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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)

OPINION OF THE CAHDI

on Recommendation 2083 (2016) of the Parliamentary Assembly
of the Council of Europe – “Introduction of sanctions against
parliamentarians”

51st meeting
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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 1247th 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 51st 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 40¹ 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 13² of the GAPI. The immunities enjoyed by PACE members are defined in particular in Articles 14³ and 15⁴ of the GAPI. Moreover, Article 3⁵ 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

¹ **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.*”

² **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.*”

³ **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.*”

⁴ **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.”

⁵ **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 645th 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 States⁶. 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 26th 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 2⁷ and 5.1⁸ 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 869th meeting of the Committee of Ministers)⁹. The CAHDI pursued its consideration of PACE Recommendation 1602 (2003) at its 27th and 28th 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 904th 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 States¹⁰. 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);

⁶ 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](#).

⁷ **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”.

⁸ **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; [...]”

⁹ See the text at the following [link](#).

¹⁰ See the text at the following [link](#).

- judges of the European Court of Human Rights and the Administrative Tribunal;
- 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))¹¹. Even if this definition includes "the legislative (...) functions performed by the State"¹², 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)¹³. 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.

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

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

¹³ 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.

APPENDIX I

Recommendation 2083 (2016) of the Parliamentary Assembly of the Council of Europe – “Introduction of sanctions against parliamentarians”¹⁴

1. The Parliamentary Assembly refers to its Resolution 2087 (2016) on the “Introduction of sanctions against parliamentarians” and, in particular, to the current situation involving a growing number of restrictions on travel by national parliamentarians from Council of Europe member States to other member States.
2. The Assembly draws the Committee of Ministers’ attention to the continued failure by certain member States to honour the international commitments they have freely entered into, by hindering the Assembly’s activities with obstacles to the exercise of its members’ duties.
3. Moreover, the growing internationalisation of parliamentary work is highlighting the inadequacy of the international legal framework in which parliamentarians perform their duties outside their own countries. While it is clear that diplomacy is an inherently sovereign function, it is also true that parliaments have gradually become involved in it, entailing a need to recognise and protect the relevant activities on an international level. National parliamentarians should therefore be afforded adequate safeguards in relation to third countries when travelling abroad in the course of their duties and be covered by a fixed, standardised framework of rights and privileges so as to meet the requirements of legal certainty.
4. The Assembly therefore calls on the Committee of Ministers to:
 - 4.1. demand that member States honour their commitments under the Statute of the Council of Europe (ETS No. 1), the General Agreement on Privileges and Immunities of the Council of Europe (ETS No. 2) and the Protocol thereto (ETS No. 10) and fully guarantee the immunity of members of the Parliamentary Assembly and their free movement on their territory;
 - 4.2. urge member States to grant, by means of unilateral declarations:
 - 4.2.1. members of the delegations holding observer or partner for democracy status with the Parliamentary Assembly taking part in sessions of the Assembly and meetings of its committees and, in general, in activities organised by them, the privileges and immunities afforded to members of the Parliamentary Assembly under the General Agreement on Privileges and Immunities of the Council of Europe and the Protocol thereto;
 - 4.2.2. national elected representatives from Council of Europe member States travelling to or through their territory the immunities afforded to the members of their countries’ own parliaments;
 - 4.3. launch, prior to any standard-setting work and taking account of current work by the United Nations International Law Commission, a feasibility study on the creation of an international status for parliamentarians and any related rights and obligations, which could be carried out by the Council of Europe’s Committee of Legal Advisers on Public International Law (CAHDI).

¹⁴ *Assembly debate* on 26 January 2016 (4th Sitting) (see Doc. [13944](#), report of the Committee on Rules of Procedure, Immunities and Institutional Affairs, rapporteur: Mr Díaz Tejera). *Text adopted by the Assembly* on 26 January 2016 (4th Sitting).

APPENDIX II

Resolution 2087 (2016) of the Parliamentary Assembly of the Council of Europe– “Introduction of sanctions against parliamentarians”¹⁵

1. In recent decades, international action has become increasingly important in the activities of national parliaments, with the growing number of interparliamentary co-operation organisations and international parliamentary forums, the development of bilateral and multilateral international parliamentary relations (friendship groups, specialised interparliamentary networks), study groups and fact-finding visits. There is furthermore an increasing demand for interparliamentary co-operation, in particular in connection with support for the democratic transition process in many States.

