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# **COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)**

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## **List of items discussed and decisions taken Abridged report**

**51<sup>st</sup> meeting**  
Strasbourg, 3-4 March 2016

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Public International Law Division and Treaty Office  
Directorate of Legal Advice and Public International Law, DLAPIL

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**COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW  
(CAHDI)**

**51<sup>st</sup> meeting, Strasbourg, 3-4 March 2016**

**List of items discussed and decisions taken  
Abridged report**

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 51<sup>st</sup> meeting in Strasbourg (France) on 3-4 March 2016 with Mr Paul Rietjens (Belgium) in the Chair.
2. The CAHDI adopted its agenda as set out in **Appendix I** to the present report.
3. The CAHDI adopted the report of its 50<sup>th</sup> meeting (Strasbourg, 24-25 September 2015) and authorised the Secretariat to publish it on the CAHDI's website.
4. The CAHDI took note of the developments within the Council of Europe since the last meeting of the Committee. In particular, the CAHDI took note of the Council of Europe action to combat terrorism and notably of the implementation of the *Action Plan on the fight against violent extremism and radicalisation leading to terrorism*. It also took note of the declarations of France and Ukraine under Article 15 of the *European Convention on Human Rights*. Furthermore, the CAHDI noted that the International Advisory Panel on Ukraine had published its report on the Odesa events on 4 November 2015 and that the Secretary General had informed the Committee of Ministers on 3 February 2016 (document SG/Inf(2016)4) on the human rights mission led by Mr Gérard Stoudmann to Crimea on 25-31 January 2016. With regard to the latest news from the Treaty Office, the CAHDI took note of the new draft conventions and protocols of the Council of Europe as well as of the latest accessions of non-member States to the conventions of the Council of Europe.
5. The CAHDI took note of the **decisions of the Committee of Ministers relevant to its work** and in particular the decision of 10-11 February 2016 communicating to the CAHDI *Recommendation 2083 (2016) of the Parliamentary Assembly of the Council of Europe – "Introduction of sanctions against parliamentarians"*, for information and possible comments before 11 May 2016. In reply to this decision, the CAHDI adopted its opinion on the abovementioned recommendation as set out in **Appendix II** to the present report.

The CAHDI also took note of its terms of reference for 2016-2017 as approved by the Committee of Ministers on 24-25 November 2015 during their 1241<sup>st</sup> meeting. The CAHDI agreed that the successive Chairs and Vice-chairs will be appointed as Gender Equality Rapporteurs. Therefore, the CAHDI appointed Mr Paul Rietjens (Belgium) and Ms Päivi Kaukoranta (Finland) as Gender Equality Rapporteurs for 2016.

6. a. With regard to the topic of "**Immunities of States and international organisations**", the CAHDI held an exchange of views on the issue of the "Settlement of disputes of a private character to which an international organisation is a party", and in particular on the questions contained in the document presented by the delegation of the Netherlands to the CAHDI. This document aimed in particular at facilitating a discussion on the topical questions related to the settlement of third-party claims for personal injuries or death and property loss or damages allegedly caused by an international organisation and the effective remedies available for claimants in these situations.

The CAHDI took note of the written comments submitted by 14 delegations – namely Albania, Andorra, Armenia, Austria, Canada, Czech Republic, Denmark, Germany, Greece, Israel, Mexico, Slovenia, Switzerland and the United Kingdom – to the questions contained in the document and invited other delegations to also reply to these questions in written.

- b. The CAHDI furthermore addressed the issue of the "Immunity of State owned cultural property on loan" and examined in this regard the replies submitted by 20 delegations – namely Albania, Andorra,

Austria, Armenia, Belarus, Belgium, Canada, Cyprus, Czech Republic, Finland, France, Germany, Greece, Ireland, Latvia, Mexico, the Netherlands, Romania, the United Kingdom and the United States of America – to the questionnaire prepared on this topic.

