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Accountability of international organisations for human rights violations

Reply to Recommendation[1]: Recommendation 2037 (2014)
Committee of Ministers

1. The Committee of Ministers welcomes Parliamentary Assembly Recommendation 2037 (2014) on "Accountability of international organisations for human rights violations", which it has agreed to communicate to the Committee of Legal Advisers on Public International Law (CAHDI) and to the Steering Committee for Human Rights (CDDH) for information and possible comments.

2. The Committee of Ministers agrees on the crucial importance of appropriate mechanisms to ensure the accountability of international organisations for any human rights violations that may occur as a consequence of their activities. It takes note of the Assembly's call on international organisations of which member States are a part, including the United Nations and its specialised agencies, as well as the European Union and the International Monetary Fund, to examine the quality and effectiveness of mechanisms aimed at ensuring compliance with their human rights obligations and to further develop legal standards in this area.

3. The Committee of Ministers recalls that the protection and promotion of human rights form part of the foundations of the Council of Europe, the European Union, the United Nations and its specialised agencies, as enshrined in the Statute of the Council of Europe (Article 1), the Treaty on European Union (Article 2) and the Charter of the United Nations (Article 1). In accordance with these constituent treaties, the protection and respect of human rights must be an integral part of any action and activities of these organisations. The Committee of Ministers also notes that the most relevant international legal instruments and human rights standards have been developed within these organisations.[2]

4. The Committee of Ministers also points out that over the years, international organisations and the European Union have developed mechanisms, bodies and entities with a view to ensuring respect for universal human rights standards, including to prevent possible infringements of human rights derived from the application of certain targeted sanctions resolutions.

5. Concerning the United Nations and its specialised agencies, the Committee of Ministers notes the ad hoc human rights mechanisms enumerated in paragraph 5 of Parliamentary Assembly Resolution 1979 (2014) on the "Accountability of international organisations for human rights violations", notably the appointment of an ombudsperson to oversee the United Nations Security Council's anti-terrorism sanctions. With regard to the United Nations Interim Administration Mission in Kosovo (UNMIK), the Committee refers notably to the establishment of the Human Rights Advisory Panels applying the European Convention on Human Rights and to the agreements between UNMIK and the Council of Europe on the application of the Framework Convention for the Protection of National Minorities and on visits by the European Committee for the Prevention of Torture and inhuman or degrading Treatment or Punishment (CPT) to places where persons

1. Adopted at the 1204th meeting of the Ministers' Deputies (2-3 July 2014).
2. For example the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the Convention on the Rights of the Child (1989), the European Convention on Human Rights (1950), the European Social Charter (1961) as well as the Charter of Fundamental Rights of the European Union (2000).

are deprived of their liberty by UNMIK. It further notes General Assembly Resolution 68/105 on the "Criminal accountability of United Nations officials and experts on mission" of 16 December 2013 which, *inter alia*, strongly urges States to take all appropriate measures to avoid impunity for crimes that could amount to human rights violations committed by UN officials or experts on mission. Furthermore,a Human Rights Due Diligence Policy, endorsed by the UN Secretary-General in July 2011,[3] sets out measures that all UN entities must take in order to ensure that any support that they may provide to non-UN forces is consistent with the purposes and principles as set out in the Charter of the UN and with its responsibility to respect, promote and encourage respect for international humanitarian, human rights and refugee law.

6. As far as the European Union is concerned, the Committee of Ministers recalls that the draft instruments for the accession of the EU to the European Convention on Human Rights were agreed in April 2013 at negotiators' level. Accession by the EU is intended to fill a legal gap to ensure that anyone who alleges that his or her human rights have been violated by an act or omission of the EU may file an application with the European Court of Human Rights. Moreover, provisions in the draft accession agreement on joint responsibility and the co-respondent mechanism also aim at ensuring proper accountability where the EU implements provisions of its founding treaties agreed upon by its member States, or where the latter implement acts adopted by the EU.

7. Regarding the issue of the "status" of international organisations within national legal systems and in particular the question of the immunities of international organisations, the Committee of Ministers underlines that the privileges and immunities enjoyed by international organisations are essential elements for the fulfilment of their mission. They are governed by international law such as constituent instruments, multilateral or bilateral agreements, i.e. headquarters or host agreements. International organisations may consider waiver of immunity in individual cases where appropriate. The Committee further notes that the CAHDI regularly discusses the issue of the immunity of international organisations and has observed an increase in practice and case law related to the scope of this immunity and to the question of the availability of "reasonable alternative means"[4] in the framework of the relevant organisation for an effective protection of the rights under the European Convention on Human Rights. These issues can be considered alongside procedures for dispute settlement involving international organisations, which is a topic that is currently being examined by CAHDI.

8. In response to the invitation to engage in a reflection on the accountability issues concerning international organisations, the Committee of Ministers notes that this issue raises several questions which deserve special attention and which are important for ensuring the full enjoyment of human rights and fundamental freedoms. It refers in this regard to the recent case law on the attribution of responsibility to a State or an international organisation[5] with regard to the implementation of international organisations' norms as well as to the work of the International Law Commission (ILC) on "The responsibility of States for internationally wrongful acts" and on "The responsibility of international organisations".

9. Finally, with regard to paragraph 3 of the Assembly's recommendation, the Committee of Ministers notes the UN General Assembly Resolution 66/100 (2011) according to which the item "Responsibility of international organisations" has been included in the provisional agenda of the General Assembly's forthcoming 69th session with a view to examining the question of what form the International Law Commission's "Draft Articles on the Responsibility of International Organisations" might take. The Committee recalls that the Secretariat, in co-operation with the CAHDI, has previously submitted a contribution on behalf of the Council of Europe to the ILC on this matter. It encourages further contributions should the item be discussed in the Sixth Committee of the General Assembly at its next session.

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3. See documents A/67/775 and S/2013/110.

4. European Court of Human Rights, Beer and Regan v. Germany, Application No. 28934/95, judgment delivered on 18 February 1999; European Court of Human Rights, Waite and Kennedy v. Germany, Application No. 26083/94, judgment delivered on 18 February 1999; European Court of Human Rights, Chapman v. Belgium, Application No. 39619/06, judgment delivered on 5 March 2013.

5. European Court of Human Rights, Nada v. Switzerland, Application No. 10593/08, judgment delivered on 12 September 2012; Judgment of the Court of Justice of the European Union of 18 July 2013 in Joined Cases C-584/10 P, C-593/10 P and C-595/10 P, Commission, Council, United Kingdom v. Yassin Abdullah Kadi; European Court of Human Rights, Al-Dulimi and Montana Management Inc. v. Switzerland, Application No. 5809/08, judgment delivered on 26 November 2013.