

Strasbourg, 20/09/2005

CAHDI (2005) 8

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

**29th meeting
Strasbourg, 17-18 March 2005**

MEETING REPORT

Secretariat Memorandum
Prepared by the Directorate General of Legal Affairs

A. INTRODUCTION

1.-3. Opening of the meeting, adoption of the agenda and communication from the Secretariat

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 29th meeting in Strasbourg, on 18 and 19 March 2005. The meeting was opened by Ms Dascalopoulou-Livada, Chair of the CAHDI. The list of participants appears in **Appendix I**.

2. Ms Dascalopoulou-Livada welcomed all the participants to the meeting and congratulated the French delegation on the appointment of Mr Abraham as French judge to the International Court of Justice. The French delegation thanked the Chair and announced the appointment of a new director of legal affairs.

3. The Chair proposed that agenda item 11 be re-worded following the adoption of the Convention on jurisdictional immunities of states and their property. The agenda, as set out in **Appendix II**, was adopted unanimously. The Committee also approved the previous meeting report (document CAHDI (2003) 11 prov.) and authorised the Secretariat to publish it on the CAHDI website (www.coe.int/cahdi).

4. The Head of the Public Law Department, Mr Palmieri, reported on recent developments in the Council of Europe, including those relating to the European Treaty Series. He drew attention to a number of major political events, such as the Third Summit of Heads of State and Government, and outlined the new activities in the legal field, in particular those connected with terrorism, nationality, data protection and cybercrime. The text of his statement appears in **Appendix III**.

B. ONGOING ACTIVITIES OF THE CAHDI

4. Decisions by the Committee of Ministers concerning the CAHDI and requests for CAHDI's opinion

5. The Chair referred to the Committee of Ministers decisions concerning the CAHDI and the request for CAHDI's opinion (documents CAHDI (2005)1, CAHDI (99) 15 Extract, CAHDI (99) 5 & CAHDI (2005) Inf. 3). She reminded participants that on 9 February 2005, the Deputies had sent Parliamentary Assembly Recommendation 1690 (2005) on the conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference to the CAHDI for information and comments, if any. Paragraph (viii) contained a recommendation to "analyse how far the European Convention for the Peaceful Settlement of Disputes reflects the current requirements of conflict settlement among member states of the Council of Europe, and where it should be revised in order to provide an adequate instrument for the peaceful settlement of disputes between member states of the Council of Europe". She invited the delegations to comment on this matter.

6. The United Kingdom delegation felt that the Committee of Ministers' request should be dealt with outside the context considered in the said Recommendation. It would be interesting, for example, to look at the peaceful settlement of disputes and the compulsory jurisdiction of the International Court of Justice (ICJ). The 1957 European Convention for the Peaceful Settlement of Disputes (the Convention) was an important legal achievement. The operation of this convention had been examined by the CAHDI back in 1999, when it was concluded that there was no need to review the instrument but that steps should be taken to encourage wider participation by states.

7. The Austrian delegation agreed with the United Kingdom and said that states' political commitment to acceding to the Convention played a key role. It went on to expand on document CAHDI (99)5, pointing out that Austria and Italy had concluded a special agreement that allowed them to call on the Convention in cases where its application was excluded. On the subject of the compulsory jurisdiction of the ICJ, it suggested examining states' acceptance of Article 36 of the ICJ Statute. As things stood at present, states were in no hurry to allow the ICJ to settle disputes.

8. The Norwegian delegation believed there was no need to revise the Convention but drew attention to the wide discrepancy between the number of states that were parties to the Convention and the number of Council of Europe member states. It was also felt that this matter should be dealt with separately from the Nagorno-Karabakh conflict.

9. The Russian Federation delegation proposed that further consideration be given to this matter at the next meeting of the CAHDI and noted that an examination of States Parties' experience of applying the machinery of the Convention would be useful for states such as the Russian Federation which were not parties to the Convention.

10. The Netherlands delegation concurred with the United Kingdom and Austria and noted that the Council of the European Union's Working Party on International Public Law (COJUR) had begun exploring this issue. A CAHDI study along these lines was to be welcomed, therefore. It was suggested that attention be given both to states' acceptance of Article 36 of the ICJ Statute and to their acceptance of the Convention, including the reasons why so few states had signed the Convention.

11. The Portuguese delegation called for an examination of the issue of concurrent jurisdiction in public international law. This item could be included in the study proposed by the United Kingdom delegation or could be dealt with separately.

12. The German delegation said the Convention was well-balanced in terms of the emphasis given to conciliation and arbitration, but that there was a question mark over its effectiveness as only fourteen member states had signed it. Many conventions contained a clause referring to the competence of the ICJ. The Convention having proven satisfactory, there was no need to revise it.

13. The Swiss delegation said that the merit of the Convention lay in the very fact that it existed and not in the number of cases resolved, which was not actually that important.

14. The Armenian delegation said the Convention played a positive role and acted as a deterrent. The small number of ratifications, however, meant that there was some question as to its effectiveness. Also, few states had agreed to arbitration. There was no need to revise the Convention but its effectiveness could be improved by increasing the number of parties.

15. The Chair noted that none of the delegations advocated revising the Convention, which was deemed to be satisfactory.

16. The Secretariat proposed that the reply to the Committee of Ministers include the following points (a) there was no need to revise the Convention and (b) member states could be asked to review their position on the Convention in order to accede to it.

17. The Armenian delegation proposed that the invitation to accede to the Convention be included in the CAHDI meeting report and not in the opinion. In the view of this delegation, the CAHDI should merely answer the question posed by the Parliamentary Assembly as to whether or not the Council of Europe's convention should be revised.

18. The Azerbaijan delegation seconded the proposal to include, in the reply to the Committee of Ministers, an invitation to ratify and emphasised the need to make use of existing instruments.

19. The delegations of France, Norway and the Netherlands endorsed the Secretariat's proposal. The Netherlands delegation further argued that a reply which dealt only with the question of whether to revise the Convention would diminish the CAHDI's contribution. The number of States Parties was an important factor in the effectiveness of the Convention.

20. The CAHDI concluded the discussion on the Committee of Ministers' request by adopting the comments on Parliamentary Assembly Recommendation 1690 (2005) on the conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference, as set out in **Appendix IV**.

21. With regard to other requests for CAHDI's opinion, in particular those concerning the immunities of members of the Parliamentary Assembly – Parliamentary Assembly Recommendation 1602 (2003), the Secretariat informed participants of the Committee of Ministers' decision and explained that this had been followed up by a letter from the Secretary General of the Council of Europe to the Permanent Representatives of the member states, dated 14 January 2005.

5. Law and practice relating to reservations and interpretative declarations concerning international treaties: European Observatory of Reservations to International Treaties

a. List of outstanding reservations and declarations to international Treaties

22. In its capacity as European Observatory of Reservations to International Treaties, the CAHDI considered a list of declarations and reservations to international treaties on the basis of the document drawn up by the Secretariat in consultation with the Chair (see documents CAHDI (2005) 2 Part I & Addendum, Part II).

23. The CAHDI began with the **declarations and reservations to treaties concluded outside the Council of Europe** (CAHDI (2005) 2 Part I).

24. With regard to the reservation entered by Belgium on 17 May 2004 to the International Convention for the Suppression of the Financing of Terrorism, New York, 9 December 1999, several delegations expressed concern. In particular, the delegations of the United Kingdom, the Netherlands and Norway, and the observers from the United States and Canada, invited Belgium to review its position and to withdraw its reservation.

25. The Spanish delegation further considered that the reservation was incompatible with the object and purpose of the Convention, and with paragraph 3g of UN Security Council Resolution 1373 which required states to ensure that claims of political motivation were not recognised as grounds for refusing requests for the extradition of alleged terrorists. It was pointed out in this connection that closer co-operation between states against terrorism was essential for conducting effective action against terrorism. It was important therefore that states co-operate with one another on clearly established legal criteria, while at the same time eliminating the margin for discretion accorded governments in extradition matters. For these reasons, the Spanish authorities were considering filing an objection to this reservation.

26. The German delegation was concerned that this reservation might set an example for other states.

27. The Austrian delegation endorsed the views expressed by other delegations and further noted that Belgium reserved the right to refuse extradition or mutual legal assistance in respect of any offence set forth in article 2, notably in paragraph 3.

28. The Belgian delegation said that the sole purpose of the reservation concerning Article 14 of the Convention was to retain the option of prosecuting and trying itself persons suspected of terrorist offences in cases where, because of certain exceptional circumstances, Belgium had refused to extradite them. In so doing, Belgium was complying with Articles 6 and 10 of the Convention. It was further pointed out that a similar reservation had already been made with regard to the European Convention on the Suppression of Terrorism and that other Council of Europe and EU member states, who were parties to this Convention, had moreover entered a similar reservation. The reservation was not incompatible with the purpose or nature of the treaty as in the preamble to this instrument it was stated that the commission of terrorist acts was unjustifiable and that in one way or another, the perpetrators must be brought to justice. The reservation was also in keeping with paragraph 3g of Security Council Resolution 1373. Attention was drawn to document CAHDI (2005)2 Part I Addendum, which contained the Belgian delegation's written observations.

29. With regard to the declarations and reservation made by Turkey on 9 August 2004 to the Convention on the Safety of United Nations and Associated Personnel of 9 December 1994, the Turkish delegation said that these were not incompatible with the purpose and nature of the treaty and that, under international law, relations between two states were established by mutual consent. The declaration concerning Article 22 merely stated that the state's consent must be explicit in matters concerning the settlement of disputes. As for the reservation to Article 20, this was only logical as Turkey was not a party to Additional Protocols I and II to the 1949 Geneva Conventions.

30. The United Kingdom delegation thanked the Turkish delegation for these clarifications and voiced concern over the first declaration and its impact on UN personnel. It observed that a state's international obligations remained intact even if it did not have diplomatic relations with another state. Consideration should therefore be given to making a formal objection.

31. The Portuguese delegation was likewise concerned about this declaration and noted that, in the past, its country had objected to similar declarations.

