

Strasbourg, 31 July 2017

DH-SYSC-II(2017)002

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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

DRAFTING GROUP II ON THE FOLLOW-UP TO THE CDDH REPORT
ON THE LONGER-TERM FUTURE OF THE CONVENTION
(DH-SYSC-II)

CONTEXT OF THE WORK OF THE DH-SYSC-II ON THE FUTURE REPORT OF
THE CDDH

(prepared by the Chair and the Secretariat)

I. Mandate of the DH-SYSC-II

1. At their 1252nd meeting (30 March 2016), the Ministers' Deputies instructed the CDDH to carry out a detailed analysis of all questions relating to the place of the Convention in the European and international legal order and on the medium-term and longer-term prospects, in the light of the relevant paragraphs of the report (conclusion § 203 iii). This work is consequently being carried out by the drafting Group DH-SYSC-II (hereafter, "the Group").

2. At its 1st meeting, held on the 30-31 March 2017 in Strasbourg, the Group determined a list of the three priority themes that need to be examined in the context of its work, as they emerge from the CDDH report on the longer-term future of the system of the European Convention on Human Rights ("the CDDH report"), namely:

- the challenge of the interaction between the Convention and other branches of international law, including international customary law (theme 1);
- the interaction between the Convention and other international human rights instruments to which the Council of Europe member States are parties (theme 2);
- the interaction between the Convention and the EU legal order, and other regional organisations (theme 3).¹

3. Both the DH-SYSC² and the CDDH³ have subsequently adopted these three priority themes.

4. As underlined by the Group, the aim of the work in its entirety 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, stemming from diverging interpretations. Each challenge presented in the CDDH report is to be subjected 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. With a view to preparing the mid- and longer-term responses, the focus needs to be on the follow-up actions of the Council of Europe bodies.

II. Working methods of the DH-SYSC-II

5. At its first meeting, the Group defined its working methods for the continuation of its work as the following: the appointment of Rapporteurs and Contributors, following a procedure to be set up by the Secretariat; the possible contribution of CAHDI and other relevant bodies to the work. Furthermore, the Group decided to organise the conduct of the work by addressing each of the three themes in a consecutive manner. In light of the general aim of the report, the observations and analysis of challenges should hold a concrete and pragmatic approach, leading to possible responses, conclusions and suggestions.

6. The working methods of the Group have been endorsed by the CDDH, which also invited experts to present their candidatures to be a Rapporteur for one of the three themes. Thus, a total

¹ DH-SYSC-II (2017)R1, §§ 6-9.

² DH-SYSC(2017)R3, § 16.

³ CDDH(2017)R87, § 14.

of three Rapporteurs (one for each of the three priority themes) will be appointed at the 2nd meeting of the Group.

7. Due to the complex and extensive nature of theme 1, four additional Contributors will be appointed to contribute to the work on this theme in addition to the Rapporteur. Each Contributor will bring their expertise on one of the main topics within this theme, namely (i) the methodology of interpretation by the Court, (ii) the notions of jurisdiction, in the sense of Article 1 of the Convention, and of responsibility (including the questions relating to effective control), (iii) the relation between the resolutions of the Security Council and the Convention, and (iv) the Convention and international humanitarian law. The Rapporteur, with the help of the Secretariat, will compile the different contributions and produce a final draft of the chapter for theme 1.

8. Interested candidates for the position of Rapporteur or Contributor are invited to send their candidatures to the Secretariat (DGI-CDDH-Reform@coe.int) before the deadline as decided by the CDDH (Friday 1 September 2017). The Rapporteur and the four Contributors for theme 1, as well as the Rapporteurs for themes 2 and 3, will then be appointed at the 2nd meeting of the Group (20-22 September 2017).

III. Detailed outline of the future report of the CDDH on the place of the Convention in the European and international legal order

9. With a view to its 2nd meeting (20-22 September 2017), the Group instructed the Secretariat to prepare a draft outline to facilitate the analyses that will be carried out. The Secretariat has prepared such a draft outline in collaboration with the Chair.

10. This draft outline will serve as a basis for discussions during the future meetings of the Group. Furthermore, it will give direction and guidance to the Rapporteurs and Contributors to start their work on their respective themes.

11. The draft outline divides the report in three main chapters, following the structure of the three main themes: (i) the challenge of the interaction between the Convention and other branches of international law, including international customary law, (ii) the challenge of the interaction between the Convention and other international human rights instruments to which the Council of Europe member States are parties, and (iii) the challenge of the interaction between the Convention and the EU legal order and other regional organisations.

12. The draft outline begins with a general introductory chapter, recalling the mandate of the Group, as well as the methodology, the scope and the general aim of the work.

13. In line with the general aim of the work, each of the three themes follows the same main structure, namely: (i) observations, (ii) analysis of the challenges, and (iii) possible responses.

14. Theme 1 examines, as agreed by the Group at its 1st meeting⁴:

- the methodology of interpretation by the Court (it will be determined at a later stage if this question should be subject to a distinct study);

⁴ DH-SYSC-II (2017)R1, § 6.

- the notions of jurisdiction, in the sense of Article 1 of the Convention, and of responsibility (including the questions relating to effective control);
- the relation between the resolutions of the Security Council and the Convention;
- the Convention and international humanitarian law.

15. Theme 2 examines the interaction between the Convention and the UN treaty bodies, in particular in light of paragraphs 182-184 as well as paragraph 188 of the CDDH report. Special focus lies on the situation in which a case introduced before the Court is declared inadmissible by means of an unreasoned decision, while the communication subsequently submitted to the United Nations Human Rights Committee is declared well-founded.⁵

16. Theme 3 examines the interaction between the Convention and the EU legal order from the perspective of the relations between the two courts (see in particular paragraphs 177-181 and 190-191 of the CDDH report). Emphasis lays on the consequences of the delay of the EU accession to the Convention, as well as on the possible responses to the consequences of this delay. As decided by the Group, the work will not cover the accession of the EU to other Council of Europe treaties. Furthermore, the question of the interaction between the Convention and the Eurasian Economic Union is included in this theme.⁶

17. The draft outline ends with a closing chapter containing final conclusions of the work reflecting the analyses carried out within the scope of the three themes.

18. The Secretariat and the Chair of the Group will compile the work of the three Rapporteurs and gather it into one uniformly structured document to be discussed and approved respectively by the Group, the DH-SYSC and the CDDH.

⁵ DH-SYSC-II (2017)R1, § 7.

⁶ DH-SYSC-II (2017)R1, § 8.