On this issue, the CAHDI furthermore encouraged delegations which had not yet done so to consider signing the *Declaration on Jurisdictional Immunities of State Owned Cultural Property* which to date (4 March 2016) had been signed by the Ministers of Foreign Affairs of 14 States (Albania, Armenia, Austria, Belarus, Belgium, the Czech Republic, Estonia, France, Georgia, Latvia, Luxembourg, the Netherlands, Romania and Slovakia). This declaration, presented by the delegations of the Czech Republic and Austria and supported by the delegation of the Netherlands, had been drafted in support of the recognition of the customary nature of the pertinent provisions of the 2004 *United Nations Convention on Jurisdictional Immunities of States and Their Property* in order to guarantee the immunity of State cultural property on loan. It had been elaborated as a non-legally binding document expressing a common understanding of *opinio juris* on the basic rule that certain kind of State property (cultural property on exhibition) enjoyed jurisdictional immunity. The CAHDI noted that the Secretariat of the CAHDI performed the functions of “depository” of this Declaration and that the text of this Declaration was available on the website of the CAHDI.

c. The CAHDI furthermore addressed the issue of the “*Immunities of special missions*” and examined in this regard the replies submitted by 24 delegations (Albania, Andorra, Armenia, Austria, Belarus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Ireland, Italy, Latvia, Mexico, the Netherlands, Norway, Romania, Serbia, Sweden, Switzerland, the United Kingdom and the United States of America) to the questionnaire prepared on this topic. The CAHDI encouraged delegations which had not yet done so, to submit or update their contribution to the questionnaire in order to prepare an analysis outlining the main trends arising from these replies.

d. The CAHDI also addressed the issue of “*Service of process on a foreign State*” and examined in this regard the replies submitted by 25 delegations (Albania, Austria, Belgium, Canada, Cyprus, the Czech Republic, Germany, Greece, Finland, France, Ireland, Israel, Italy, Japan, Latvia, Mexico, the Netherlands, Norway, Portugal, Romania, Serbia, Slovenia, Switzerland, United Kingdom and the United States of America) to the questionnaire prepared on this topic. The CAHDI encouraged delegations which had not yet done so, to submit or update their contribution to the questionnaire in order to prepare an analysis outlining the main trends arising from these replies.

e. The CAHDI took stock of the state of ratifications of the *United Nations Convention on Jurisdictional Immunities of States and Their Property* by the States represented within the CAHDI. It welcomed in this regard the ratifications of the Convention by Mexico and the Slovak Republic, respectively on 29 September 2015 and 29 December 2015.

f. With regard to its *Database on “State practice regarding State Immunities”*, the CAHDI noted that to date (4 March 2016) 35 States (Andorra, Armenia, Austria, Belgium, Canada, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Mexico, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey and the United Kingdom) and one organisation (European Union) had submitted a contribution to this database. It also welcomed the updated contribution of Belgium to this database.

The CAHDI furthermore considered national practices and case-law regarding immunities of States and international organisations on the basis of information provided by the delegations and invited delegations to submit or update their contributions to the relevant CAHDI database.

g. The CAHDI pursued its exchange of views on the *Possibilities for the Ministry of Foreign Affairs to raise public international law issues in procedures pending before national tribunals and related to States’ or international organisations’ immunities*.

The CAHDI noted that to date (4 March 2016), 29 delegations (Albania, Austria, Belgium, Canada, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Israel, Italy, Japan, Latvia, Luxembourg, Montenegro, the Netherlands, Norway, Portugal, Romania, the Russian Federation, Slovakia, Slovenia, Spain, Sweden, and the United States of America) had replied to the questionnaire on this matter (document CAHDI (2015) 21). The CAHDI invited delegations which had not yet done so to submit or update their replies to the questionnaire.

7. Regarding the revised questionnaire on the **“Organisation and functions of the Office of the Legal Adviser of the Ministry of Foreign Affairs”** which contains additional questions on gender equality following the recommendations contained in the Council of Europe Gender Equality Strategy 2014-2017, the CAHDI examined the replies submitted by 30 delegations (Albania, Andorra, Armenia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Canada, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Israel, Italy, Latvia, Luxembourg, Mexico, Montenegro, Norway, Slovenia, Sweden, Switzerland, the United Kingdom, the United States of America and NATO). The CAHDI invited delegations to send to the Secretariat any further information in order to complete their replies.

8. With regard to the issue of **“National implementation measures of UN sanctions and respect for human rights”**, the CAHDI held an exchange of views with Ms Catherine Marchi-Uhel, Ombudsperson of the United Nations Security Council’s ISIL (Da’esh) and Al-Qaida Sanctions Committee.

Furthermore, the CAHDI took note of the information regarding cases that had been submitted to national tribunals by persons or entities included in or removed from the lists established by the UN Security Council Sanctions Committee.

9. The CAHDI considered **cases brought before the European Court of Human Rights involving issues of public international law** and invited delegations to keep the CAHDI informed of any judgments, decisions or relevant forthcoming events.