32. The Finnish delegation said it was very concerned about this declaration which would be examined by its authorities.

33. The French delegation said that the declaration was problematic and that a state could not make its international obligations conditional upon its diplomatic relations. The French delegation likewise had reservations about the second declaration.

34. The Greek delegation also had misgivings about the first declaration, saying there was a risk of discrimination against UN personnel depending on whether they found themselves in a state with which Turkey did or did not have diplomatic relations. In addition, the additional protocols to the Geneva Convention reflected customary law, which made Turkey's reservation vis-à-vis these protocols problematic.

35. The German delegation believed that this declaration should be regarded as a reservation and therefore as inadmissible. The additional protocols to the Geneva Conventions came under customary international law, so the reservation was null and void.

36. The Italian delegation said that no distinctions could be made between UN staff on the basis of nationality.

37. The Canadian observer took the view that if this declaration meant Turkey would not apply the Convention to UN staff who were nationals of a state with which Turkey did not have diplomatic relations, then it was effectively a reservation and that this was unacceptable to Canada.

38. The delegations of Spain and the Netherlands also voiced concern and pointed out that Protocols I and II to the 1949 Geneva Conventions contained certain provisions which came under general international law and could not therefore be “opted out” of by Turkey.
39. The Armenian and Swedish delegations echoed the concerns expressed. The Swedish delegation went on to say that its authorities were considering filing an objection.
40. The Chair observed that Turkey’s reservation in respect of the protocols to the Geneva Conventions seemed to cast doubt on Turkey’s commitment to the customary law reflected therein.
41. The Turkish delegation would convey the views expressed to its authorities and would make comments at the next meeting of the CAHDI.
42. With regard to the reservations entered by the Federated States of Micronesia on 1 September 2004 to the Convention on the elimination of all forms of discrimination against women of 18 December 1979, the Austrian and Swedish delegations felt that the second reservation referring to “traditional titles” and “marital customs” was incompatible with the object and purpose of the Convention and said that they were considering filing an objection.
43. The Portuguese delegation said that its authorities were considering filing an objection and told the Committee that the European Commission would intercede with Micronesia.
44. The United Kingdom delegation said that its authorities were considering objecting to the reservation to Article 11 of the Convention and were awaiting further information.
45. The delegations of Germany, Estonia and Norway said that their countries were considering objecting to these reservations, as they were incompatible with the object and purpose of the Convention.
46. The Netherlands delegation said that the Netherlands Presidency of the EU had tried to obtain information from Micronesia but to no avail. It expressed deep concern.
47. With regard to the reservation entered by Lesotho on 25 August 2004 to the above-mentioned Convention, the United Kingdom delegation observed that its domestic law contained similar provisions concerning succession to the throne.
48. The Austrian delegation welcomed the withdrawal of Lesotho’s earlier reservations and said that this reservation concerning succession to the throne was not a major concern.
49. With regard to the reservations entered by the United Arab Emirates on 6 October 2004 to the above-mentioned Convention, the Austrian delegation was likewise concerned, in particular by the reservations to Articles 2 (f), and 16 (e) of the Convention and said that Austria would object to both of these reservations. It did not have any problem, however, with the reservation to Article 29 of the Convention.
50. The Finnish delegation said that its authorities would also object.
51. The Spanish delegation believed that the reservations to Articles 2, 9, 15 and 16 were inadmissible because they were incompatible with the object and purpose of the Convention and also with the Vienna Convention on the Law of Treaties of 1969.
52. The United Kingdom delegation said that its country would object to the reservation to Article 2 (f) of the Convention and that it was still considering the other reservations.

53. The German delegation further observed that Article 28 of the Convention prohibited reservations which were incompatible with the object and purpose of the Convention. The reservations in question referred to the Shariah, which involved discrimination against women, and were therefore incompatible with the object and purpose of the Convention.

54. The Swedish, Netherlands and Norwegian delegations said that their countries would object to the reservation to Article 2 (f) of the Convention.

55. With regard to Pakistan's declaration of 3 November 2004 to the International Covenant on Economic, Social and Cultural Rights of 1966, the Austrian delegation objected to the references to domestic law, including even constitutional law. Next, referring to the last annual meeting of Legal Advisers in New York, it noted that the idea that international law could be subordinated to domestic law was gaining ground. It said that the first part of the declaration was still being considered, but that its authorities would definitely be objecting to the second part.

56. The French, Spanish and United Kingdom delegations agreed with Austria.

57. The German delegation said that Germany would object to both parts of this declaration.

58. The Portuguese delegation thought that Pakistan's declaration was not a reservation but rather a declaration of non-accession to the provisions of the 1966 Covenant which did not accord with the law of that state.

59. The Swedish and Finnish delegations said that their authorities would object to the second part of this declaration. The first part did not present any problems.

60. The Norwegian delegation shared the concerns expressed over the second part of Pakistan's declaration.

61. With regard to the reservation and declaration made by Oman on 17 September 2004 to the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts of 25 May 2000, the Austrian delegation did not think that the referral to Oman's reservations to the Convention on the Rights of the Child was problematic in itself. The declarations referring to the Shariah or domestic law were unacceptable, however. Austria would object to the declaration which failed to set a minimum age for recruitment to the armed forces.

62. The Finnish, German and Swedish delegations said their countries would object both to the reservation and to the declaration referring to the Shariah. The United Kingdom was considering objecting to the declaration which refers to the above-mentioned Protocol.

63. The Netherlands delegation recalled its authorities' objection to Oman's reservations to the Convention on the Rights of the Child as far as the reference to the Shariah was concerned.

64. To sum up, the Chair said that states tended to lodge objections when a reservation contained references to domestic law, such as the Shariah.

65. With regard to the declaration made by the Syrian Arab Republic on 19 August 2004 to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, the Spanish delegation observed that the Convention did not allow states to be excluded from its scope.

66. The French delegation said it was particularly worried as the Convention dealt with fundamental rights.

67. The Israeli observer said he had no problem with the first part of Syria's declaration according to which "The accession of the Syrian Arab Republic to this Convention shall in no way signify recognition of Israel" as this was a political declaration. He was, however, concerned about the second part which was incompatible with the object and purpose of the Convention.

68. The Finnish, Portuguese and Swedish delegations agreed that it was the second part of the declaration that posed a problem.

69. The Chair considered that this declaration was in fact a mixture of political declaration and reservation proper which was incompatible with the object and purpose of the Convention and noted that some delegations intended to object.

70. With regard to Mauritania's declaration of 17 November 2004 to the International Covenant on Civil and Political Rights of 16 December 1966, the Finnish delegation felt that any allusion of this kind to the Shariah was unacceptable.

71. The French, Swedish, German, Greek, Netherlands, United Kingdom, Portuguese, Spanish and Norwegian delegations said that their countries would object.

72. The CAHDI then turned its attention to **the declarations and reservations to Council of Europe treaties** (document CAHDI (2005) 2 Part II).

73. With regard to the reservations made by Serbia and Montenegro on 3 March 2004 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) of 4 November 1950, the Chair observed that the reservation entered by Serbia and Montenegro to Article 6, paragraph 1 of the Convention, on the right to a public hearing, could pose problems because it stated that, in principle, courts did not hold public hearings when dealing with administrative disputes.

74. The Austrian delegation noted that its country had taken a similar line and that the European Court of Human Rights (ECHR) had found against it several times on those grounds.

75. The German delegation said that excluding the public from administrative courts could be seen as a general reservation. The delegation said that it was considering filing an objection to this reservation.

76. The United Kingdom delegation said that the ECHR decided itself what effects reservations would have and whether or not they were compatible with the Convention and ECHR case-law. In practice, states did not object to reservations to this Convention. Any reservations and declarations to the Convention should be forwarded to the CAHDI purely for information, therefore.

77. The Serbia and Montenegro delegation agreed with the Secretariat's comments and said that its authorities were seeking agreement at constitutional level in order to accept the Convention.

78. With regard to Monaco's declaration of 5 October 2004 to the above-mentioned Convention, the Monaco delegation said that its declaration was an interpretative one.

79. With regard to the reservations made by Germany, Greece, Luxembourg, Austria, Belgium and the Netherlands to the European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe (ETS No. 25) of 13 December 1957, the Ukrainian delegation said it understood and respected the reservations entered by EU Member States in respect of Ukraine. It pointed out that Ukraine had gone through

a turbulent period in recent months and that these upheavals entitled it to ask the EU states to review their position. The new President of Ukraine had announced major changes. In principle, the visa requirement for EU nationals was to be abolished on 1 April 2005. A reciprocal arrangement might be sought but even if this request for reciprocity were refused, the visa requirement for EU nationals would still be scrapped.

80. With regard to Switzerland's first declaration to the second additional protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS No. 182) of 8 November 2001, the Chair observed that this declaration seemed to introduce an extra stage (consent of the person concerned) which was not mentioned in the Convention.

81. The Swiss delegation said that the two declarations were compatible with the Convention and that the first declaration made it clear in what circumstances Switzerland could refuse the transmission or use of personal data. That did not go beyond what was provided for in the Convention.

82. The Chair was satisfied with the explanations furnished by the Swiss delegation.

b. Consideration of reservations and declarations to international Treaties applicable to the fight against terrorism

83. The Secretariat presented documents CAHDI (2005) 5 and CAHDI (2004)22 and noted that, further to the request made by the CAHDI at the previous meeting, the Committee of Ministers' Deputies had examined the list of potentially problematic reservations to international treaties applicable to the fight against terrorism, which appeared in Appendix II to document CM(2004)174, and had invited the member states concerned to consider withdrawing their respective reservations. They had also invited the Secretary General of the Council of Europe to notify the non-member states concerned of the CAHDI's conclusions concerning their respective reservations and member states to volunteer to approach the non-member states concerned regarding their respective reservations. This decision had been followed up by a letter dated 8 February 2005 from the Secretary General to the foreign affairs ministers of the member states and non-member states concerned which had made reservations, as set out in the list.

