

24 September 2021

**REPLY OF THE COMMITTEE OF LEGAL ADVISERS ON  
PUBLIC INTERNATIONAL LAW (CAHDI)  
ON RECOMMENDATION 2201 (2021) OF THE PARLIAMENTARY ASSEMBLY**

1. On 5 May 2021, the Ministers' Deputies, at their 1403rd meeting, agreed to communicate Recommendation 2201 (2021) of the Parliamentary Assembly of the Council of Europe (PACE) to the Committee of Legal Advisers on Public International Law (CAHDI), for information and possible comments. The Ministers' Deputies further agreed to communicate the Recommendation to the Steering Committee on Media and Information Society (CDMSI) and to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).
2. The CAHDI examined the abovementioned Recommendation, and wishing to refrain from drafting an opinion on any country-specific human rights situation, since it falls outside of CAHDI's Terms of reference, made the following general remarks in relation to universal jurisdiction.
3. At the outset, the CAHDI recalls that the topic "*The scope and application of the principle of universal jurisdiction*" has been a standing agenda item of the UN General Assembly's Sixth Committee and recalls the respective reports of the UN Secretary-General as well as UN General Assembly resolutions on the matter.
4. The CAHDI notes that the notion of "universal jurisdiction", first and foremost, concerns criminal jurisdiction.
5. The CAHDI recalls that the 1949 Geneva Conventions place an obligation for the States Parties 'to search for persons alleged to have committed or to have ordered to be committed grave breaches [of the Conventions] and shall bring such persons, regardless of nationality, before its own courts'. Similar obligations are found in other sources of applicable international law.
6. A number of international treaties on specific offences establish the principle of *aut dedere aut judicare* requiring the custodial State to prosecute the suspect in case of non-extradition. The principle of *aut dedere aut judicare* is incorporated also in a number of conventions concluded within the Council of Europe. Such conventions oblige their State parties to prosecute or extradite offenders in their custody.
7. Notwithstanding the above, the CAHDI underlines that the primary responsibility to prosecute lies with the State or States with direct jurisdictional links, notably those with territorial or personal jurisdiction.