10. In the context of its consideration of issues relating to the **peaceful settlement of disputes**, the CAHDI considered the latest version of the document containing information on the International Court of Justice’s (ICJ) compulsory jurisdiction. It noted that since its previous meeting, Bulgaria and Japan had amended their declarations recognising the ICJ’s jurisdiction as compulsory.

11. In the framework of its activity as the **European Observatory of Reservations to International Treaties**, the CAHDI considered a list of 12 reservations and declarations to international treaties, likely to be objected to.

In addition, the CAHDI took note of the reactions to reservations and declarations to international treaties previously examined by the CAHDI and for which the deadline for objection had already expired. It invited delegations to submit to the Secretariat any relevant information for the update of the summary table as set out in document CAHDI (2016) 4 Addendum prov.

Furthermore, the CAHDI held an exchange of views on the opportunity to pursue the examination of partial withdrawals of reservations in the framework of the CAHDI *Observatory of reservations to international treaties* considering that it is not possible to object to these partial withdrawals. It decided to pursue the examination of these withdrawals given that some withdrawals could amount to reservations.

12. Following the decision of the Ministers’ Deputies of 10 April 2013 on the **review of Council of Europe conventions** adopted in the light of the Secretary General’s report, the CAHDI adopted its main findings on the conventions and protocol for which it had been given responsibility and which were examined in 2014 and 2015.

13. With regard to **consideration of current issues of international humanitarian law**, the CAHDI took note of information provided by several delegations.

14. The CAHDI held an exchange of views with Ms Silvia Fernández de Gurmendi, President of the International Criminal Court (ICC).

The CAHDI also took note of the recent **developments concerning the ICC and other international criminal tribunals**.

15. With regard to the examination of **topical issues of international law**, the CAHDI took note of the comments made by delegations.

16. The CAHDI decided to hold its **52<sup>nd</sup> meeting** in Brussels (Belgium) on 15-16 September 2016. The CAHDI instructed the Secretariat, in liaison with the Chair of the CAHDI, to prepare in due course the provisional agenda of this meeting.

17. a. On the basis of the document presented by the United Kingdom, the CAHDI held an exchange of views on the possible review and updating of the *“Amended Model Plan for the Classification of Documents concerning State practice in the Field on Public International Law”* contained in the appendix to Recommendation No. R (97) 11 adopted on 12 June 1997 by the Committee of Ministers. In order to expedite the progress of the work, the delegation of the United Kingdom agreed to undertake an assessment of the views expressed by the experts of the CAHDI concerning the need and the usefulness of revising the Model Plan. The delegation of the United Kingdom will revert to the CAHDI in order that the CAHDI can make a final decision.

b. The CAHDI held an exchange of views on a document prepared by the Treaty Office of the Council of Europe concerning the *“Draft model final clauses for conventions, additional protocols and amending protocols concluded within the Council of Europe”*. In order to allow delegations to further examine these final clauses, the CAHDI agreed that this document would be re-examined at its next meeting in September 2016, together with the written comments to be provided by delegations to the Secretariat before 1 June 2016.

## APPENDIX I

### AGENDA

#### I. INTRODUCTION

1. Opening of the meeting by the Chair, Mr Paul Rietjens
2. Adoption of the agenda
3. Adoption of the report of the 50<sup>th</sup> meeting
4. Information provided by the Secretariat of the Council of Europe
  - Statement by Mr Jörg Polakiewicz, Director of Legal Advice and Public International Law

#### II. ONGOING ACTIVITIES OF THE CAHDI

5. Committee of Ministers' decisions and activities of relevance to the CAHDI's activities, including requests for CAHDI's opinion
6. Immunities of States and international organisations
  - a. *Topical issues related to immunities of States and international organisations*
    - Settlement of disputes of a private character to which an international organisation is a party
    - Immunity of State owned cultural property on loan
    - Immunities of special missions
    - Service of process on a foreign State
  - b. *UN Convention on Jurisdictional Immunities of States and Their Property*
  - c. *State practice, case-law and updates of the website entries*
7. Organisation and functions of the Office of the Legal Adviser of the Ministry of Foreign Affairs
8. National implementation measures of UN sanctions and respect for human rights
  - Exchange of views with Ms Catherine Marchi-Uhel, Ombudsperson of the United Nations Security Council's ISIL (Da'esh) and Al-Qaida Sanctions Committee
9. Cases before the European Court of Human Rights involving issues of public international law
10. Peaceful settlement of disputes
11. Law and practice relating to reservations and interpretative declarations concerning international treaties: European Observatory of Reservations to International Treaties
  - List of outstanding reservations and declarations to international treaties subject to objection
12. Review of Council of Europe conventions