84. The Russian Federation delegation drew participants' attention to document CAHDI (2005) 7 containing its authorities' reply to the Secretary General's letter inviting Russia to withdraw its declarations to the International Convention for the Suppression of the Financing of Terrorism. The delegation had provided explanations in March 2003 and at the time, these had seemed to be satisfactory. The declarations were of a political nature and did not constitute reservations aimed at restricting or modifying the effect of the Convention. Similar declarations had been made before and had never met with a negative reaction. The CAHDI was therefore asked to remove these declarations from the list of problematic reservations and declarations drawn up by the CAHDI (CAHDI (2004) 22). The United Kingdom delegation seconded this request.

85. The CAHDI agreed to grant the request. The Chair asked the delegations to say what steps they had taken or were planning to take vis-à-vis the non-member states concerned regarding their respective reservations.

86. The Russian delegation said that, in keeping with the Secretary General's request and the Committee of Ministers decision, on 1 March 2005 Russia had written to Jordan about its declaration to this International Convention for the Suppression of the Financing of Terrorism, asking it to review its position. This was not an objection by Russia that would require the adoption of a federal law, however.

6. Pilot project of the Council of Europe on State practice regarding State immunities – Presentation of the analytical report and follow-up

87. The Chair gave a progress report on the pilot project (document CAHDI (2005) 6 Part I, Part II & Table). She thanked Mr Kohen from the Graduate Institute of International Studies (Geneva), Ms Breau from the British Institute of International Comparative Law and Mr Wittich from the University of Vienna for preparing the analytical report (CAHDI (2005)5) and asked them to outline the main points.

88. Mr Kohen said that the presentation of the CAHDI report coincided with the adoption, on 17 January 2005, of the United Nations Convention on Jurisdictional Immunities of States and their Property (the Convention) and that the analytical report had a similar layout to the Convention.

89. In contrast to the Council of Europe Convention which had only eight parties and had never been applied by domestic courts, the UN Convention contained neither complicated procedural rules nor provisions on the specific entities competent to deal with problems arising from the interpretation and implementation of the treaty. States thus had an opportunity to harmonise their practice and confirm the customary nature of the provisions of the UN Convention by signing and ratifying it. It was further pointed out that national trends were moving in the direction of the Convention.

90. With regard to chapter 1 on “The definition of the State”, Mr Kohen began by noting that the current debate on the subject of entities which should be regarded as an emanation of the State in order to qualify for immunity was largely a product of the doctrine of absolute immunity, which was obsolete. According to this doctrine, the only criterion for establishing immunity was the status of the entity, with no consideration being given to the sovereign nature of the activities. Now that the distinction between acts *jure gestionis* and acts *jure imperii* had been widely adopted as the basic criterion for granting immunity, the debate had lost its relevance.

91. Chapter 3 concerned the “Distinction between state immunity and diplomatic immunity”. It concluded that state immunity and diplomatic immunity differed in nature. Given the identity of consequences of state immunity and diplomatic immunity with regard to property related to diplomatic missions, state practice showed that in some cases immunity with regard to actions related to that property had been granted on the basis of diplomatic or consular immunity, in others on the basis of state immunity, in others on the basis of both and in yet other cases without any explicit reference to a particular kind of immunity.

92. With regard to Chapter 6 on “Personal injuries and damage to property”, it was not possible to conclude from an analysis of the international instruments and court decisions both at domestic and international level the existence of a clear pattern in this regard. The courts did however generally rely on the distinction between *acta jure imperii* and *acta jure gestionis* when deciding whether to grant or refuse immunity. Recently, some domestic and international courts had also begun to advocate denying immunity in cases of serious violations of human rights¹.

93. Ms Breau presented the report’s conclusions on ownership, possession and use of property and the status of ships owned or operated by a state.

94. With regard to tangible property, the bulk of state practice supported the doctrine of restrictive immunity. The critical factor would be the commercial nature of most property transactions. The issue of consular property did not seem to have been resolved and pointed to a divergence in state practice. At the same time, intangible property had not been the subject of many court decisions either. It was impossible to predict, therefore, what legal issues might arise in these cases.

¹ See, for example, *Al-Adsani v. The United Kingdom* [GC], Judgement of 21 November 2001, n° 35763/97, ECHR, 2001-XI.

95. With regard to ships owned or operated by a state, the case-law of Council of Europe states with respect to ships did not indicate any substantive difficulties with either the instruments or the general rules of international law. It remained to be seen whether the ability to issue a certificate of non-commercial use would cause problems in case-law.

96. Lastly, Mr Wittich looked at the definition of commercial acts, state immunity regarding employment contracts and enforcement measures.

97. With regard to the definition of commercial acts, he said that the practice of European states with respect to state immunity and the commercial transaction exception followed well-established patterns in the practice of international law, according to which there were no clear-cut criteria ready-made in all instances. While most states adhered to the nature-of-the-act test which thus prevailed over the test according to the object or motive of the act, courts tended to render decisions on a case-by-case basis, taking into consideration the entire context and circumstances of each individual case.

98. On the subject of state immunity regarding employment contracts, most decisions submitted by states concerned employment contracts with personnel of diplomatic/consular missions and the majority of national courts had accepted the non-immunity rule regarding employment contracts as reflected in international law instruments on State immunity. However, concerning the personnel of diplomatic or consular missions, the courts had tried to find a balance between this rule on the one hand and the status of a diplomatic/consular mission and its sovereign functions on the other. The exceptions to the non-immunity rule regarding employment contracts established by national courts were based on various aspects of the employment relationship, such as the location of the work in an embassy/consulate, or the nature of the employee's work.

99. On the subject of state immunity from enforcement measures, an analysis of European court practice with regard to enforcement immunity confirmed that absolute immunity was no longer the rule. Instead, many national courts were now adopting a more restrictive approach which permitted enforcement measures against property clearly serving non-governmental purposes, against earmarked property and in cases of waiver.

100. The Norwegian delegation emphasised the need for legal certainty in matters concerning immunity and for the development of a more uniform body of rules, comprising Council of Europe and UN conventions, national case-law, etc. The analytical report would be very useful for domestic courts. State practice was consistent with the UN Convention, which should facilitate its ratification and entry into force.

101. The United Kingdom delegation said the analytical report was a useful and interesting document. It asked for time so that delegations could submit comments on the report. Regarding the report itself, it felt that the analytical part should be as descriptive and impartial as possible. Some of the conclusions, such as those relating to Chapter 6, should be reviewed in the light of the current uncertainty. A disclaimer stating that the views expressed in the report were those of its authors and did not reflect the views of the Council of Europe or its member states should therefore be included in the introduction. The United Kingdom delegation noted that reference was made to the practice of "European" states yet Japan had also contributed to the study. It further requested that Professor Hafner's contribution to the UN General Assembly be reflected in the report. It said that state practice was more or less consistent with the UN Convention and that this instrument and the Council of Europe convention should be mutually enhancing.

102. The Russian Federation delegation said that its country was planning to sign and ratify the UN Convention. A draft law on the immunities of foreign states was in preparation. Once it had been adopted, an English translation of this law would be sent to the CAHDI.

103. The Japanese observer congratulated the authors on what she considered to be a very sound, useful report but said he would like to see more input from Professor Hafner in the analytical report.

104. The Finnish delegation thought the report was very useful, particularly in terms of ratification of the UN Convention.

105. On behalf of the three experts, Mr Kohen thanked the delegations for their comments. He had no objection to inserting a disclaimer and reminded participants that the authors' task had been to examine the replies and draw conclusions from them.

106. The Chair thanked the experts for their presentations and welcomed their efforts. She invited the delegations to submit any comments they might wish to make by the end of May.

107. The Secretariat explained that the task of translating the report into French had already begun and that only the analytical report would be translated. It was hoped that the report would be published by the end of 2005 and there were plans to include a preface by the Secretary General of the Council of Europe. A disclaimer would be inserted as in previous publications sponsored by the CAHDI.

7. Organisation and functions of the Office of the Legal Adviser of the Ministry of Foreign Affairs

108. The Chair reminded participants that further to a proposal from the United Kingdom at the 27th meeting, the CAHDI had agreed to gather information on the organisation and functions of the Office of the Legal Adviser of the Ministry of Foreign Affairs based on a questionnaire. The contributions submitted by states appeared in documents CAHDI (2005)3 and CAHDI (2005) 3 Add.

109. The Romanian delegation presented its country's contribution to the CAHDI (CAHDI (2005)3 Add 2).

110. The United Kingdom delegation thanked those delegations which had replied to the questionnaire and urged all the member states and delegations to contribute to this useful exercise. It further proposed that the replies already received be published on the CAHDI website.

111. The Chair concluded this item by inviting any delegations which had not yet done so to submit their contributions by 31 July 2005 and the CAHDI agreed to publish the replies already received on the CAHDI website.

8. National implementation measures of UN sanctions, and respect for Human Rights

112. The Chair recalled that at its 28th meeting, the CAHDI had examined a series of documents on this subject (CAHDI (2004) 7, 9 & 13). The contributions submitted by states appeared in document CAHDI (2005) 4 & Add.

113. In the light of the compilation of replies, the Chair noted that Council of Europe member states which also belonged to the EU applied the Security Council's sanctions either through EU regulations or through acts, ordinances and royal or presidential decrees adopted at national level. She further noted that most of the replies to questions 6 and 7 were negative and emphasised the importance of the Irish and Italian contributions concerning their experience on these matters.

114. The Swedish delegation drew attention to document CAHDI (2005) Inf 4 containing an article which took an indirect look at national implementation measures from the UN perspective and said that this could be of use to the CAHDI in carrying out its review.

115. The United Kingdom and Finnish delegations agreed that this was an important issue and supported the idea of monitoring developments at both international and national level.

116. The Chair proposed that consideration be given to drafting an analytical report on national implementation measures of UN sanctions and respect for human rights and invited any delegations which had not yet done so to submit their replies by 31 July 2005.

