Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

**Doc. 11494**
19 January 2008

# Prosecution of offences falling within the jurisdiction of the International Criminal Tribunal for the former Yugoslavia (ICTY)

**Reply to Recommendation**[1]: Recommendation 1803 (2007)
Committee of Ministers

1. The Committee of Ministers has attentively examined Parliamentary Assembly Recommendation 1803 (2007) on prosecution of offences falling within the jurisdiction of the International Criminal Tribunal for the former Yugoslavia (ICTY), which it has transmitted to the member states' governments, to the Committee of Legal Advisers on Public International Law (CAHDI), to the European Committee on Crime Problems (CDPC) and to the Steering Committee for Human Rights (CDDH), for information and possible comments. The comments received from these committees are appended to this reply.

2. The Committee of Ministers notes that the Assembly recommends that the Committee of Ministers:

*a.* invites certain Council of Europe member states to sign and/or ratify a number of Council of Europe treaties on international justice in criminal matters (particularly ETS Nos. 24, 70, 73, 82, 99, 116, 167 and 182) aimed at promoting international co-operation, prevention of impunity and victim protection; and

*b.* encourages member states which have not yet done so to consider signing agreements with the United Nations concerning the enforcement of sentences handed down by the International Criminal Tribunal for the former Yugoslavia (ICTY).

3. With regard in particular to paragraph 1 of the recommendation, the Committee of Ministers refers to the Action Plan adopted at the 3rd Summit of the Council of Europe (Warsaw, May 2005), which calls for full use to be made of the Council of Europe's standard-setting potential and for promotion of the implementation and development of the Organisation's legal instruments and judicial co-operation mechanisms, and to Resolution No. 5 on the functioning of the Council of Europe conventions on judicial co-operation in criminal matters, adopted by the 26th Conference of European Ministers of Justice (Helsinki, April 2005). In addition, it draws attention to the work of the Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters (PC-OC), which monitors the functioning of conventions dealing with international co-operation in criminal matters so as to facilitate their application in practice.

4. The Committee of Ministers takes note of the entry into force on 27 June 2003 of the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes (ETS No. 82) and of the fact that it has to date been ratified by only three states and signed by two others. The Committee of Ministers informs the Assembly that Serbia has ratified the European Convention on the International Validity of Criminal Judgments (ETS No. 70) and the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS No. 182). The Committee of Ministers invites all states which have not yet done so to ratify these instruments and the other treaties cited by the Assembly.

1. Adopted by the Committee of Ministers on 16 January 2008, at the 1015th meeting of the Ministers' Deputies.

5. The Committee of Ministers further draws the Assembly's attention to the work of the CAHDI, which also contributes to the effectiveness and operation of the conventions by regularly examining reservations to international treaties, as part of its work as the European Observatory of Reservations to International Treaties.

6. With regard to paragraph 2 of the recommendation, the Committee of Ministers wishes to inform the Assembly that the CAHDI periodically examines developments concerning the international criminal courts, not least the ICTY and the International Criminal Tribunal for Rwanda (ICTR), with a view to promoting their work. Since 2000, at the initiative of the CAHDI and the CDPC, the Council of Europe has also held four consultation meetings, open to member and observer states, so as to foster exchanges of views on the implications for Council of Europe member states of ratifying the Statute of the International Criminal Court (ICC). Although the meetings concerned the ICC, aspects of co-operation with the ICTY were also discussed. The conclusions adopted at these meetings were brought to the attention of the Committee of Ministers, which transmitted them to the Parliamentary Assembly.

7. Lastly, the Committee of Ministers notes that 10 states, all members of the Council of Europe, have concluded agreements on the enforcement of sentences handed down by the ICTY.[2] It also points out that concluding such agreements is voluntary and would contribute to pursuit of the objectives underlying the establishment of the ICTY. It encourages states which have not yet done so to envisage signing such agreements.

2. Italy, 6 February 1997; Finland, 7 May 1997; Norway, 24 April 1998; Sweden, 23 February 1999; Austria, 23 July 1999; France, 25 February 2000; Spain, 28 March 2000; Germany, 17 October 2000; Denmark, 19 June 2002; and United Kingdom, 11 March 2004. These agreements can be consulted on www.un.org/icty/legaldoc-e/index.htm.

**Appendix to the reply**

**Opinion of the Committee of Legal Advisers on Public International Law (CAHDI) on Parliamentary Assembly Recommendation 1803 (2007) on prosecution of offences falling within the jurisdiction of the International Criminal Tribunal for the former Yugoslavia (ICTY)**

1. On 9 July 2007, the Ministers' Deputies communicated Assembly Recommendation 1803 (2007) to the Committee of Legal Advisers on Public International Law (CAHDI) for information and possible comments by 31 October 2007.

2. The CAHDI considered the above-mentioned recommendation and adopted the following comments at its 34th meeting (Strasbourg, 10-11 September 2007).