2. As a benchmark institution for interparliamentary co-operation in Europe, the Parliamentary Assembly refers to its Resolution 1773 (2010) on promoting parliamentary diplomacy, in which it welcomed the positive role played by the latter in preventing conflicts, reducing tension between countries, facilitating dialogue and mediation.

3. The Assembly is seriously concerned about the current political context in Europe, where the illegal annexation of Crimea by the Russian Federation and its intervention resulting in a military conflict in eastern Ukraine, following the war between Russia and Georgia, and the occupation and illegal recognition of the independence of Abkhazia, Georgia and South Ossetia, Georgia by the Russian Federation, have generated a climate of mutual distrust and revived security concerns within Council of Europe and European Union member States, against a background of a “war of sanctions”. The reciprocal direct sanctions and the resulting restrictions on travel by parliamentarians are particularly harmful to parliamentary diplomacy.

4. The Assembly reaffirms the principle of territorial integrity, sovereignty and inviolability of the internationally recognised borders of all member States. In this context, the Assembly has systematically condemned the violation of international law and the Statute of the Council of Europe (ETS No. 1) by the Russian Federation in respect of Georgia and Ukraine. It has *inter alia* deplored the actions of the individual members of the Russian Federation Duma and the Federation Council who have unanimously voted in favour of military aggression, occupation, recognition of independence and annexation of parts of Council of Europe member States and has imposed sanctions envisaged by the Statute of the Council of Europe.

5. The Assembly believes that the restrictive measures targeting parliamentarians are not compatible with the very nature of parliamentarianism, which requires relations to be maintained through dialogue. It is afraid that the spread of individual sanctions involving the sharing of responsibility between States and individuals supporting the objectives of States is leading to an excessively moralistic trend in international law and the system of international liability, whereby, in the absence of any criminal liability, individual sanctions are supplementing the traditional sanctions targeting States.

6. Moreover, the Assembly notes the existence of national “blacklists” of parliamentarians to whom the States which have drawn them up can refuse visas or entry. Criminal or administrative proceedings for having breached a State’s legislation on entry into its territory must fully comply with international law. The Assembly underlines that, regardless of the legitimacy of the assertion by certain States of their sovereignty or the integrity of their territory in response to real or presumed threats, all restrictive measures are subject to compliance with international law, principles of good governance and the respect of law.

¹⁵ *Assembly debate* on 26 January 2016 (4th Sitting) (see Doc. [13944](#), report of the Committee on Rules of Procedure, Immunities and Institutional Affairs, rapporteur: Mr Díaz Tejera). *Text adopted by the Assembly on 26 January 2016* (4th Sitting). See also Recommendation 2083 (2016).

7. However, the Assembly stresses that the measures which could be adopted by the Parliamentary Assembly against its delegations or members, individually, under its Rules of Procedure are not part of a sanctions regime regulated by international law. These measures should be seen as a mechanism to prevent serious violations of the basic principles established by the Statute of the Council of Europe and persistent failures to honour obligations and commitments by the Council of Europe's member States.

8. The Assembly considers that, although international law in principle grants States full sovereignty over their territory, entry bans imposed by member States on parliamentarians amount to interference in the latter's exercise of their right to freedom of expression enshrined in the European Convention on Human Rights (ETS No. 5). With reference to Resolution 1894 (2012) on the inadmissibility of restrictions on freedom of movement as punishment for political positions, the Assembly reasserts that freedom of movement as a corollary of freedom of expression must not be subject to restrictions or used as punishment for peacefully expressing political opinions. Freedom of political expression enjoys enhanced protection and should not be restricted without compelling reasons.

