



DH-SYSC-II(2018)Info1

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STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

COMMITTEE OF EXPERTS ON THE SYSTEM OF THE EUROPEAN
CONVENTION ON HUMAN RIGHTS
(DH-SYSC)

**DRAFTING GROUP ON THE PLACE OF THE EUROPEAN CONVENTION ON
HUMAN RIGHTS IN THE EUROPEAN AND INTERNATIONAL LEGAL ORDER
(DH-SYSC-II)**

**Information on the terms of reference, context of the work
and working methods
of the DH-SYSC-II**

*(prepared by the Secretariat with a view to its presentation at the 55th meeting
of the Committee of Legal Advisers on Public International Law (CAHDI),
22-23 March 2018)*

I. Terms of reference of the DH-SYSC-II and context of its work

1. On 11 December 2015 the Steering Committee for Human Rights (CDDH) adopted its report on “The longer-term future of the system of the European Convention on Human Rights” (“the CDDH report”), presenting its opinions and proposals in the context of the process for securing the long-term effectiveness of the Convention system. Having regard to this CDDH report,¹ the Ministers’ Deputies, at their 1252nd meeting (30 March 2016), instructed the CDDH to carry out a detailed analysis of all questions relating to the place of the European Convention on Human Rights in the European and international legal order and on the medium-term and longer-term prospects.
2. The terms of reference for 2018-2019 of the Committee of Experts on the System of the European Convention on Human Rights (DH-SYSC), which is a subordinate body of the CDDH, provide that the DH-SYSC is to “prepare a draft report for the Committee of Ministers containing conclusions and possible proposals for action (deadline: 31 December 2019)”² concerning the place of the European Convention on Human Rights in the European and international legal order as well as the related challenges. This work has been entrusted by the DH-SYSC to its Drafting Group DH-SYSC-II (“the Group”).

II. Working methods

3. At its first meeting on 30-31 March 2017, the Group, chaired by Ms Florence MERLOZ (France), identified three themes which need to be examined in the context of its work, namely:
 - Theme 1: the challenge of the interaction between the Convention and other branches of international law, including international customary law;
 - Theme 2: the challenge of the interaction between the Convention and other international human rights instruments to which the Council of Europe member States are parties;
 - Theme 3: the challenge of the interaction between the Convention and the legal order of the EU and other regional organisations.³
4. The future report on the place of the European Convention on Human Rights in the European and international legal order will accordingly consist of three main chapters, one for each of the said three themes. Each challenge identified in the CDDH report will be subject to stocktaking followed by an analysis identifying the underlying risks that it entails, as well as the concrete and pragmatic responses thereto, from the perspective of the system of the Convention. As regards the mid- and longer-term responses, the focus is on the follow-up actions of the Council of Europe bodies.⁴ The three themes will be addressed by the Group in a consecutive manner.⁵

¹ In particular, conclusion § 203 iii) of the [CDDH Report](#).

² [DH-SYSC\(2018\)01](#).

³ [DH-SYSC-II\(2017\)R1](#), §§ 6-9. Both the DH-SYSC and the CDDH have subsequently endorsed these three themes, see [DH-SYSC\(2017\)R3](#), § 16; and [CDDH\(2017\)R87](#), § 14.

⁴ [DH-SYSC-II\(2017\)R1](#), § 9.

⁵ See for the outline of the future report [DH-SYSC-II\(2017\)R2](#), Appendix III.