3. From the outset the CAHDI concentrated on those aspects which it thought fell within its scope of competence and did not address the others, particularly those relating to criminal law, which fall within the competence of other committees, in particular the CDPC.

4. In Recommendation 1803 (2007), the Assembly recommended that the Committee of Ministers:

*a.* invite a number of Council of Europe member states to sign and/or ratify a series of Council of Europe treaties relating to international criminal justice (namely ETS Nos. 24, 70, 73, 82, 99, 116, 167 and 182) aimed at promoting international co-operation, the fight against impunity and the protection of victims; and

*b.* encourage member states which had not yet done to consider signing agreements with the United Nations concerning the execution of sentences handed down by the International Criminal Tribunal for the former Yugoslavia (hereafter the ICTY).

5. Regarding the recommendation in paragraph 4.*a* above, the CAHDI wishes to recall the Action Plan of the 3rd Summit of the Council of Europe (Warsaw, May 2005), which calls for full use to be made of the Council of Europe's standard-setting potential and for the promotion of the implementation and further development of the Organisation's legal instruments and mechanisms of legal co-operation, and Resolution No. 5 on the functioning of the Council of Europe conventions on judicial co-operation in criminal matters, adopted at the 26th Conference of European Ministers of Justice (Helsinki, April 2005).

6. The CAHDI further wishes to stress the importance of the above-mentioned conventions and acknowledge the work of the CDPC relating to their efficient functioning and operation. In particular, the CAHDI notes the entry into force on 27 June 2003 of the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes (ETS No. 082) and the fact that to date it has been ratified by only three states and signed by a further two.

7. The CAHDI also contributes to the efficient functioning and operation of conventions by periodically considering outstanding reservations to international treaties, including those mentioned above, in the context of its operation as European Observatory of Reservations to International Treaties.

8. Regarding the recommendation in paragraph 4.*b* above, the CAHDI regularly reviews developments regarding the international criminal tribunals, including the ICTY and the ICTR, with a view to promote their work. This should be seen against the background of the CAHDI's work in support of international criminal justice, bearing in mind the relevant texts of the Parliamentary Assembly[3] and the decisions of the Committee of Ministers in relation to them.

9. Since 2000, at the initiative of the CAHDI and the CDPC, the Council of Europe has also organised four consultation meetings open to member and observer states, to foster exchanges of views on the implications for Council of Europe member states of ratification of the Statute of the International Criminal Court (ICC).

---

3. See Parliamentary Assembly: Recommendation 1189 (1992) on the establishment of an international court to judge war crimes; Parliamentary Assembly Recommendation 1408 (1999) on the International Criminal Court; Parliamentary Assembly Recommendation 1581 (2002) on risks for the integrity of the Statute of the International Criminal Court; Parliamentary Assembly Resolution 1300 (2002) on risks for the integrity of the Statute of the International Criminal Court; Parliamentary Assembly Resolution 1336 (2003) on threats to the International Criminal Court. Committee of Ministers: Declaration of the Committee of Ministers on the International Criminal Court – forthcoming entry into force of the Rome Statute; Committee of Ministers' reply to Parliamentary Assembly Recommendation 1581 (2002) on risks for the integrity of the Statute of the International Criminal Court and Committee of Ministers' reply to Parliamentary Assembly Recommendation 1408 (1999) on the International Criminal Court.

Although the consultations focused on the ICC, they also covered aspects relating to co-operation with the ICTY. The conclusions adopted at these consultations were brought to the attention of the Committee of Ministers, which communicated them to the Parliamentary Assembly.

10. In these conclusions, participants have consistently noted the particular importance for the work of the ICC of appropriate state support with regard to enforcement of sentences in accordance with Part 10 of the Rome Statute. The same should be held true in relation to the ICTY.

11. The CAHDI notes that 10 states have concluded agreements on the enforcement of sentences of the ICTY all of which are members of the Council of Europe.[4] The CAHDI notes that the conclusion of such agreements is voluntary and would contribute to the pursuance of the objectives underlying the setting-up of the ICTY, and recalls the position of the Secretary General of the United Nations that "given the nature of the crimes in question and the international character of the tribunal, the enforcement of sentences should take place outside the territory of the former Yugoslavia. States should be encouraged to declare their readiness to carry out the enforcement of prison sentences in accordance with their domestic laws and procedures, under the supervision of the International Tribunal."[5]

4. These are: Italy, 6 February 1997; Finland, 7 May 1997; Norway; 24 April 1998; Sweden, 23 February 1999; Austria, 23 July 1999; France, 25 February 2000; Spain, 28 March 2000; Germany, 17 October 2000; Denmark, 19 June 2002; and United Kingdom, 11 March 2004. The text of the agreements is available at www.un.org/icty/legaldoc-e/index.htm.

5. See report of the Secretary General pursuant to paragraph 2 of Security Council Resolution 808 (1993), 3 May 1993, Document S/25704.