkey and United Kingdom).

The European Court of Human Rights will continue working on all Ukraine-related applications and cases and any individual may still apply to the Court in relation to the alleged violations by Ukraine of the rights guaranteed by the Convention. Pursuant to its well-established case-law, the Court will assess, in the specific cases brought before it, whether the measures implemented by virtue of the derogation are justified in view of the threats the derogation refers to.

Obviously, the Council of Europe hopes that the situation will rapidly improve in such a way as to allow Ukraine to end the derogatory regime as soon as possible. With this in mind, the Secretary General made a call on all parties to immediately stop violence and bloodshed and urged them to take all measures to fully implement the Minsk Agreements without delay. He underlined that further escalation of the conflict will have unacceptable consequences for the security, stability and human rights in Ukraine and in Europe as a whole.

C. The Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols

During the Ministerial Session on 19 May 2015 in Brussels, the Committee of Ministers adopted a series of decisions in order to secure the long-term effectiveness of supervisory mechanism of the European Convention on Human Rights, in particular it endorsed the so-called “Brussels Declaration” adopted on the occasion of the High-Level Conference on “*the implementation of the European Convention on Human Rights, our shared responsibility*” (Brussels, 26-27 March 2015). The Conference followed on from Interlaken, Izmir and Brighton Conferences, while highlighting the persisting challenges and the current situation three years after Brighton. The Committee of Ministers pointed out among current challenges, the backlog of potentially admissible and well-founded cases pending before the Court, the repetitive applications resulting from non-execution of Court’s judgments, as well as the increasing workload of the Committee of Ministers in its function of supervision of the execution of judgments.

Among these measures, the Committee of Ministers called States Parties to the ECHR to sign and ratify its Protocols No.15 and No.16.

Protocol No. 15 amending the ECHR (CETS No.213) introduces a reference to the principle of subsidiarity and the doctrine of margin of appreciation. It also reduces from six to four months the time-limit within which an application may be made to the Court following the date of a final domestic decision. Protocol No. 15 will enter into force as soon as all the States Parties to the Convention have signed and ratified it. So far 19 States Parties have ratified it and 21 have signed it.

The Protocol No. 16 to the ECHR (CETS No.214) will allow the highest courts and tribunals of a State Party to request the Court to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or the protocols thereto. So far 3 States have ratified it and 13 States have signed it.

In his second report on *State of Democracy in Europe, Human Rights and the Rule of Law in Europe: A shared responsibility for democratic security in Europe*, issued in May 2015, the Secretary General of the Council of Europe stressed that “The Convention remains the only Europe-wide legal instrument setting commonly agreed standards and offering objective judicial review of compliance in all key areas of democratic security. It provides guidance for action at national level and subsidiary remedial action at European level.”

To the extent that the accession of the EU to the ECHR became a legal obligation under the Treaty of Lisbon which entered into force on 1 December 2009, the Council of Europe can only reaffirm the importance of this accession and encourage, following the Opinion 2/13 of the European Union Court of Justice, the finalisation of the process at the earliest opportunity.

D. Opening for signature and entering into force of the Council of Europe Conventions

- The *Council of Europe Convention on the Manipulation of Sports Competitions* (CETS No.215) was opened for signature on 18 September 2014 in Maggling/Macolin (Switzerland). To date this new Convention has been ratified by one State and signed by 20 States. This Convention requires 5 ratifications for its entry into force.
- The *Council of Europe Convention against Trafficking in Human Organs* (CETS No. 216) was opened for signature on 25 March 2015 in Santiago de Compostela (Spain). To date 14 Council of Europe member States have signed this new Convention.
- The *European Convention on the Repatriation of Minors* (ETS No.071) which was adopted in 1970, will enter into force on 28 July 2015.

Since we met last year, when I provided to you an overview of the Council of Europe activities concerning our treaties, we have had 85 ratifications and accessions, 70 signatures and 40 declarations related to the Council of Europe conventions by the 47 Member States of the Council of Europe.

E. Accessions to the Council of Europe conventions by non- member States: the universal vocation of the Council of Europe conventions

The Treaty Office of the Council of Europe is also dealing with an increasing number of requests by non-member States to accede to the Council of Europe conventions. Indeed 159 Council of Europe's conventions out of our 216 are opened to non-member States.

- From July last year we have had the following 10 accessions by non-member States:

- *Convention on Mutual Administrative Assistance in Tax Matters* (ETS No. 127), as amended by the 2010 Protocol (CETS No. 208): Indonesia, Seychelles, Kazakhstan, Nigeria, El Salvador, Mauritius and Cameroun;

- *Convention on Cybercrime* (ETS No. 185): Canada, Sri Lanka;
- *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime* (ETS No. 141): Kazakhstan.