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

9. Exchange of views with the Bureau of the International Court of Conciliation and Arbitration within the OSCE

117. The Chair welcomed Mr Badinter, President of the International Court of Conciliation and Arbitration within the OSCE (the Court) and also Mr Ferrari Bravo, a member of the Court's Bureau. She reminded participants that an initial exchange of views had taken place at the 19th CAHDI meeting in Berlin in March 2000. The Chair pointed out that her own country, Greece, had taken an active part in the negotiations in Geneva to adopt the text of the Convention on Conciliation and Arbitration establishing the said Court and, by ratifying it, had accepted the two methods of dispute settlement prescribed by the Convention in question, namely conciliation and arbitration.

118. Mr Badinter thanked the CAHDI for inviting them to its meeting and proceeded to describe the Court. He began by saying that the Court's founders had wanted to provide a swift and inexpensive mechanism for resolving the kind of disputes that typically arose in international life (linguistic, environmental problems, etc). The Court had been set up under the Convention on Conciliation and Arbitration within the OSCE, which was adopted on 15 December 1992 in Stockholm and came into force on 5 December 1994. It had been ratified by thirty-three states to date. The Court was based in Geneva and each state appointed two conciliators and two arbitrators (a member and an alternate). These conciliators and arbitrators were highly competent individuals with considerable ministerial or judicial experience. Their fees were the same as those of the ad hoc judges at the ICJ. The Court's regulations paved the way for swift, flexible and effective solutions to disputes and the arbitration procedure was governed by the usual rules.

119. Mr Badinter went on to say, however, that the court had never been called on to examine a dispute and wondered why this might be so. A proposal had been put forward to make conciliators and arbitrators available to states to advise them on specific issues. This proposal had been well received by the states in question but no action had been taken on it.

120. Mr Ferrari Bravo spoke of the mystery surrounding this lack of applications to the Court at a time when major disputes were occurring. Some cases brought before the ECHR could have been referred to the Court of Conciliation and Arbitration. The EU was expanding to the east and south-east, where countries were facing major problems in the maritime sector. This could be the time to make use of the Court. Advisory opinions could also be sought from the ICJ but the procedure was much more cumbersome.

121. Mr Kohen observed that because of their complex nature, certain disputes were ideal material for the Court, in particular disputes which had non-legal aspects and which did not really lend themselves to a purely judicial settlement, such as territorial disputes involving minority issues.

122. To conclude, Mr Badinter proposed that the Statute, rules of procedures and list of members of the Court of Conciliation and Arbitration be circulated among the CAHDI delegations.

123. The Chair thanked the members of the Court's Bureau on behalf of the CAHDI and said that the documents would be distributed as widely as possible.

10. Consideration of current issues in the area of international humanitarian law

124. The Swiss delegation drew attention to Switzerland's current activities as depositary state for the 1949 Geneva conventions and additional protocols, and also as a State Party. It was recalled that in resolution A/RES-ES 10/15, the UN General Assembly had invited Switzerland, in its capacity as the depositary of the Geneva Conventions, to conduct consultations and to report to the General Assembly, including with regard to the possibility of convening a Conference of High Contracting Parties to discuss the Fourth Geneva Convention of 1949. Consultations with the key players were under way and there was now a vital need to identify practical ways of improving the humanitarian situation on the ground, while at the same time contributing to the parties' efforts in the peace process.

125. With regard to the emblem, the draft protocol remained a high priority, even though the conference on this subject, scheduled for October 2000, had had to be postponed because of the situation in the Middle East. Consultations with the States Parties to the Geneva Conventions on an additional emblem had resumed. The chances of staging a successful diplomatic conference were largely dependent on peace and stability in the Middle East, however.

126. As the depositary of the Geneva Conventions, Switzerland was sponsoring a project in the field of international law, air warfare and missiles. Three meetings of experts had been held to prepare a handbook consisting of a text and comments on the international humanitarian law applicable to air and missile warfare. It was hoped that the handbook could be presented and published in 2007.

127. The Swiss and Finnish delegations had joined Sweden in its pledge given at the 28th International Conference of the Red Cross and the Red Crescent to initiate a process in the field of computer network attacks and international humanitarian law. A meeting of experts had been held in Stockholm in November 2004 and a further meeting would be called by Switzerland in the autumn of 2005 to discuss follow-up to the process based on a written document which would be drawn up by a group of international experts and distributed to participants before the start of the meeting.

128. As part of the Euro-Atlantic Partnership/Partnership for Peace, Switzerland ran continuous training programmes in international humanitarian law, focusing mainly on the central role of the commander and codes of conduct. It was also planned to develop an e-learning tool and to hold a competition for young officers on international humanitarian law.

129. At national level, Switzerland's Federal Department of Defence and Federal Department of Foreign Affairs were developing a new procedure to give full effect to Article 36 of the First Additional Protocol to the Geneva Conventions.

130. The observer from the International Committee of the Red Cross (ICRC) agreed with the Swiss delegation about the need to introduce a new additional emblem because of the religious connotations of the existing emblems and the fact that certain states and national branches of the ICRC were unable to use them. He went on to say that the draft Protocol drawn up in 2000 provided the most appropriate basis for discussion and welcomed the resumption of the diplomatic process. He also drew attention to the ICRC's study on international humanitarian law and its three main findings:

- a) The Geneva Conventions of 1949 were ratified universally, but the same could not be said for all international humanitarian law instruments, in particular the 1977 additional protocols to the 1949 Geneva Conventions. Practice showed, however, that a large

number of rules and principles contained in the treaties were of a customary nature, including for example the rules governing the conduct of hostilities or the treatment of persons not or no longer taking a direct part in hostilities.

- b) In non-international armed conflicts, treaty law remained fairly limited. The key provision here was Article 3 which was common to the 1949 Geneva Conventions and Additional Protocol II to the Geneva Conventions of 12 August 1949 on the protection of victims of non-international armed conflicts. The study showed that a number of rules of international armed conflict were also applied to non-international armed conflicts as customary law. This was notably the case for rules on the conduct of hostilities.
- c) A large number of customary rules of international humanitarian law were applicable to both international and non-international armed conflicts. The practice of categorising conflicts as international or non-international was now obsolete, therefore. This was particularly relevant in coalition warfare where the states forming the coalition had obligations under different treaties.

131. The Finnish delegation welcomed the resumption of consultations on the additional emblem and said that consideration should be given to issues such as the universality of the ICRC, the stepping-up of independent humanitarian assistance and the protection of humanitarian workers around the world. It welcomed the fact that the ICRC study had been finalised and suggested that the CAHDI arrange for a more comprehensive presentation to be given on this study at its next meeting.

132. The Swedish delegation agreed with the Finnish delegation about the emblem and the ICRC study and thanked the Swiss delegation for calling a second meeting of those involved in the process in the field of computer network attacks and international humanitarian law.

133. The Canadian observer wondered whether states could perhaps submit formal or informal comments on particular aspects of the ICRC study.

134. The German delegation felt that more time was needed for a substantive examination of the study before launching the national debate in all the entities concerned. It accordingly backed the proposal for a more comprehensive presentation. It was, moreover, wholly in favour of the additional emblem and willing to provide assistance in introducing it.

135. The observer from the ICRC noted that the study was not an official ICRC document so no arrangements had been made for states to submit comments.

136. The Chair concluded in favour of the Finnish proposal and decided to return to it when discussing the agenda for the 30th meeting of the CAHDI.

11. The new Convention on jurisdictional immunities of States and their property

137. The Chair reminded participants that on 2 December 2004, the UN General Assembly had adopted the text of the Convention on Jurisdictional Immunities of States and their Property (the UN Convention), opened for signature on 17 January 2005 (cf. Resolution A/RES/59/38). She went on to consider its implications for the 1972 European Convention on State Immunity (the European Convention).

138. The Portuguese delegation told the Committee that its country was not a party to the European Convention but that it had signed the UN Convention on 25 February 2005. Portugal had also translated the text of this convention in an effort to encourage other Portuguese-speaking countries to sign and ratify it. The Portuguese delegation felt that the co-existence of the machinery provided by the two conventions was a subject worth examining.

139. The Norwegian delegation said that the text of the UN Convention had already been translated into Norwegian. Norway planned to sign the Convention shortly and there was no need for any legislative change. Professor Hafner's report was of considerable importance when it came to interpreting the Convention, moreover. Norway was not a party to the European Convention and was not planning to accede to it.

140. The Austrian delegation told the Committee that it had signed the UN Convention and was preparing to ratify it, something that did not require the adoption of new legislation. It felt it was important that all European countries sign this Convention as quickly as possible and proposed that the CAHDI act as a forum for exchanging information on ratification. In the delegation's view, however, there were still a number of questions to be answered: to what extent was it necessary to repeat the content of Professor Hafner's statement or the question of the co-existence of the European and UN Conventions? Denunciation was an option but one that should be considered carefully alongside other possibilities. Attention was also drawn to the joint efforts being made by Austria, Switzerland and Germany to prepare an official German version of the UN Convention, the official text of which was already available.

141. The Russian Federation delegation welcomed the adoption of the UN Convention, which was a major development in the field of public international law. The Russian Federation was looking into the possibility of signing and ratifying it. There were no legal barriers to such a move; the draft national law on the jurisdictional immunities of states, modelled on the Convention, had been adopted at first reading in Parliament. The Russian Federation was not a party to the European Convention and preferred to have a single legal regime, namely the UN one.

142. The German delegation said that Germany was to sign the UN Convention at the UN General Assembly session in September 2005 and would therefore be ratifying it shortly, but that it did not intend to denounce the European Convention. It would, however, be making an interpretative declaration for acts of the armed forces which, as far as Germany was concerned, were not covered by this Convention.

143. The United Kingdom delegation told the Committee that its country would be signing the UN Convention shortly. It supported the Austrian delegation's proposal to organise, within the CAHDI, an exchange of information on progress on ratifying this Convention.

144. The Japanese observer said that his country was currently considering signing and ratifying the UN Convention.

145. The Chair concluded that, with a large number of states planning to sign/ratify the new UN Convention, further consideration should be given to this matter at the next meeting of the CAHDI.

