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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

QUESTIONNAIRE

LEGAL FOUNDATION OF FOREIGN POLICY

PRINCIPLES

1. (a) What are the legal foundations in your country for the conduct of foreign policy, and for the definition of its principles and aims? (b) How are these reflected in the various sources of domestic law:

- in the Constitution or its Preamble;
- in the basic principles governing laws of a constitutional or even supra-constitutional character;
- in organic or ordinary laws;
- in regulations;
- in case law?

(c) In this respect, are national treaties, or even decisions of international organisations, considered to be a source of domestic law capable of determining and establishing the principles and/or aims of foreign policy?

2. (a) What is the role of values such as democracy, the rule of law, the protection of Human rights and individual freedoms, in the conduct of foreign policy? (b) How are these values given effect? c) To this end, are there any control and protection mechanisms in place?

3. What is the place of the notion of the separation of powers in the determination by the State of its foreign policy and in the distribution of powers among the various persons and bodies concerned?

4. What is the influence of moves towards integration (such as European Union) on the different steps for the determination and implementation of foreign policy?

AUTHORITIES

5. Whore are the individual or institutional authorities responsible for the elaboration of basic principles governing the conduct of foreign policy?

6. What is the role of the Head of State in the formulation of foreign policy?

7. What is the role of the government in the formulation of foreign policy? What is the position of the Minister of Foreign Affairs?

8. What is the role of Parliament in the formulation of foreign policy? To what extent is parliamentary authorisation required for:

- the adoption of foreign policy directive?
- the expression of consent to be bound by international treaties?
- the taking of unilateral action (denunciation of treaties, withdrawal of reservations, recognition of foreign States, etc.)?

9. Is action taken within the framework of foreign policy subject to judicial review? Which court or courts exercise such jurisdiction? What is the scope of their power to review?

10. What is the role of the people in determining the direction of foreign policy (referendum, popular initiative)?

11. Among other authorities:

- (a) what is the role of other public bodies in the field of foreign policy and, particularly, of local, regional and federated bodies?
- (b) what is the role of the various pressure groups, lobbies, associations, individuals and companies (including multinationals)?

12. Is it possible to discern a trend towards increased decentralisation of the power of initiative or action in matters of foreign policy? If so, what factors contribute to this trend?

13. Does the Constitution contain provisions on rules of diplomatic protection or on liability for damage resulting from the implementation of foreign policy decisions? Are these provided for in other domestic sources of law?

14. How is the recruitment of diplomatic personnel and of staff of the Ministry of Foreign Affairs organised, with particular reference to the nomination, status and dismissal of senior civil servants and ambassadors in key posts.? Please supply recent statistics by way of illustration.

15. When important decision must be taken, to whom are diplomats in key posts bound to refer?

Legal foundation of foreign policy

Secretariat note

This draft report (Annex II) concerns the study on the "Legal foundation of foreign policy", prepared by M. Stanko Nick, with the Secretariat's assistance on the basis of the replies to the questionnaire CDL-DI (95) 3.

The Commission has received replies from the following countries : Argentina, Austria, Belarus, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Italy, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Norway, Portugal, Romania, Russia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine.

The Commission has not yet received replies from the following countries : Belgium, Cyprus, Ireland, Iceland, Japan, Luxembourg, Malta, Moldova, Netherlands, Poland, San Marino, United States of America.

The Secretariat informs the members of the Sub-Commission on international law that this first draft is not finalised. Some parts are still to be completed and some subjects should be developed further. However, this document can already be considered as the basis and the structure of the draft report which will be presented during the next Commission's meeting.

Members of the Sub-Commission are therefore invited to send to the Secretariat any observations or comments they may have concerning this draft report.

Moreover, the Rapporteur considers that it would be appropriate, at this stage of the study, to ask members of the Commission some further questions in order to have a more complete approach of some matters. Annex I to the document contains these questions.

The Secretariat will invite members of the Commission to send their replies as soon as possible in order to enable the Rapporteur to prepare a final draft report which could be examined during the Sub-Commission's next meeting in November.

ANNEX I

Further questions concerning the "Legal foundations of foreign policy"

1. Parliamentary control

- a) In your country, how does the Parliament control foreign policy in general, and international treaties and agreements in particular ? Give some examples.
- b) What is the role of parliamentary committees, especially foreign affairs committees, in the conduct of foreign policy ?
- c) Do parliamentary debates on foreign policy take place regularly in your country ? Do parliamentarians ask the government and the Minister of Foreign Affairs to submit reports on specific issues of foreign policy, or as a whole ?

2. Judicial control

- a) Have constitutional courts or courts of equivalent jurisdiction in your country already taken decisions concerning conformity with the constitution of actions taken within the framework of foreign policy ?
- b) If so, please indicate whether there exists a body of constitutional case law in the matter.