- 9 non-member States have already been invited to accede to the following Council of Europe conventions in 2015:

- *Convention on the Transfer of Sentenced Persons* (ETS No. 112): Mongolia;
- *Convention on Cybercrime* (ETS No. 185): Tonga, Peru, Sri Lanka, Paraguay;
- *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (ETS No. 108) and its additional protocol: Mauritius, Senegal;
- *Convention on Mutual Administrative Assistance in Tax Matters* (ETS No. 127), as amended by the 2010 Protocol (CETS No. 208): Seychelles, Mauritius, El Salvador.

- 7 requests from non-member States to be invited to accede to the following Council of Europe Conventions are still pending:

- *Convention on Mutual Administrative Assistance in Tax Matters* (ETS No. 127), as amended by the 2010 Protocol (CETS No. 208): Uganda, Senegal, Pakistan, Barbados and Burkina Faso;
- *Council of Europe Convention on the counterfeiting of medical products and similar crimes involving threats to public health* (CETS No. 211) – “Medicrime”: Burkina Faso.

Regarding the specific issue of the participation of non-member States in Council of Europe conventions, I would also like to inform you of the adoption by the Committee of Ministers, on 18 February 2015, of the *Resolution CM/Res(2015)1 concerning financial arrangements for the participation of non-member States in Council of Europe conventions*. This Resolution foresees the application of a calculation method when a Contracting Party to a Council of Europe convention participates in the follow-up mechanism of a convention containing a clause on financial participation in its follow-up mechanism. To date, only three recent conventions explicitly provide for a financial contribution to their follow-up mechanism by non-member States: the *Council of Europe Convention on the Counterfeiting of Medical Products and Similar Crimes involving Threats to Public Health* (CETS No. 211), the *Council of Europe Convention on the Manipulation of Sports Competitions* (CETS No. 215) and the *Council of Europe Convention against Trafficking in Human Organs* (CETS No. 216).

Concerning the accession by non-member States to the Council of Europe conventions, I would also like to inform you about the recent change in the procedure for consulting non-member States on their requests for accession to Council of Europe conventions. Until recently according to the past practice, the consultation was made in two stages.

In the first stage, all member States of the Council of Europe were consulted (even if they are not Parties to the convention). If no objections were raised during a period of six weeks, the request for accession was transmitted to the competent Rapporteur Group and then to the Committee of Ministers. In the second stage, once there was an agreement in principle within the Committee of Ministers to give a positive reply to the request, the Secretariat was instructed by the Committee of Ministers to consult the non-member States which were Parties to the convention. These non-member States were given a two months' time-limit for the formulation of their objections. If there were no objections, the decision to invite the non-member State became final. If there was an objection, the Committee of Ministers resumed consideration of the request for invitation.

The new consultation procedure is in one stage in order to limit, as much as possible, differences in the status between Parties, treating them on equal footing, as suggested in the Secretary General's Report on the review of Council of Europe conventions. It also intends to significantly reduce the length of the procedure by which the Committee of Ministers decides on the invitation of a non-member State to accede to a convention.

III. The Council of Europe action to combat terrorism

Allow me, at present, to give you an overview of the Council of Europe action to combat terrorism. Following the horrendous terrorist attacks in Belgium, France and Denmark, the Secretary General of the Council of Europe presented to the Committee of Ministers, on 9 February, a document on the *“Immediate Action by the Council of Europe to combat extremism and radicalisation leading to terrorism”* (document SG/Inf(2015)4 rev) endorsed by the Committee of Ministers on 11-12 February 2015. The proposals contained in this document led to the adoption by the Committee of Ministers on 19 May 2015 during its Ministerial Session in Brussels of:

- A Declaration on “United around our principles against violent extremism and radicalisation leading to terrorism”, and
- An Action Plan on “The fight against violent extremism and radicalisation leading to terrorism”.

The proposals contained in both documents are basically articulated around two main objectives:

1. To reinforce the legal framework against terrorism and violent extremism;
2. To prevent and fight violent extremism and radicalisation through concrete measures in the public sector, in particular in schools and prisons, and on Internet.

1. The first objective notably consists of:

- helping to ensure that all Council of Europe member States, and neighbouring countries, sign and ratify, as a matter of priority, notably the *Council of Europe Convention on the Prevention of Terrorism* (CETS No. 196)²;
- the adoption by the Committee of Minister at its Ministerial Session in Brussels on 19 May 2005 of a new *Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism* on the so-called “foreign terrorist fighters”. This Additional Protocol defines more precisely the offences set out in the *United Nations Security Council Resolution 2178 (2014) on “Threats to international peace and security caused by terrorist acts”* adopted by the Security Council on 24 September 2014 and commits parties to establish the required criminal offences under their domestic law. The opening for signature of this Additional Protocol to CETS No.196 will probably take place in autumn of this year;
- to elaborate a new recommendation on terrorists acting alone, providing guidelines to member States on how to efficiently prevent and suppress this particular form of terrorism;
- to further disseminate updated and relevant case-law of the European Court of Human Rights, offer Council of Europe expertise to member States, and distribute relevant legal texts.

