

OPINION OF THE CAHDI

On Recommendation 2130 (2018) of the Parliamentary Assembly of the Council of Europe – “Legal Challenges Related to Hybrid War and Human Rights Obligations”

1. On 15 May 2018, the Ministers’ Deputies at their 1316th meeting agreed to communicate [Recommendation 2130 \(2018\)](#) of the Parliamentary Assembly of the Council of Europe (PACE) on “*Legal Challenges Related to Hybrid War and Human Rights Obligations*” to the Committee of Legal Advisers on Public International Law (CAHDI), for information and possible comments by 30 September 2018. The Ministers’ Deputies also communicated this Recommendation to the Steering Committee for Human Rights (CDDH), the Committee on Counter-terrorism (CDCT), the Cybercrime Convention Committee (TC-Y), and the Steering Committee on Media and Information Society (CDMSI). PACE [Resolution 2217 \(2018\)](#), on the same topic, is associated to it.
2. The CAHDI examined the abovementioned Recommendation at its 56th meeting (Helsinki, Finland, 20-21 September 2018) and made the following comments which concern aspects of the Recommendation which are of particular relevance to the Terms of Reference of the CAHDI.
3. The CAHDI takes due note of the Parliamentary Assembly’s findings in Resolution 2217 (2018) as regards the main elements of “hybrid war”, at the same time pointing out the absence of a universally agreed definition. The CAHDI shares the concerns of the Parliamentary Assembly about the legal challenges related to “hybrid war” and hybrid influencing, and agrees to underline that relevant national and international legal regimes apply to the military and non-military means of “hybrid war”. Each action should be assessed individually according to the relevant legal regime. If the actions amount to an armed conflict, be it international or non-international, International Humanitarian Law applies. The CAHDI would also like to recall that international human rights law is relevant to both military and non-military actions carried out as part of a “hybrid war”, including in particular the case law of the European Court of Human Rights as regards restrictions on certain human rights.
4. The CAHDI considers that many political and legal issues are raised by the activities referred to as a “hybrid war”. Furthermore, the CAHDI points out that some of these legal challenges are already addressed by existing binding international legal instruments as well as by several international entities and committees within the Council of Europe and beyond. In the Council of Europe these include, for instance, the *Convention on Cybercrime (ETS No. 185)*; the *Council of Europe Convention on the Prevention of Terrorism (CETS No. 196)* and its Protocol; the Steering Committee on Media and Information Society (CDMSI) and the Steering Committee on Human Rights (CDDH).
5. The CAHDI consequently considers that the proposal of the Parliamentary Assembly concerning the development of new legal standards to prevent and combat the threats of “hybrid war”, in the absence of a common understanding as to what “hybrid war” entails and in the context of on-going work by different sectors, would be premature at this stage.