

Strasbourg, 24/03/04

CAHDI (2004) 12

**COMMITTEE OF LEGAL ADVISERS
ON PUBLIC INTERNATIONAL LAW
(CAHDI)**

27th meeting, Strasbourg, 18-19 March 2004

List of items discussed and decisions taken

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 27th meeting in Strasbourg, on 18 and 19 March 2004. The meeting was chaired by Ambassador Michel (Switzerland), Chairman of the CAHDI. The list of participants can be consulted in the meeting report (document CAHDI (2004) 11 prov.) and the agenda appears in Appendix I to the present report (the references of the documents submitted in the meeting appear in Appendix II to document CAHDI (2004) 11 prov.).
2. The Director General of Legal Affairs, Mr de Vel informed the CAHDI about developments concerning the Council of Europe since the last meeting of the Committee.
3. Further to its preliminary opinion on Recommendation 1602 (2003) on immunities of the Members of the Parliamentary Assembly adopted at its 26th meeting, the CAHDI pursued its consideration of this Recommendation and asked the Dutch delegate, Mr Lammers, to coordinate the preparation of a possible supplementary draft opinion which will be examined at the 28th meeting of the CAHDI. To this end, delegations were invited to submit any comment to the secretariat before 20 May 2004.
4. In the context of its activity as *European Observatory of Reservations to International Treaties*, the CAHDI considered a list of outstanding declarations and reservations to international treaties and several delegations informed the Committee about the follow-up they envisaged to give to some of them. Further to that, the CAHDI considered reservations to international treaties applicable to the fight against terrorism in accordance with the decision of the Committee of Ministers of 21 September 2001 (CM/Del/Dec (2001) 765 bis, Item 2.1) and agreed to submit a list of reservations that posed significant problems to the Committee of Ministers at its next meeting. To this end, delegations were invited to make submissions to the secretariat before 30 June 2004.
5. The CAHDI considered the progress made in the preparation of an analytical report on the Pilot-Project of the Council of Europe on State practice regarding Immunities of States. In this connection, it held an exchange of views with Mrs Breau of the British Institute of International and Comparative Law and with Mr Kohen of the Graduate Institute of International Studies. The CAHDI agreed to pursue consideration of this item at its next meeting and invited delegations not having done so to submit their national report at their earliest possible convenience.
6. The CAHDI considered the implementation at national level of UN sanctions and respect for human rights on the basis of contributions submitted by the delegations of Greece and Sweden. In this connection, the CAHDI asked its Chair, Mr Michel and its Vice-Chair, Mrs Dascalopoulou-Livada to prepare a questionnaire regarding means of implementation of such sanctions at domestic level which would serve as a basis to collect information about member and observer States for consideration at its next meeting. Moreover, it asked the Secretariat to prepare a document on developments at international level for its next meeting.

7. The CAHDI was informed about recent developments concerning the implementation of international instruments protecting the victims of armed conflicts and had an exchange of views on this issue.
8. Further to that, the CAHDI considered developments concerning the functioning of the Tribunals established by UN Security Council Resolutions 927 (1993) and 955 (1994).
9. The CAHDI considered the developments of the International Criminal Court (ICC), and had an exchange of views with Mr Moreno Ocampo, Chief Prosecutor of the ICC. His statement appears in Appendix III to the meeting report (document CAHDI (2004) 11 prov.).
10. The Secretariat informed the members of the CAHDI about developments concerning the Council of Europe activities against terrorism.
11. The CAHDI granted observer status to the International Criminal Police Organization (INTERPOL) for the whole duration of the Committee and to the European Organization for Nuclear Research (CERN) for specific items on the agenda at the CERN's request and subject to the Chair's approval. The revised draft specific terms of reference appear in Appendix II to the present report.
12. The CAHDI was informed about ongoing discussions concerning the reform of the European Court of Human Rights and the revitalisation of the UN General Assembly.
13. The CAHDI agreed to collect information on the structure and functioning of the Legal Adviser of the Ministry of Foreign Affairs in the member and observer States and, to this end, agreed on a questionnaire which appears in Appendix III to the present report. Delegations were asked to submit their replies to the questionnaire to the Secretariat by 30 June 2004.
14. Following the kind invitation of the Swiss authorities, the CAHDI decided to hold its next meeting in Switzerland, on 13 and 14 September 2004 and adopted the preliminary draft agenda in Appendix IV to the present report.

APPENDIX I

AGENDA OF THE 27TH MEETING OF THE CAHDI

- A. INTRODUCTION
1. Opening of the meeting by the Chairman, Ambassador Nicolas Michel
 2. Adoption of the agenda and approval of the report of the 26th meeting (Strasbourg, 18-19 September 2003)
 3. Communication by the Director General of Legal Affairs, Mr Guy de Vel
- B. ONGOING ACTIVITIES OF THE CAHDI
4. Decisions by the Committee of Ministers concerning the CAHDI and requests for CAHDI's opinion (Opinion on Recommendation 1602 (2003) on Immunities of members of the Parliamentary Assembly)
 5. The law and practice relating to reservations and interpretative declarations concerning international treaties: European Observatory of Reservations to international Treaties
 - a) Consideration of outstanding reservations and declarations to international Treaties
 - b) Consideration of reservations and declarations to international Treaties applicable to the fight against terrorism
 6. Pilot Project of the Council of Europe on State practice regarding State immunities
- C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW
7. National implementation measures of UN sanctions, and respect for Human Rights
 8. Implementation of international instruments protecting the victims of armed conflicts
 9. Implementation and functioning of the Tribunals established by United Nations Security Council Resolutions 827 (1993) and 955 (1994)
 10. Developments concerning the International Criminal Court (ICC): Exchange of views with the Chief Prosecutor of the ICC, Mr Luis Moreno Ocampo
 11. Fight against Terrorism - Information about work undertaken in the Council of Europe and other international Fora
- D. OTHER
12. Date, place and agenda of the 28th meeting of the CAHDI
 13. Request of observer status by the European Organization for Nuclear Research (CERN) and by INTERPOL
 14. Other business