12. Developments concerning the International Criminal Court (ICC)

146. The Norwegian delegation recalled that under the Rome Statute, the review conference could take place 7 years after the said Statute came into force and that it would therefore be held in 2009. With this in mind, any opinions and ideas would be most welcome

147. The Turkish delegation pointed out that its country had taken an active part in establishing the ICC but that it had neither signed nor ratified the Rome Statute because the court's jurisdiction did not include terrorism. It believed that terrorism, as a crime against humanity, should be among the subjects covered by the ICC.

148. The Mexican observer told the Committee that his country would be ratifying the Rome Statute shortly. A constitutional amendment had been approved by the lower house of the national parliament and submitted to the federal states for approval.

149. The Japanese observer said that his country was considering the possibility of acceding to the Rome Statute.

150. The Secretariat informed the committee that in 2006, the Council of Europe would be holding the 4th multilateral consultation meeting on the implications of the ratification of the Rome Statute of the ICC for Council of Europe member states, provided the necessary funding was available.

151. To conclude, the Chair said that the possibility of including acts of terrorism in the list of crimes covered by the ICC could be discussed at the Rome Statute review conference in 2009. Participants would also consider including the crime of aggression. The Chair reminded the committee that the inter-session meeting on the crime of aggression would be held at Princeton University on 13 and 14 June 2005.

13. Functioning of the Tribunals established by United Nations Security Council Resolutions 827 (1993) and 955 (1994)

152. Nothing to report.

14. Fight against terrorism – information about the work undertaken in the Council of Europe and other international bodies

153. The Secretariat reported on the Council of Europe's activities in the fight against terrorism (document CAHDI (2005) Inf 2). Significant progress had been made, including notably the finalisation of two draft conventions, the Council of Europe convention on the prevention of terrorism and the Council of Europe convention on laundering, the financing of terrorism, search, seizure and confiscation of the proceeds from crime. Several Council of Europe committees had been involved in drafting the above-mentioned instruments, notably the Committee of Experts on Terrorism (CODEXTER). The conventions would be adopted so that they could be opened for signature at the Third Council of Europe Summit.

154. The Secretariat also spoke of developments in other bodies, such as the adoption of the Madrid Agenda by the International Summit on Democracy, Terrorism and Security, held by the Madrid Club on 8-11 March 2005 (document CAHDI (2005) 5).

155. The Spanish delegation thanked the Secretariat for presenting the Madrid Agenda which had been adopted just one year after the attacks in Spain in March 2004. It welcomed the findings of this document which were of considerable importance for democratic values and called for the Madrid Agenda to be widely distributed and publicised.

156. The Finnish delegation said that the Convention on the Prevention of Terrorism was a compromise instrument, citing Article 5 on "Public provocation to commit a terrorist offence", and Article 12 on "Conditions and safeguards". It felt that the new convention brought a practical perspective to this highly sensitive area and welcomed its forthcoming finalisation and adoption.

D. OTHER

15. Date, place and agenda of the 30th meeting of the CAHDI

157. The CAHDI decided to hold its 30th meeting on 19 and 20 September 2005 in Strasbourg.

158. The United Kingdom delegation proposed extending the next CAHDI meeting agenda to include an item on states' intentions to ratify and introduce national measures to implement the

Second Protocol to The Hague Convention on Protection of Cultural Property in the event of Armed Conflict.

159. The Finnish delegation called for a discussion on the ICRC study on customary international humanitarian law. The Austrian delegation agreed that this was an important issue and suggested examining the relationship between international humanitarian law and human rights.

160. The Chair of the CAHDI drew members' attention to the importance of the UN High-Level Panel report of December 2004 as well as of the response of the UN Secretary General and called for an exchange of views on this subject.

161. The CAHDI adopted a preliminary draft agenda for its next meeting, as set out in **Appendix V**.

16. Other business

162. Nothing to report.

APPENDIX I

LIST OF PARTICIPANTS**ALBANIA/ALBANIE:**

Mme Ledia HYSI, Director of Legal Affairs and Treaties Department, Ministry of Foreign Affairs, Bul. Gjergj Fishta, n°6, TIRANA (Tel: + 355 4364674, Fax: +355 4362084 – E-mail: lhysi@mfa.gov.al)

ANDORRA/ANDORRE:

Ms Iolanda SOLA, Legal Adviser, Ministry of Foreign Affairs, C/Prat de la Creu, 62-64, ANDORRE LA VIEILLE (Tel: +376 868610 - Fax: + 376 869559 – E-mail : csd@andorra.ad)

ARMENIA/ARMENIE:

Mr Levon AMIRJANYAN, Counsellor, Permanent Representation of the Republic of Armenia to the Council of Europe, 40 allée de la Robertsau – 67000 STRASBOURG

Mrs Narine MATOSYAN, Third Secretary, Legal Department, Ministry of Foreign Affairs of Armenia, Government House 2, Republic Square, 375010 Yerevan, ARMENIA (Tel: +374 1 54 40 41 - 269 - Fax: + 374 1 54 39 25 – E-mail: n.matosyan@mfa.am)

AUSTRIA/AUTRICHE:

Mr Hans WINKLER, Ambassador, Legal Adviser, Federal Ministry of Foreign Affairs, Balhausplatz 2, 1014 WIEN (Tel: +43 50 1150 3369 – E-mail: hans.winkler@bmaa.gv.at)

AZERBAIJAN/AZERBAIDJAN:

Mr Emin EYYUBOV, Deputy Head of the Department of International Law and Treaties, Ministry of Foreign Affairs, Sh. Gurbanov Str. 4 – 1009 BAKU (Tel: +994 12 492 96 92 ext. 2208 – Fax: +994 12 971548 – E-mail: e_eyyubov@mfa.gov.az)

BELGIUM/BELGIQUE:

M. Jan DEVADDER, Directeur Général des Affaires Juridiques, Service public fédéral des Affaires Etrangères, du Commerce extérieur et de la Coopération au développement, 15 rue des Petits Carmes, 1000 BRUXELLES
(Tel: +32 2 5018089 - Fax: +32 2 5112259 - E-mail: jan.devadder@diplobel.fed.be)

M. Patrick DURAY, Conseiller, Direction Générale des Affaires Juridiques, Service public fédéral des Affaires Etrangères, du Commerce extérieur et de la Coopération au développement, 15 rue des Petits Carmes, 1000 BRUXELLES (Tel: +32 2 5013667 - Fax: + 32 2 5112259 - E-mail: patrick.duray@diplobel.fed.be)

BOSNIA AND HERZEGOVINA/BOSNIE-HERZEGOVINE:

Mme Gildzana TANOVIC, Ministère des Affaires Etrangères, Musala 2, 71000 SARAJEVO (Tel: +387 33 281 176 – Fax: +387 33 471 188 – E-mail: gildzana.tanovic@mvp.gov.ba)

BULGARIA/BULGARIE:

Mrs Guenka BELEVA, Director, International Law Directorate, Ministry of Foreign Affairs, SOFIA (E-mail: gbeleva@mfa.government.bg)

CYPRUS/CHYPRE:

Mr Nicos MICHAELIDES, Law Officer, Law Office, Appellis St., 1403 - NICOSIA (Tel: +357 22 889189 - Fax: +357 22 889230 - E-mail: nmichaelides@eudep.law.gov.cy)

CZECH REPUBLIC/REPUBLIQUE TCHEQUE:

Mr Jan CIZEK, Director, International Law Department, Ministry of Foreign Affairs, Loretanske namesti 5, 118 00 PRAGUE 1 (Tel: +420 224 18 22 31 - Fax: +420 224 18 20 38 - E-mail: jan_cizek@mzv.cz)

Ms Marie SULCOVA, member of the International Law Department, Ministry of Foreign Affairs, Loretanske namesti 5, 118 00 PRAGUE 1 (Tel: +420 22418 2271 - Fax: +420 22418 2038 - E-mail: marie_sulcova@mzv.cz)

DENMARK/DANEMARK:

Mr Jacob Skude RASMUSSEN, Head of Section, Legal Service, Ministry of Foreign Affairs, 2, Asiatisk Plads - 1448 COPENHAGEN K (Tel: +45 33 920776 - Fax: +45 33920303 - E-mail:jacsku@um.dk)

ESTONIA/ESTONIE:

Mrs Triin PARTS, Director General, Legal Department, Ministry of Foreign Affairs, Islandi väljak 1, 15049 TALLINN (Tel: +372 6317102 – E-mail: triin.parts@afa.ee)

FINLAND/FINLANDE:

Mrs Irma ERTMAN, Ambassador, Director general for Legal Affairs, Ministry of Foreign Affairs, P.O. Box 176, 00161 HELSINKI (Tel: +358 9 160 55700 – Fax: + 358 9 160 55703 - E-mail: irma.ertman@formin.fi)

Mrs Marja LEHTO, Director, Ministry of Foreign Affairs, P.O. Box 176, 00161 HELSINKI (Tel: +358 0 1341 51 – Fax: +358 9 16055707 - E-mail: Marja.Lehto@formin.fi)

FRANCE:

M. Pierre BODEAU-LIVINEC, Chargé de mission, Sous-direction du droit international public général, Ministère Public Général, 57, boulevard des Invalides, 75700 PARIS 07SP (Tel : +33 1 53693612 – Fax : +33 1 53693668– E-mail : Pierre.Bodeau@diplomatie.gouv.fr)

GEORGIA/GEORGIE:

Mrs Ekaterine ZODELAVA, Head of Treaty Division, Ministry of Foreign Affairs, International Law Department, Chitadze St. 4, TBILISI 380018 (Tel: +995 32 28 46 25 - Fax: +995 32 28 48 77 - E-mail ezodelava@yahoo.com)

GERMANY/ALLEMAGNE:

Dr Thomas LÄUFER, Legal Adviser, Director General for Legal Affairs, Federal Foreign Office, Auswärtiges Amt, Werderscher Markt 1, 10117 BERLIN (Tel: +49 1888172722 Fax: +49 30 5000 3663 - E-mail: 5-D@diplo.de)