5. The aim of the work is the preservation of the efficiency of the Convention system against risks of fragmentation of the European and international legal space in the field of human rights protection by diverging interpretations.⁶
6. At its second meeting on 20-22 September 2017 (see the meeting report: [DH-SYSC-II\(2017\)R2](#)), the Group appointed the following Rapporteurs to submit a draft chapter to the Group reflecting the content of the discussions and contributions of the latter:
 - Theme 1 (the challenge of the interaction between the Convention and other branches of international law, including international customary law):
Prof. Alexei ISPOLINOV (Russian Federation) and Mr Chanaka WICKREMASINGHE (United Kingdom)
 - Theme 2 (the challenge of the interaction between the Convention and other international human rights instruments to which the Council of Europe member States are parties):
Ms Sofia KASTRANTA (Greece)
 - Theme 3 (the challenge of the interaction between the Convention and the legal order of the EU and other regional organisations):
Ms Kristine LĪCIS (Latvia).
7. Due to the complex nature of Theme 1, Contributors were appointed to contribute to the work on that theme in addition to the Rapporteurs. The Rapporteurs shall use the contributions when drawing up their draft chapters. The appointed Contributors are the following:
 - Subtheme i) on the Methodology of interpretation by the European Court of Human Rights and its approach to international law:
Mr Chanaka WICKREMASINGHE (United Kingdom)
 - Subtheme ii) on State responsibility and extraterritorial application of the European Convention on Human Rights:
Mr Marten ZWANENBURG (Netherlands)
 - Subtheme iii) on the Interaction between the resolutions of the Security Council and the European Convention on Human Rights:
Mr Chanaka WICKREMASINGHE (United Kingdom)
 - Subtheme iv) on the Interaction between international humanitarian law and the European Convention on Human Rights:
Prof. Anatoly KOVLER (Russian Federation)
8. Theme 2 covers the interaction between the Convention and the UN treaty bodies.⁷ Special focus shall lie on cases in which an application lodged with the European Court of Human Rights was declared inadmissible by means of an unreasoned

⁶ [DH-SYSC-II\(2017\)R1](#), § 9.

⁷ In particular in the light of §§ 182-184, 188 of the CDDH report.

decision, while the communication subsequently submitted to the United Nations Human Rights Committee on the same subject-matter is declared well-founded.⁸

9. Theme 3 concerns the interaction between the Convention and the legal order of the European Union (EU), in particular from the perspective of the relations between the European Court of Human Rights and the Court of Justice of the EU.⁹ Emphasis shall lie on the consequences of the delay of EU accession to the Convention, as well as on the possible responses to the consequences of this delay. Furthermore, the question of the relation with other entities such as the Eurasian Economic Union shall equally be addressed.¹⁰
10. At its forthcoming 3rd meeting on 3-5 April 2018, the DH-SYSC-II will examine the draft chapters on State responsibility and extraterritorial application of the European Convention on Human Rights (Theme 1 subtheme ii)) and on Interaction between the resolutions of the Security Council and the European Convention on Human Rights (Theme 1 subtheme iii)) submitted to the Group by the Rapporteurs. It will further hold a brainstorming discussion on Methodology of interpretation by the European Court of Human Rights and its approach to international law (Theme 1, subtheme i)) and on the Interaction between international humanitarian law and the European Convention on Human Rights (Theme 1, subtheme iv)).
11. The Group will hold another four meetings in the period of 2018–2019. An interim report will be presented to the DH-SYSC and to the CDDH at the end of 2018. In 2019 the focus will be on Themes 2 and 3.¹¹ The Group shall finalise its work before the end of the biennium 2018-2019.¹²
12. As has been noted by the Group, consulting the Council of Europe bodies relevant to its work, in particular the Committee of Legal Advisers on Public International Law (CAHDI), is important for the quality of its work.¹³ The appointment of a CAHDI representative, Mr Petr VÁLEK (Czech Republic), to participate in the meetings of the Group was welcomed by the CDDH at its 88th meeting.¹⁴ Furthermore, the Chairperson of the Group and the Chairperson of the CAHDI exchange views regularly and take part in the work of the other body respectively.

⁸ [DH-SYSC-II\(2017\)R1](#), § 7.

⁹ In particular in the light of §§ 177-181, 190-191 of the CDDH report.

¹⁰ [DH-SYSC-II\(2017\)R1](#), § 8.

¹¹ [DH-SYSC-II\(2017\)R2](#), § 9.

¹² [CDDH\(2017\)R88](#), § 8, 9 ii).

¹³ [DH-SYSC-II\(2017\)R1](#), § 10; and [DH-SYSC-II\(2017\)R2](#), § 10.

¹⁴ [CDDH\(2017\)88](#), § 9 iii).