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**III. GENERAL ISSUES OF PUBLIC INTERNATIONAL LAW**

13. Consideration of current issues of international humanitarian law
14. Developments concerning the International Criminal Court (ICC) and other international criminal tribunals
  - Exchange of views with Ms Silvia Fernández de Gurmendi, President of the ICC
15. Topical issues of international law

**IV. OTHER**

16. Place, date and agenda of the 52<sup>nd</sup> meeting of the CAHDI
17. Other business
  - a. *Possible review and updating of the “Amended Model Plan for the Classification of Documents concerning State practice in the Field on Public International Law” adopted by the Committee of Ministers of the Council of Europe in Recommendation No. R (97) 11 of 12 June 1997*
  - b. *Exchange of views on the “Draft model final clauses for conventions, additional protocols and amending protocols concluded within the Council of Europe”, prepared by the Treaty Office of the Council of Europe*

## APPENDIX II

### OPINION OF THE CAHDI

#### ON RECOMMENDATION 2083 (2016) OF THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE – “INTRODUCTION OF SANCTIONS AGAINST PARLIAMENTARIANS”

1. On 10-11 February 2016, the Ministers' Deputies at their 1247<sup>th</sup> meeting agreed to communicate Recommendation 2083 (2016) of the Parliamentary Assembly of the Council of Europe (PACE) on “Introduction of sanctions against parliamentarians” to the Committee of Legal Advisers on Public International Law (CAHDI), for information and possible comments by 11 May 2016. The text of this Recommendation and the Resolution 2087(2016) associated with it appears in Appendix I and Appendix II respectively to this document.

2. The CAHDI examined the above-mentioned Recommendation at its 51<sup>st</sup> meeting (Strasbourg, 3-4 March 2016) and made the following comments concerning those aspects of Recommendation 2083 (2016) which are of particular relevance to the Terms of Reference of the CAHDI.

#### A. Comments in relation to the general question of the rights of members of the PACE

3. From the outset, the CAHDI notes that the legal situation of members of the PACE travelling in an official capacity to and in Council of Europe member States is governed by Article 40<sup>1</sup> of the *Statute of the Council of Europe*, as further elaborated in the *General Agreement on Privileges and Immunities of the Council of Europe* (GAPI) and its *Protocol*. Furthermore, the CAHDI notes that the rights of members of the PACE when seeking to attend an official meeting in a member State, in particular in relation to the freedom of movement, are defined in Article 13<sup>2</sup> of the GAPI. The immunities enjoyed by PACE members are defined in particular in Articles 14<sup>3</sup> and 15<sup>4</sup> of the GAPI. Moreover, Article 3<sup>5</sup> of the *Protocol* to the GAPI extends the immunities defined in Article 15 of the GAPI to the representatives of the PACE and their substitutes attending or travelling to or from meetings of the PACE committees or sub-committees.

4. The CAHDI recalls that the Committee of Ministers of the Council of Europe has invited on several occasions the governments of member States to adopt specific measures in order to fully implement the above mentioned privileges and immunities enjoyed by the PACE members. For

<sup>1</sup> **Article 40 (ETS No.1):** “The Council of Europe, representatives of members and the Secretariat shall enjoy in the territories of its members such privileges and immunities as are reasonably necessary for the fulfilment of their functions. These immunities shall include immunity for all representatives to the Consultative Assembly from arrest and all legal proceedings in the territories of all members, in respect of words spoken and votes cast in the debates of the Assembly or its committees or commissions.”

<sup>2</sup> **Article 13 (ETS No.2):** “No administrative or other restriction shall be imposed on the free movement to and from the place of meeting of Representatives to the Consultative Assembly and their substitutes. Representatives and their substitutes shall, in the matter of customs and exchange control, be accorded:

- a. by their own government, the same facilities as those accorded to senior officials travelling abroad on temporary official duty;
- b. by the governments of other members, the same facilities as those accorded to representatives of foreign governments on temporary official duty.”

<sup>3</sup> **Article 14 (ETS No.2):** “Representatives to the Consultative Assembly and their substitutes shall be immune from all official interrogation and from arrest and all legal proceedings in respect of words spoken or votes cast by them in the exercise of their functions”.