Mrs Suzanne WASUM-RAINER, Head of Division, Public International Law Department, Auswärtiges Amt, Referat 500, Werderscher Markt 1, 10117 BERLIN (Tel: +49 1888 172718 - Fax: +49 1888 174044 - E-mail: 500-rl@diplo.de)

GREECE/GRECE:

Mrs Phani DASCALOPOULOU-LIVADA, Legal Adviser, Head of the Section of Public International Law, Ministry of Foreign Affairs, 3 Zalokosta Street, ATHENS (Tel: +30 2 10 3683307or 8 - Fax: +30 2 10 3683316 - E-mail: eny@mfa.gr) **(Chair/Présidente)**

Mr Michael STELLAKATOS-LOVERDOS, Member of the Legal Service, Ministry of Foreign Affairs, 3 Zalokosta Street, ATHENS 10681 (Tel: +302 10 368 3319 - Fax: + 302 10 3683316 – e-mail: eny@mfa.gr)

HUNGARY/HONGRIE:

Mr Istvan GERELYES, Deputy Director, International Law Department, Ministry of Foreign Affairs, Bem Rakpart 47, 1027 BUDAPEST (Tel: +361 458 11 42 – Fax : +361 458 10 91 - E-mail : lGerelyes@kum.hu)

ICELAND/ISLANDE:

Mr Tomas H. HEIDAR, Legal Adviser, Ministry for Foreign Affairs, Rauderarstigur 25, 150 REYKJAVIK, (Tel: +354 545 9900 – Fax: +354 562 2373 – E-mail: tomas.heidar@utn.stjr.is)

IRELAND/IRLANDE:

Mrs Patricia O'BRIEN, Legal Adviser, Department of Foreign Affairs, Hainault House, 69-71 St. Stephens Green, DUBLIN 2 (Tel: +353 1478 0822 - Fax: + 353 1478 5950 – E-mail: patricia.obrien@iveagh.gov.ie)

ITALY/ITALIE:

Mr Ivo Maria BRAGUGLIA, Head of the Legal Department, Ministry for Foreign Affairs, Piazza della Farnesina 1, ROMA 00197 (Tel: +3906 36912460 - Fax: +39 06 3230315 - E-mail: francesco.deconno@esteri.it)

Dr Annalisa CIAMPI, Professor, University of Florence

LATVIA/LETTONIE:

Ms Evija DUMPE, Legal Department, Ministry of Foreign Affairs, Brivibas Boulv. 36, 1395 RIGA (Tel: +371 7016106 – Fax : +371 7828121 - E-mail: evija.dumpe@mfa.gov.lv)

LITHUANIA/LITHUANIE:

Mr Ridas PETKUS, Head of International Treaties Division, Ministry of Foreign Affairs, J. Tumo Vaizganto g.2 - 01511 VILNIUS (Tel: +370 5 362 543 - Fax: +370 5 2362532 - E-mail: ridas.petkus@urm.lt)

MALTA/MALTE:

Mrs Marvic SCIBERRAS ABDILLA, Counsel, Office of the Attorney General, The Palace, VALLETTA (Tel: +356 25683205, Fax: +356 21237281 - E-mail: marvic.sciberras-abdilla@gov.mt)

MOLDOVA:

M. Iurie CERBARI, Chef du Service général du droit international et des traités, Ministère des Affaires Etrangères, 80, 31 August 1989 Str; CHISINAU, MD 2012 (Tel: +373 22 578216 - Fax: +373 22 232302 - E-mail: treatdep@mfa.md)

MONACO :

M. Bernard GASTAUD, Conseiller pour les Affaires Juridiques et Internationales, Ministère d'Etat, Place de la Visitation, MC 98000 MONACO (Tel : +377 93158765)

NETHERLANDS/PAYS-BAS:

Mr Johan LAMMERS, Legal Adviser, International Law Division, Ministry of Foreign Affairs, Bezuidenhoutseweg 67, P.O. Box 20061 – 2500 EB THE HAGUE – (Tel: +31 70 3486137 – Fax: +31 70 3485128 – E-mail: johan.lammers@minbuza.nl)

NORWAY/NORVEGE:

Mr Rolf Einar FIFE, Director General, Department for Legal Affairs, Ministry of Foreign Affairs, P.O. Box 8114 Dep., 0032 OSLO 1 (Tel: +47 22 243400 - Fax: + 47 22 243368 - E-mail: rolf.einar.fife@mfa.no)

Ms Martine SCHEIE, Executive Officer, Ministry of Foreign Affairs, Russelokkveien, 14, 0259 OSLO - (Tel: +47 22 24 39 30 - Fax: +47 22 24 33 68 - E-mail: martine.scheie@mfa.no)

POLAND/POLOGNE:

Mr Remigiusz HENCZEL, Director of Legal and Treaty Department, Ministry of Foreign Affairs, Legal and Treaties Department, Al. Szucha 23, 00 580 WARSAW (Tel: +48 22 523 94 24 - Fax: +48 22 523 83 29 - E-mail: remigiusz.henczel@msz.gov.pl)

PORTUGAL:

Mr Luis SERRADAS TAVARES, Director, Ministry of Foreign Affairs, Department of Legal Affairs, Largo do Rilvas – 1399 030 LISBOA (Tel: +351 21394 6243 - Fax: +351 21 394 6009 - E-mail: daj@sg.mne.gov.pt)

Mrs Patricia GALVAO TELES, Consultant, Ministry of Foreign Affairs, Department of Legal Affairs, Largo do Rilvas – 1399 030 LISBOA (Tel: +351 21394 6243 - Fax: +351 21 394 6009, E-mail: dip@sg.mne.gov.pt)

ROMANIA/ROUMANIE:

Mr Cosmin DINESCU, General Director, General Directorate for Legal Affairs, Ministry of Foreign Affairs, Alee Modrogan n°14, Sector 1, BUCAREST (Tel.: +40 2123 07 595. - Fax: +40 21 231 29 34 - E-mail: cosmin.dinescu@mae.ro)

Ms Alina PAPUC, Third secretary, Ministry of Foreign Affairs, Alee Modrogan n°14, Sector 1, BUCAREST
E-mail: alina.papuc@mae.ro

RUSSIAN FEDERATION/FEDERATION DE RUSSIE :

Mr Vladimir TARABRIN, Deputy Director of the Legal Department, Ministry of Foreign Affairs, 32/34 Smolenskaya-Sennaya, MOSCOW (Tel : +709 52417718 – Fax : +7 09 5241 1166 - E-mail: dp@mid.ru)

SERBIA AND MONTENEGRO/SERBIE ET MONTENEGRO:

Mr Milan PAUNOVIC, Chef Legal Advisor, Ministry of Foreign Affairs, No 26, Kneza Milosa Str, 1000 BELGRADE (Tel: +381 11 3068 661 - E-mail: milan.paunovic@smip.sv.gov.yu)

SLOVAK REPUBLIC/REPUBLIQUE SLOVAQUE:

Mr Igor GREXA, General Director, Direction of International Law and Consular Affairs, Ministry of Foreign Affairs Hlboka cesta 2, 833 36 BRATISLAVA (Tel: +421 2 5978 3701 - Fax: +421 2 5978 3709 – E-mail: igor_grexa@foreign.gov.sk)

SPAIN/ESPAGNE:

Mme Concepción ESCOBAR HERNÁNDEZ, Chef du Département Juridique International, Ministère des Affaires Etrangères, Palacio de Santa Cruz, Plaza de la Provincia 1, 28071 MADRID (Tel.: +34 91 379 99 12 - Fax: +34 91 3640645 - E-mail: concepcion.escobar@mae.es)

Mme Cristina AGUILAR JIMENEZ, Conseillère technique, Département juridique international, Ministère des Affaires Etrangères, Palacio de Santa Cruz, Plaza de la Provincia 1, 28071 MADRID

M. Maximiliano BERNAD ALVAREZ DE EULATE, Professeur de Droit international public et d'Institutions et droit communautaire européens, Université de Zaragoza, Président du 'Real Instituto de Estudios Europeos', Coso 24, 50004 ZARAGOZA (Tel: +34 976 22 51 64 - Fax: +34 976 233958 - E-mail: info@riee.es)

SWEDEN/SUEDE:

Mr Bosse HEDBERG, Director, International Law and Human Rights Department, Ministry for Foreign Affairs, Box 16121, 10349 STOCKHOLM (Tel: +46 8405 5050 - Fax: +46 8723 1176- E-mail: bosse.hedberg@foreign.ministry.se)

SWITZERLAND/SUISSE:

M. Jürg LINDENMANN, Suppléant du Jurisconsulte, Direction du Droit international public, Département fédéral des affaires étrangères, Palais fédéral Ouest, 3003 BERNE (Tel: +41 313245599 - Fax: +41 31 3249073 - E-mail: JUERG.lindenmann@eda.admin.ch)

"THE FORMER REPUBLIC YUGOSLAV OF MACEDONIA"/"L'EX-REPUBLIQUE YOUGOSLAVE DE MACEDOINE":

Mrs Magdalena DIMOVA, Head of International Law Department, Ministry of Foreign Affairs, Dame Gruev 6, 1000 SKOPJE (Tel: +389 2 3128 135 - Fax: +389 2 3115 790 - E-mail: dimova@mfa.gov.mk)

TURKEY/TURQUIE:

Mr Cinar ALDEMIR, Ambassador, Chief Legal Adviser, Ministry of Foreign Affairs, T.C. Disisleri Bakanligi, Balgat/ ANKARA (Tel: +90 312 292 22 08 - Fax: +90 312 212 27 16 - E-mail: cinar.aldemir@mfa.gov.tr)

UKRAINE:

Mr Olexander KUPCHYSHYN, Legal and Treaty Department, Ministry of Foreign Affairs, 1, sqr Mykhaylivska, KYIV 01018 (Tel: +380 (44) 2381518 - Fax: +380 44 2128227- E-mail: dpu@mfa.gov.ua)