APPENDIX II

DRAFT REVISED SPECIFIC TERMS OF REFERENCE OF THE CAHDI**1. Name of committee:**

Committee of legal advisers on public international law (CAHDI)

2. Type of committee:

Ad Hoc Committee of experts

3. Source of terms of reference:

Committee of Ministers

4. Terms of reference:

Under the authority of the Committee of Ministers, the Committee is instructed to examine questions of public international law, to exchange and, if appropriate, to co-ordinate the views of member states at the request of the Committee of Ministers, Steering Committees and Ad Hoc Committees and at its own initiative.

5. Membership of the Committee:

a. The Committee is composed of experts by member States, preferably chosen among the Legal Advisers to the Ministries of Foreign Affairs. Travel and subsistence expenses of one expert per member State (two for the State assuming the Chair of the Committee) are borne by the Council of Europe budget.

b. The European Community may send representatives to meetings of the Committee, without the right to vote or to a refund of expenses.

c. The following observers with the Council of Europe may send a representative to meetings without the right to vote or to a refund of expenses:

- Canada
- Holy See
- Japan
- Mexico
- United States of America.

d. The following observers with the Committee may send representatives to meetings of the Committee, without the right to vote or to a refund of expenses:

Australia
 Israel¹
 New Zealand
 The Hague Conference on Private International Law
 NATO²
 The Organisation for Economic Co-operation and Development
 The United Nations and its specialised agencies³
 International Committee of Red Cross (ICRC)
 European Organization for Nuclear Research (CERN)⁴
 International Criminal Police Organization (INTERPOL).

¹ Admitted as observer "for the whole duration of the Committee" by the CAHDI, March 1998. The same is valid for subordinated committees. Decision confirmed by the Committee of Ministers (CM/Del/Dec(99)670, item 10.2 and CM(99)57, para. D15).

² See CM/Del/Dec/Act(93)488/29 and CM/Del/Concl(92)480/3.

³ For specific items at the request of the Committee.

⁴ For specific items at the CERN's request and subject to the Chair's approval.

6. Structures and working methods:

The CAHDI may set up working parties and have recourse to consultant experts.

7. Duration:

The present terms of reference expire on 31 December 2004.

APPENDIX III

QUESTIONNAIRE ON THE ORGANISATION AND FUNCTIONS OF THE OFFICE OF THE LEGAL ADVISER (OLA) OF THE MINISTRY OF FOREIGN AFFAIRS

1. What are the title, rank and position of the Legal Adviser?
2. What are the principal functions of the OLA?
3. Please give a brief description of staff employed by the OLA, including overseas staff.
4. Briefly describe the organisation and structure of the OLA.
5. What is the OLA's place within the Ministry of Foreign Affairs?
6. What are the main contacts of the OLA within Government?
7. Please describe the relations of the OLA with lawyers in private practice, academics and legal institutions.
8. Please provide a brief bibliography on the OLA, if available

APPENDIX IV

PRELIMINARY DRAFT AGENDA OF THE 28TH MEETING OF THE CAHDI**A. INTRODUCTION**

1. Opening of the meeting by the Chairman, Ambassador Michel
2. Adoption of the agenda and approval of the report of the 27th meeting (Strasbourg, 18-19 March 2004)
3. Communication by the Director General of Legal Affairs, Mr de Vel

B. ONGOING ACTIVITIES OF THE CAHDI

4. Decisions by the Committee of Ministers concerning the CAHDI and requests for CAHDI's opinion
5. The law and practice relating to reservations and interpretative declarations concerning international treaties: European Observatory of Reservations to international Treaties
 - a. Consideration of outstanding reservations and declarations to international Treaties
 - b. Consideration of reservations and declarations to international Treaties applicable to the fight against terrorism
6. Pilot Project of the Council of Europe on State practice regarding immunities of States – Preliminary Analytical report

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

7. The work of the Sixth Committee of the General Assembly of United Nations and of the International Law Commission (ILC)
 - a. 56th Session of the International Law Commission
 - b. Revitalisation of the General Assembly
8. National implementation measures of UN sanctions, and respect for Human Rights
9. Implementation of international instruments protecting the victims of armed conflicts
10. Developments concerning the International Criminal Court (ICC)
11. Implementation and functioning of the Tribunals established by United Nations Security Council Resolutions 827 (1993) and 955 (1994)
12. Fight against Terrorism – Information about work undertaken in the Council of Europe and other international Fora

D. OTHER

13. Election of the Chair and the Vice-Chair
14. Adoption of the draft specific terms of reference for 2005-2006
15. Date, place and agenda of the 29th meeting of the CAHDI
16. Other business