<sup>4</sup> **Article 15 (ETS No.2):** “During the sessions of the Consultative Assembly, the Representatives to the Assembly and their substitutes, whether they be members of Parliament or not, shall enjoy:

- a. on their national territory, the immunities accorded in those countries to members of Parliament;
- b. on the territory of all other member States, exemption from arrest and prosecution.

This immunity also applies when they are travelling to and from the place of meeting of the Consultative Assembly. It does not, however, apply when Representatives and their substitutes are found committing, attempting to commit, or just having committed an offence, nor in cases where the Assembly has waived the immunity.”

<sup>5</sup> **Article 3 (ETS No.10):** “The provisions of Article 15 of the Agreement shall apply to Representatives to the Assembly, and their Substitutes, at any time when they are attending or travelling to and from, meetings of committees and sub-committees of the Consultative Assembly, whether or not the Assembly is itself in session at such time”.



instance, in its Reply to PACE *Recommendation 1373 (1998) on freedom of movement and the issue of visas to members of the Parliamentary Assembly of the Council of Europe* adopted on 20 October 1998 at the 645<sup>th</sup> meeting, the Committee of Ministers invited the governments of member States to consider taking a series of measures, in conformity with their national legislation, to ensure that members of the Parliamentary Assembly on official journeys benefit from full entry facilities on the territory of member States<sup>6</sup>. These measures were recalled by the Chair of the Committee of Ministers in his reply to the written Question No. 501 by Lord Russell-Johnston: "Visa requirements for members of the Assembly attending Assembly committee meetings". In this regard, the CAHDI recalls, as does the PACE itself in its Resolution 2087 (2016), that international law grants States full sovereignty over their territory. This implies that States can also freely decide, in conformity with their obligations under international law, on the entry of foreign nationals into their territory.

5. Furthermore, the CAHDI recalls its Preliminary Opinion on *Recommendation 1602 (2003) of the Parliamentary Assembly of the Council of Europe on "Immunities of members of the Parliamentary Assembly"* adopted at its 26<sup>th</sup> meeting in September 2003 (see Appendix III to this document). In this Preliminary Opinion "the CAHDI considered that the issues dealt with by this Recommendation, in particular paragraphs 2<sup>7</sup> and 5.1<sup>8</sup> required an in depth analysis which it could not carry out during the present meeting, and therefore it reserved its consideration of these issues and to return to them at its next meeting in the light of further information" (document CAHDI (2003)14, Appendix III). The Committee of Ministers took into account this CAHDI Preliminary Opinion when replying to the PACE in relation to Recommendation 1602 (2003) on 21 January 2004 (Reply adopted at the 869<sup>th</sup> meeting of the Committee of Ministers)<sup>9</sup>. The CAHDI pursued its consideration of PACE Recommendation 1602 (2003) at its 27<sup>th</sup> and 28<sup>th</sup> meetings, and agreed "to propose to the Committee of Ministers to ask member states, where national legislation permits, to acknowledge unilaterally as an official document the laissez-passer issued by the competent Council of Europe authorities to the members of the Parliamentary Assembly" (document CAHDI (2004) 27 paragraph 27). At their 904<sup>th</sup> meeting (17 November 2004), the Committee of Ministers decided to follow the CAHDI's proposal and instructed the Secretary General to transmit the invitation to member States<sup>10</sup>. The CAHDI notes that the Council of Europe Protocol will be issuing this year a Council of Europe laissez-passer to:

- members of Council of Europe institutions (Parliamentary Assembly and Congress of Local and Regional Authorities);
- judges of the European Court of Human Rights and the Administrative Tribunal;

<sup>6</sup> In its reply to PACE Recommendation 1373 (1998) on freedom of movement and the issue of visas to members of the Parliamentary Assembly of the Council of Europe, the Committee of Ministers "invited the governments of member States to consider taking one or more of the following measures, in conformity with their national legislation, to ensure that members of the Parliamentary Assembly on official journeys benefit by full entry facilities on the territory of member States:

- i. according priority to or at least speedy treatment of requests for visas from members of the Parliamentary Assembly in connection with their official duties, in particular when supported by a Council of Europe card;
- ii. granting long-term multiple entry visas whenever possible;
- iii. when the granting of long-term multiple visas is not possible, according priority to the speedy processing of requests for single-entry visas;
- iv. authorising authorities at ports of entry, in cases of urgency when it has not been possible for the member of the Parliamentary Assembly to obtain a visa prior to departing on an official journey, and when notified of such impossibility by the appropriate domestic authorities, to grant the appropriate visas exceptionally at the port of entry;
- v. granting visas free of charge whenever possible".