2. The second objective detailed in the Action Plan requires initiating concrete measures in education, in prisons and on the Internet, to prevent and fight radicalisation. This will be achieved notably through the drafting of guidelines on how to prevent radicalisation in prisons as well as through several conferences and campaigns in order to give more visibility to Council of Europe standards and tools in this field. Furthermore, it request to identify key competences required for democratic culture and intercultural dialogue with a view to developing a competence framework for member States, to be used and adapted in their own education system as well as by providing a counter-narrative to the misuse of religion.

² To date (10 July 2015), the Convention has been signed by 11 States and ratified by 33 States.

IV. The Credentials of the Russian delegation at the Parliamentary Assembly of the Council of Europe and the situation in Ukraine

In January 2015 the Parliamentary Assembly of the Council of Europe (PACE) has decided to ratify the credentials of the Russian delegation, citing the need to “foster dialogue”, but at the same time has decided to suspend its voting rights and its right to be represented in the Assembly’s leading bodies “as a clear expression of condemnation of continuing grave violations of international law in respect of Ukraine” by Russia.

In addition, the PACE also suspended – for the duration of the Assembly’s 2015 session – the right of its Russian members to be appointed as a rapporteur, to observe elections or to represent the Assembly in other Council of Europe or external bodies.

In its 2015 June Session, the PACE – while keeping in place all sanctions against the Russian delegation imposed in January in response to the situation in Ukraine – has decided not to go further and annul the delegation’s credentials at this time, “as a signal of its commitment to an open and constructive dialogue”.

The parliamentarians called on the Russian delegation – which has not taken part in the work of PACE since the sanctions were applied – to reverse its refusal to co-operate with the Assembly and to re-establish dialogue.

The PACE also repeated its call on the Russian authorities to – among other things – withdraw all its troops from Ukrainian territory, fully implement the Minsk agreements, reverse the illegal annexation of Crimea, and release Nadiia Savchenko and others.

Concerning the situation in Ukraine, the Committee of Ministers adopted another decision on 15 April 2015 reiterating that a sustainable political solution to the crisis in Ukraine can only be based on the principles of the peaceful settlement of disputes, the full respect of Ukraine’s independence, sovereignty and territorial integrity within its internationally recognised borders and the protection of human rights. At the same time, the Committee of Ministers called upon all parties concerned to strictly respect the Minsk Agreements, including the “Package of Measures for the Implementation of the Minsk Agreements” of 12 February 2015, and to take the necessary further steps for their swift and full implementation, in particular as regards respect for the ceasefire, the organisation of local elections and the release of hostages and illegally detained persons. The Committee of Ministers also underlined the importance to rapidly bring forward the reforms regarding decentralisation, the judiciary, election legislation, the fight against corruption and the effective protection of human rights. It reiterated the willingness of the Council of Europe to provide further assistance to this end under the Action Plan for Ukraine for the period 2015-2017 launched in Kyiv on 18 March 2015.

The Committee of Ministers also welcomed the report published by the International Advisory Panel on 31 March 2015 regarding the investigations conducted into the violent events in Maidan and invited the Ukrainian authorities to take all appropriate action to follow up the conclusions of the Panel’s report.

Finally, the Committee of Ministers underlined that those responsible for the downing of flight MH17 be held to account and brought to justice, and called upon all States in the region to co-operate fully with the on-going international investigations into the cause of the crash and the identity of those responsible.

V. Conclusion

To conclude, I would like to underline the importance of the increasing cooperation between the Council of Europe and the United Nations in a wide range of fields. In this respect I would like to mention that Resolution A/RES/ 69/83 on *Cooperation between the United Nations and the Council of Europe* was adopted by the General Assembly on 17 December 2014. In this Resolution, the UNGA “Reiterates its call for the reinforcement of cooperation between the United Nations and the Council of Europe regarding the protection of human rights and fundamental freedoms, the promotion of democracy and the rule of law and good governance at all levels, inter alia, the prevention of torture, the fight against terrorism and trafficking in human beings, the fight against all forms of racism, discrimination, xenophobia and intolerance, the promotion of freedom of expression and freedom of thought, conscience, religion or belief, the protection of the rights and dignity of all members of society without discrimination on any grounds and the promotion of human rights education”.

In this Resolution the General Assembly also “welcomes the contribution of the Council of Europe to the Sixth Committee of the General Assembly and the International Law Commission”.