UNITED KINGDOM/ROYAUME-UNI:

Sir Michael WOOD, Legal Adviser, Foreign and Commonwealth Office, King Charles Street, LONDON SW1A 2 AH (Tel: +44 20 7008 3052 - Fax: +44 20 7008 3071 - E-mail: michael.wood@fco.gov.uk) (**Vice-chair/Vice-Président**)

Mr Chanaka WICKREMASINGHE, Legal Researcher, Foreign and Commonwealth Office, King Charles Street, LONDON SW1 A 2AH (Tel: +44 20 7008 1548 - Fax: +44 20 7008 2280 - E-mail: chanaka.wickremasinghe@fco.gov.uk)

OBSERVERS/ OBSERVATEURS**CANADA:**

Mrs Colleen SWORDS, Legal Adviser, Department of Foreign Affairs and International Trade, 125 Sussex Drive OTTAWA, ONTARIO K1A OG2 (Tel: +1 613 995 8901 - Fax: +1 613 944 0845 - E-mail: colleen.swords@international.gc.ca)

HOLY SEE/SAINT-SIEGE:

Mme Odile GANGHOFER, Mission du Saint Siège auprès du Conseil de l'Europe, 2 rue le Nôtre, 67000 Strasbourg (Tel: 33 3 88 35 02 44 - Fax: 33 3 88 24 78 05, E-mail: saint.siège.strg@wanadoo.fr)

JAPAN/JAPON:

Mr Takeo AKIBA, Director, International Legal Affairs Division, Ministry of Foreign Affairs, 2-2-1 Kasumigaseki, Chiyoda-ku - 100-8919 TOKYO (Tel: +81 33580 3311 (ext. 2657) - Fax: +81 3 5501 8382 - E-mail: takeo.akiba@mofa.go.jp)

Mr Kiyoyuki SUGAHARA, Deputy Director, International Legal Affairs Division, Ministry of Foreign Affairs, 2-2-1 Chiyoda-ku - 100-8919 TOKYO (Tel: +81 33580 3311 (ext. 3409) - Fax: +81 3 5501 8382 - E-mail: kiyoyuki.sugahara@mofa.go.jp)

Mr Naoyuki IWAI, Consul, Consultat Général du Japon, "Tour Europe", 20 place des Halles - 67000 STRASBOURG (E-mail: naoyuki.iwai@dial.oleane.com)

MEXICO/MEXIQUE:

Mr Alejandro RODILES, Director de Derecho Internacional I, de la Consultoria Juridica de la Secretaria de Relaciones Exteriores de Mexico, Avenida Ricardo Flores Mayon n°1, Edificio Nuevo, Cuerpo B 3er Piso, Tlatelolco CP 06995 (Tel:+52 55 91 57 43 58 - Fax: +52 55 91 57 43 43 - E-mail: arodiles@sre.gob.mx)

UNITED STATES OF AMERICA/ETATS-UNIS D'AMERIQUE:

Mr David P. STEWART, Assistant Legal Adviser, Office of the Legal Adviser, US Department of State, WASHINGTON DC 20520-6310 (Tel: +1 202 647 1074 – E-mail: stewartdp@state.gov)

ISRAEL/ISRAËL:

Mr Ehud KENAN, Legal Adviser, Ministry of Foreign Affairs, JERUSALEM (Tel:+972 2 5303266 - Fax: +72 2 5303251 - E-mail: ehudk@mfa.gov.il)

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT/ORGANISATION DE COOPERATION ET DE DEVELOPPEMENT ECONOMIQUES (OCDE):

Apologised/Excusé

EUROPEAN ORGANISATION FOR NUCLEAR RESEARCH (CERN)/ORGANISATION EUROPEENNE POUR LA RECHERCHE NUCLEAIRE (CERN)

Apologised/Excusé

THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW/CONFERENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVE:

Apologised/Excusé

INTERPOL:

Mr Rutsel MARTHA, Conseiller Juridique, Bureau des Affaires Juridiques, INTERPOL, 200 quai Charles de Gaulle, F - 69006 LYON (Tel: +33 4 72 44 57 30 – Fax: +33 4 72 44 73 38 – E-mail: r.martha@interpol.int)

INTERNATIONAL COMMITTEE OF THE RED CROSS/COMITE INTERNATIONAL DE LA CROIX ROUGE:

Mr Jean-Philippe LAVOYER, Head of the Legal Division, 19, rue de la Paix, CH - 1202 GENEVA, Switzerland (Tel: +41 22 730 29 08 - Fax: +41 22 733 20 57 - E-mail: jlavoyer.gva@icrc.org)

NORTH ATLANTIC TREATY ORGANISATION (NATO) / ORGANISATION DU TRAITE DE L'ATLANTIQUE NORD (OTAN):

Mr Zbigniew CZECH, Assistant Legal Adviser, Office of the Legal Adviser, Bld Leopold III - 1110 BRUXELLES (Tel: +32 2 707 3938 - E-mail: z.czech@hq.nato.int)

Ms Laura MAGLIA, Legal Assistant, Legal Department, Bld Leopold III – 1110 BRUXELLES (Fax: + 32 2 707 3831 – E-mail: 32 2 707 9167 E-mail: l.maglia@hg.nato.int)

CONSULTANTS/EXPERTS CONSULTANTS

Dr Stephan WITTICH, Department of International Law, University of Vienna, Universitätstrasse 2, 1090 WIEN - Autriche (E-mail: stephan.wittich@univie.ac.at)

Mrs Susan C. BREAU, Fellow in Public International Law, Director of the Commonwealth Legal Advisory Service, British Institute of International and Comparative Law, Charles Clore House, 17 Russel Square, LONDON - WC1B 5JP - United Kingdom (Tel: +44 20 78625158 - Fax: +44 20 73232016 - E-mail: s.c.breau@biicl.org)

M. Marcelo KOHEN, Institut Universitaire de Hautes Etudes internationales, The Graduate Institute of International Studies, 132, rue de Lausanne - P.O. Box 36 - CH - 1211 GENEVE 21 - Suisse

SPECIAL GUESTS/INVITES SPECIAUX

M. Robert BADINTER, Président de la Cour internationale de conciliation et d'arbitrage de l'OSCE, 38 rue Guynemer – F 75006 PARIS

M; Luigi FERRARI BRAVO, membre du Bureau de la Cour internationale de conciliation et d'arbitrage de l'OSCE, Villa Rive-Belle, 266 route de Lausanne, C.P. 20 – CH 1292 CHAMBESY

SECRETARIAT GENERAL

DIRECTORATE GENERAL OF LEGAL AFFAIRS/DIRECTION GENERALE DES AFFAIRES JURIDIQUES

M. Giovanni PALMIERI, Head of the Public Law Department/Chef du service du droit public (Tel: +33 3 88 41 34 35- Fax: + 33 3 88 41 27 64 - E-mail: giovanni.palmieri@coe.int)

Mr Rafael A. BENITEZ, Secretary of the CAHDI/Secrétaire du CAHDI, Deputy Head of the Department of Public Law/Adjoint du Chef du Service du droit public (Tél : +33 3 88 41 34 79 – Fax : +33 3 88 41 27 64 – E-mail: rafael.benitez@coe.int)

Mme Albina LACHERET-OVCEARENCO, Administrative assistant/Assistante administrative, Department of Public Law/Service du droit public (Tel.: +33 3 90 21 52°09 – Fax : +33 3 88 41 27 64 – E-mail: albina.ovcearenco@coe.int)

Mme Francine NAAS, Assistant/Assistante, Department of Public Law/Service du Droit public (Tel: +33 3 90 21 46 00 – Fax: + 33 3 90 21 51 31 – E-mail: Francine.naas@coe.int)

Ms Saskia DANIELL, Assistant/Assistante, Department of Public Law/Service du Droit public, (Tel: +33 3 90 21 44 59 – Fax: + 33 3 90 21 51 31 – E-mail: saskia.daniell@coe.int)

Mme Frédérique BONIFAIX, Assistant/Assistante, Department of Public Law/Service du Droit public (Tel: +33 3 88 41 20 05 – Fax: + 33 3 90 21 51 31 – E-mail:

INTERPRETERS/INTERPRETES:

Mr Jean SLAVIK
M. Daniel BIRNBAUM
Mr Didier JUNGLING

APPENDIX II

AGENDA**A. INTRODUCTION**

1. Opening of the meeting by Ms Dascalopoulou-Livada, Chair of the CAHDI
2. Adoption of the agenda and approval of the report of the 28th meeting (Lausanne, 13-14 September 2004) **CAHDI (2005) OJ 1 & CAHDI (2004) 27 prov**
3. Communication by the Head of Public Law Department, Mr Paimieri **CAHDI (2005) Inf 1**

B. ONGOING ACTIVITIES OF THE CAHDI

4. Decisions by the Committee of Ministers concerning the CAHDI and requests for CAHDI's opinion **CAHDI(2005) 1
CAHDI (99) 15 Excerpt, CAHDI (99) 5 & CAHDI (2005) Inf. 3**
5. Law and practice relating to reservations and interpretative declarations concerning international treaties: European Observatory of Reservations to International Treaties
 - a. List of outstanding reservations and declarations to international Treaties **CAHDI (2005) 2 Part I & Part II**
 - b. Consideration of reservations and declarations to international Treaties applicable to the fight against terrorism **CAHDI (2005) 7 & CAHDI (2004) 22**
6. Pilot Project of the Council of Europe on State practice regarding State immunities – Presentation of the Analytical report and follow-up **CAHDI (2005) 5, CAHDI (2005) 6 Part I, Part II & Table**
7. Organisation and functions of the Office of the Legal Adviser of the Ministry of Foreign Affairs **CAHDI (2005) 3 & Add.**
8. National implementation measures of UN sanctions, and respect for Human Rights **CAHDI (2005) 4 & Add
CAHDI (2004) 7, 9 & 13**

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

9. Exchange of views with the Bureau of the International Court of Conciliation and Arbitration within the OSCE
10. Consideration of current issues in the area of international humanitarian law
11. Drafting of the new Convention on jurisdiction immunities of States and their property
12. Developments concerning the International Criminal Court (ICC)
13. Implementation and functioning of the Tribunals established by United Nations Security Council Resolutions 827 (1993) and 955 (1994)
14. Fight against Terrorism - Information about work undertaken in the Council of Europe and other international Fora **CAHDI (2004) Inf 2**

D. OTHER

15. Date, place and agenda of the 30th meeting of the CAHDI (proposed dates: 19-20 September)
16. Other business

APPENDIX III

**STATEMENT BY Mr GIOVANNI PALMIERI,
HEAD OF THE PUBLIC LAW DEPARTMENT**

On behalf of the Director General of Legal Affairs, Mr Guy de Vel, who is sorry not to be able to participate in this meeting due to prior commitments, I have the honour and the pleasure of welcoming you to the Council of Europe.