Reply adopted by the Committee of Ministers on 20 October 1998 at the 645th meeting of the Ministers' Deputies: See the text at the following [link](#).

<sup>7</sup> **Recommendation 1602 (2003) paragraph 2:** "It recalls that in the light of the ongoing work of the Assembly and its bodies throughout the year and the concept of European parliamentary immunity developed by the European Parliament, the notion "during the sessions of the Assembly" covers the entire parliamentary year".

<sup>8</sup> **Recommendation 1602 (2003) paragraph 5:** "It recommends that the Committee of Ministers invite member states: 5.1. to interpret the immunities accorded under Article 14 of the general agreement in such a way as to include the opinions expressed by Assembly members within the framework of official functions they carry out in the member states on the basis of a decision taken by an Assembly body and with the approval of the competent national authorities; [...]"

<sup>9</sup> See the text at the following [link](#).

<sup>10</sup> See the text at the following [link](#).

- members of monitoring bodies, including the European Committee for the Prevention of Torture (CPT) and the European Committee of Social Rights (ECSR);
- staff members of the Council of Europe.

This document will replace the so-called "blue passport" issued by Council of Europe Protocol since the 1970s which will be discontinued.

## **B. Comments in relation to specific questions raised in Recommendation 2083 (2016)**

6. Concerning the reference contained in paragraph 4.3 of the PACE Recommendation 2083 (2016) in relation to the "current work by the United Nations International Law Commission (ILC)" on this subject, the CAHDI underlines that the ILC is currently examining the subject of "Immunity of State officials from foreign criminal jurisdiction". The ILC defined "State official" in its provisionally adopted "Draft articles" as "any individual who represents the State or who exercises State functions" (see draft Article 2(e))<sup>11</sup>. Even if this definition includes "the legislative (...) functions performed by the State"<sup>12</sup>, it must be underlined that the ILC has excluded "persons connected with (...) international organizations" from the scope of the "Draft articles" (see draft Article 1.2)<sup>13</sup>. Furthermore, the ILC is only dealing with immunity from foreign criminal jurisdiction.

7. The CAHDI considers that many political and legal issues are raised by the privileges and immunities of parliamentarians and their corresponding rights and obligations, which are governed by the applicable Council of Europe treaties. The CAHDI recalls the rules currently in force and considers that an efficient implementation of these rules would solve most of the issues highlighted by the PACE. Consequently, the CAHDI considers that at present the drafting of any standard-setting work would not be the best way forward.

8. The CAHDI further considers that the responsibility for imposing restrictive measures on particular individuals, be they foreign parliamentarians or not, rests with the States or the international organisations that have adopted them. It is up to those States or international organisations to meet the requirements of legal certainty and to accompany the said measures by appropriate procedural guarantees taking into account *inter alia* the relevant jurisprudence of the European Court of Human Rights. The CAHDI notes that with respect to the restrictive measures of the European Union, the Court of Justice of the European Union provides judicial protection to persons addressed in such measures. With respect to restrictive measures adopted by the United Nations, the procedures for listing and delisting have been improved.

9. The CAHDI consequently considers that the proposal of the PACE concerning the possibility of the CAHDI carrying out "a feasibility study on the creation of an international status for parliamentarians and any related rights and obligations" would require, in an area which falls to a large extent under the national sovereignty, a prior evaluation of the needs in this field. Accordingly, the question of creating a specific status for parliamentarians goes beyond the sole competence of the CAHDI. Furthermore, recalling its Terms of Reference wherein the CAHDI is instructed by the Committee of Ministers to deal with immunities of States and international organisations, the CAHDI considers the specific immunities, rights and obligations of parliamentarians to be outside its purview.

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<sup>11</sup> Text of draft article 2(e) provisionally adopted by the ILC, see A/69/10, para. 131, p. 231.

<sup>12</sup> See Commentary to article 2 (e), see A/69/10, para.11 p. 235.

<sup>13</sup> Text of draft article 1.2 provisionally adopted by the ILC A/68/10, p.51; and see also commentary in particular paragraphs (1) (9) (10) (14) and (15), pp. 52, 55, 56 and 57.