9. The Assembly welcomes the fact that since the adoption of its Resolution 1597 (2008) on United Nations Security Council and European Union blacklists, the safeguards applicable to sanction procedures or restrictive measures both at United Nations and European Union level, in particular the procedures for challenging the measures and the scope and intensity of judicial review of the measures, have been duly improved. In this connection, it welcomes the judicial supervision exercised by the Court of Justice of the European Union over decisions providing for restrictive measures against natural or legal persons adopted by the Council of the European Union and expects the Court of Justice to clarify in its case law the extent and scope of the safeguards concerning natural persons.

10. The Assembly considers that any sanction targeting individuals must meet the requirements of legal certainty and be accompanied by appropriate procedural guarantees. However, in the case of parliamentarians, even if judicial reviews of bans or restrictive measures imposed by third countries play a key part in protecting them against arbitrary decisions, they should be afforded additional safeguards in order to offset the harmful effects which travel restrictions may have on the performance of their duties. The Assembly calls on Council of Europe member States to provide foreign parliamentarians targeted by restrictive measures such as inclusion on entry or visa blacklists with a transparent listing and appeals procedure.

11. In this context, the Assembly calls on member States which have adopted or may adopt restrictive measures to:

11.1. identify exhaustively the provisions governing the restrictive measures, travel ban lists or special rules on movement which could restrict foreign parliamentarians' freedom of movement;

11.2. make sure that there is a close link between a restrictive measure imposed on a foreign parliamentarian and its intended purpose. In particular, national security grounds must not be used to restrict the access of a parliamentarian who is peacefully expressing certain political positions;

11.3. notify foreign parliamentarians who are subject to bans or restrictive measures of their existence and the reasons for them;

11.4. ensure that foreign parliamentarians are able at short notice to submit their observations to the body that has imposed or is threatening to impose a restriction;

11.5. suspend the execution of a ban or restrictive measure while it is being challenged.

12. The Assembly is seriously concerned about the restrictions or travel bans which certain Council of Europe member States have imposed on Assembly members when performing their duties, in particular in the case of election observation exercises or visits by rapporteurs duly appointed by it, whether in terms of refusals to issue visas or threats of arrest or prosecution under national legislation. The Assembly unreservedly condemns these restrictions, which are a flagrant violation of the General Agreement on Privileges and Immunities of the Council of Europe (ETS No. 2) and the Protocol thereto (ETS No. 10) and a breach of the undertaking to co-operate with the Assembly.

13. Under the Statute of the Council of Europe and the General Agreement on Privileges and Immunities of the Council of Europe and the Protocol thereto, to which they all are parties, Council of Europe member States have undertaken to recognise and guarantee the freedom of movement and immunity of Assembly members and to protect them against any legal proceedings or detention, thereby ruling out both entry or visa bans and prosecution for failure to comply with rules on entry or movement, for instance via legislation on occupied territories.

14. The Assembly emphasises that, in accordance with the principles of international law, no State may evade the obligations imposed on it by international law or the treaties which it has signed by relying on the provisions of its domestic legislation, of whatever kind, including its own constitution. Accordingly, no Council of Europe member State may derogate from the obligations it entered into under the General Agreement on Privileges and Immunities and the Protocol thereto by relying on provisions of its domestic law to justify its failure to comply.

15. The Assembly therefore formally asks the member States to abide by their commitment to:

15.1. guarantee free movement of members of the Assembly. When a member State hosts a meeting, a visit or an official event organised by the Assembly, it must facilitate the participation of members of the Assembly and issue the visas required for their entry into its territory unless otherwise provided by the principles of international law;

15.2. guarantee the immunity of members of the Assembly against any legal proceedings or measures for their arrest or detention, except in cases of flagrante delicto.

16. Reiterating firmly the position which it took in Resolution 2078 (2015) on the progress of the Assembly's monitoring procedure, Resolution 2063 (2015) on consideration of the annulment of the previously ratified credentials of the delegation of the Russian Federation and Resolution 2034 (2015) on challenge on substantive grounds, of the still unratified credentials of the delegation of the Russian Federation, the Assembly condemns the violation by the Russian Federation of the General Agreement on Privileges and Immunities of the Council of Europe and calls on the authorities immediately to release Nadiia Savchenko, member of the Assembly.

17. The Assembly believes that it is now vital for national parliaments to introduce good governance in the area of their international activities if they wish to continue to operate legitimately through parliamentary diplomacy. It calls on the national parliaments of the member States to:

17.1. draw up guidelines on the conduct of bilateral or multilateral interparliamentary relations, setting out the aims, instruments and arrangements for interparliamentary co-operation, as well as the institutional and legal framework and the procedural or organisational aspects, or general rules of conduct, the rules applicable to visits by parliamentarians to other countries and, where applicable, the specific rights of the relevant parliamentarians;

17.2. provide appropriate training for members of parliament and the relevant secretariat staff concerning the preparation and conduct of parliamentary visits to foreign countries and

prepare updates on specific rules and regulations outlined by the national legislation of Council of Europe member States and parliamentary practice;

17.3. support initiatives aimed at promoting at international level the recognition of an international status for parliamentarians and any related rights and obligations, which is vital to the development of parliamentary diplomacy.

18. The Assembly also calls on the member States to:

18.1. sign and ratify the 1969 United Nations Convention on Special Missions;

18.2. study without delay the question of the rights and obligations of national parliamentarians from Council of Europe member States travelling on their territory in order to grant them adequate safeguards for carrying out their duties freely and effectively outside their own countries, including freedom of movement and expression and personal immunity;

18.3. in this connection, study the possibility of granting national parliamentarians from Council of Europe member States travelling on their territory on behalf of their parliaments the same immunities as parliamentarians from their own countries.

19. Against this overall background of the internationalisation of national parliamentary activities and given the greater responsibility now borne by parliamentarians on account of their actions and decisions, with the possibility of their being held personally liable under international law, the lack of a specific status and protection for parliamentarians under international law means that parliamentarians' rights and privileges outside their own countries are precarious. Account therefore needs to be taken of the specific nature of parliamentary work at international level and the protection afforded to those performing it needs to be strengthened, in particular in relation to third countries. The Assembly therefore calls on:

19.1. the Inter-Parliamentary Union (IPU) to develop and promote a set of rules applicable to parliamentarians travelling abroad in the exercise of their duties so as to provide an international framework for interparliamentary co-operation;

19.2. the United Nations International Law Commission to promote, in its ongoing discussions, a comprehensive international legal framework so that parliamentarians targeted by restrictive measures are covered by a proper status in this connection, given the wide range of different safeguards afforded to individuals targeted by sanctions, which currently depend on the legal order of the international organisation or State which imposed them.

APPENDIX III

Preliminary Opinion on Recommendation 1602 (2003) on Immunities of Members of the Parliamentary Assembly

(document CAHDI (2003) 14, Appendix III)

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 26th session in Strasbourg, 18-19 September 2003. The agenda included an item on « Decisions of the Committee of Ministers concerning the CAHDI and request for CAHDI's opinion».
2. In the framework of this item, pursuant to the Committee of Ministers' decision at their 837th meeting (Strasbourg, 16 April 2003), the CAHDI examined Parliamentary Assembly Recommendation 1602 (2003) on immunities of Members of the Parliamentary Assembly.
3. In accordance with its specific terms of reference, the CAHDI concentrated on what it considered to be issues of public international law.
4. The CAHDI considered that the issues dealt with by this Recommendation, in particular paragraphs 2 and 5.i 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.
5. However, in order to meet the request of the Committee of Ministers, the CAHDI wished to provide it with the following preliminary considerations.
6. The CAHDI recalls the relevant provisions of the Vienna Convention on the Law of the Treaties, including Articles 31-33 and in particular Article 31 that provides that
 1. *A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*
[...]
 3. *There shall be taken into account, together with the context:*
 - (a) *any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;*
 - (b) *any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.*
7. Without prejudice to the further consideration of the substantive points referred to in paragraph 4 above, the CAHDI notes that, from a procedural point of view, the Committee of Ministers could, if considered appropriate, adopt unanimously a position concerning the interpretation of the General Agreement on Privileges and Immunities of the Council of Europe. The effect of such a position would have to be seen in the light of the above-mentioned provisions.
8. Concerning paragraph 5, iii of the Recommendation, the CAHDI stresses that, in accordance with Article 6, paragraph 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, at all stages when parliamentary immunity is waived the presumption of innocence must be maintained.