Allow me to provide you, as usual, with a few details on the institutional life and activities of the Council of Europe.

The Secretariat's main concern at present is arranging the Third Summit of Heads of State and Government to be held in Warsaw on 16 and 17 May 2005 at the invitation of the Polish government.

The two previous Summits gave a real boost to the European integration process and a number of key decisions were taken there.

The 3rd Summit, which is being held at a time of major change, is expected to address the challenges facing Europe in the future and to reiterate the importance of the Council of Europe for the European continent. It is expected to define the Council's place in the European institutional landscape and to give it a clear political mandate for the years ahead. It should also mobilise the necessary resources to accomplish this mandate.

The date of the 3rd Summit, which coincides symbolically with the 60th anniversary of the end of the second world war and the 15th anniversary of the start of democratic reform in central and eastern Europe, provides an excellent opportunity to reaffirm the unity of a Europe without dividing lines, based on shared values.

The Committee of Ministers is currently drawing up the agenda for the Summit, which is expected to focus on the following: Europe's new institutional architecture for undertaking effective, joint action; community of European values, including their social dimension and intercultural dialogue both within Europe and between Europe and its neighbours.

A consensus seems to be forming around the key idea of the Summit, which would make this a "summit of European unity".

I am also able to report that we are continuing to work with UNMIK to make the Framework Convention for the Protection of National Minorities and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment applicable in Kosovo. On 3 and 4 February 2005, moreover, the Council of Europe Secretariat teamed up with UNMIK to hold a conference in Pristina on reorganising the judicial system in Kosovo.

With regard to the European Treaty Series, I will just say that there have been a number of significant developments since your last meeting. These developments are reported in document CAHDI (2005) Inf 1, which is in the meeting file.

I would nevertheless like to draw your attention to three events which we consider particularly important, namely:

- the Additional Protocol to the Convention on Human Rights and Biomedicine concerning biomedical research was opened for signature on 25 January 2005.
- The Additional Protocol to the Criminal Law Convention on Corruption entered into force on 1 February 2005.
- Additional Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms will enter into force on 1 April 2005.

As regards activities in the field of legal co-operation, allow me to draw your attention to the leaflet that was handed out at your 28th meeting in Lausanne. This leaflet outlines the activities and projects under way in Directorate General I – Legal Affairs. For an update, you may find it useful to consult the Council of Europe website. I will not go into details, as we have a fairly busy agenda today.

I should just mention, though, a few recent developments in areas such as terrorism, local and regional terrorism, cybercrime and data protection.

On the subject of terrorism, the Committee of Experts on Terrorism (CODEXTER) held its 8th meeting in Strasbourg, from 28 February to 4 March 2005.

The CODEXTER approved the draft European convention on the prevention of terrorism and decided to forward it to the Committee of Ministers for adoption at the earliest opportunity, so that it could be opened for signature at the 3rd Summit of Heads of State and Government.

The CODEXTER also examined and approved a draft Committee of Ministers Recommendation to the member states on identity and travel documents and the fight against terrorism together with its draft explanatory memorandum and agreed to forward it to the Committee of Ministers for adoption.

The CODEXTER discussed the arrangements for future activities in this area and decided to resume, as a matter of priority, the preparation of “National profiles” on counter-terrorism capacity. In this connection, Austria, Croatia, Hungary, Lithuania, Luxembourg, Slovenia, Turkey and the EU volunteered to submit their respective reports at the next meeting.

The CODEXTER also decided to resume the exchange of best practice regarding national systems for protecting and compensating victims of terrorism. Sweden and the United Kingdom volunteered to describe their experiences at the next meeting.

In the field of local and regional democracy, I would like to draw attention to the staging of the First Regional Conference of Ministers of South-East Europe responsible for local and regional government. This conference was held in Zagreb on 25 and 26 October 2004. Among the most important results were the drawing up of work programmes for better local administration; the signing by ministers of a Memorandum of Understanding and the decision to meet in Skopje (“the former Yugoslav Republic of Macedonia”) in eighteen months’ time to review the action taken at national and regional level to implement the work programmes.

On the subject of nationality, the 3rd Conference on Nationality on the theme “Nationality and the Child” was held in Strasbourg on 11 and 12 October 2004. The conference made proposals for developing the principles of the European Convention on Nationality in areas such as acquisition of the nationality of the country of residence for first and second generation migrant children and change of nationality of the parents and its effects on the nationality of the child. Other proposals were concerned with preventing statelessness among children, including children involved in international adoptions who were liable to become stateless if the adoption did not proceed or if the adoption procedure failed. I should also point out that the Committee on Nationality (CJ-NA) is preparing a new protocol on the principles and rules on the avoidance of statelessness in relation to state succession.

In the field of cybercrime, Strasbourg hosted a conference on the challenges of cybercrime on 15 and 17 September 2004. This conference should give fresh impetus to the ratification process, helping to secure the widest possible support for the Convention on Cybercrime and its Additional Protocol – which came into force on 1 July 2004 – in Europe and beyond.

In the field of data protection, mention should be made of the multilateral conference on the rights and responsibilities of data subjects, held in Prague on 14 and 15 October 2004. The

conference produced a number of recommendations and proposals for action for better information and empowerment of data subjects.

I will not go into the other priority areas, such as the fight against corruption, bioethics, and the fight against trafficking in human beings. These subjects will be examined at the Warsaw Summit.

I have then come to the end of my presentation of recent developments. I have chosen those which strike me as the most important, in view of our priorities and of the preparation of the Warsaw Summit.

It therefore remains for me to thank you all for your attention.

APPENDIX IV

COMMENTS BY THE COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI) ON PARLIAMENTARY ASSEMBLY RECOMMENDATION 1690 (2005) – THE CONFLICT OVER THE NAGORNO-KARABAKH REGION DEALT WITH BY THE OSCE MINSK CONFERENCE

In pursuance of the Deputies' Decision taken at their 915th meeting on 9 February 2005 (CM/Del/Dec(2005)913/3.1), members of the CAHDI considered Parliamentary Assembly Recommendation 1690 (2005) – The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference. In accordance with its specific terms of reference, the CAHDI concentrated on what it considered to be the public international law issues and, in particular, paragraph viii. which recommended that the Committee of Ministers:

viii. instruct its competent steering committee to analyse how far the European Convention for the Peaceful Settlement of Disputes reflects the current requirements of conflict settlement among member states of the Council of Europe and where it should be revised in order to provide an adequate instrument for the peaceful settlement of disputes between the member states of the Council of Europe;

The CAHDI recalls that in 1998 it undertook the examination of the functioning and operation of the conventions under its responsibility, including the above-mentioned convention. The CAHDI considered that Convention in particular at its 17th meeting (Vienna, 8-9 March 1999) and noted that:

75. The existence of the Convention and the threat by one Party to a dispute to have recourse to it no doubt facilitated friendly settlements. The Convention thus fairly frequently had a dissuasive effect (fleet in being). For this reason, given the present group of Contracting Parties and taking account of the extent of their acceptance, the Convention had helped to improve the possibilities for the legal settlement of disputes between member states of the Council of Europe.

76. However, a certain number of disputes that had arisen or were likely to arise remained outside the field of application of the Convention, mainly due to the fact that over half of the Council of Europe member states were not Parties to the Convention.

and the Chair concluded that through this Convention, a substantial number of disputes could be settled by the International Court of Justice without any particular problem.²

The relevant paragraphs of the meeting report are enclosed.

At its 29th meeting, the CAHDI reconsidered the functioning and operation of the Convention and confirmed its prior position. The CAHDI therefore concludes in reply to the Recommendation of the Parliamentary Assembly that the Convention reflects the current requirements of conflict settlement among the member states of the Council of Europe and provides an adequate instrument for the peaceful settlement of disputes among themselves. The CAHDI therefore considers that the Convention does not need to be revised and suggests that the Committee of Ministers invite member states not having done so to become Parties to it.

² See documents CAHDI (1999) 5 and 15.

Annex

6. Consideration of conventions under the responsibility of the CAHDI: Examination of the European Convention for the Peaceful Settlement of Disputes (ETS 23)

73. The CAHDI began the examination of the European Convention for the Peaceful settlement of disputes (N° 23 in the European Treaty Series) on the basis of the document prepared by the Secretariat⁹.

74. The Chairman stated that the European Convention for the Peaceful settlement of the disputes had entered into force on 30 April 1958 and 13 member States were at present bound by it (Austria, Belgium, Denmark, Germany, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Sweden, Switzerland and the United Kingdom). In addition, it had been signed by 5 other member States (France, Greece, Iceland, Ireland and Turkey). The last ratification of the Convention was on 18 February 1980 (Liechtenstein) and the last signature dated back to 1958 (Turkey).

75. The existence of the Convention and the threat by one Party to a dispute to have recourse to it no doubt facilitated friendly settlements. The Convention thus fairly frequently had a dissuasive effect (*flect in being*). For this reason, given the present group of Contracting Parties and taking account of the extent of their acceptance, the Convention had helped to improve the possibilities for the legal settlement of disputes between member States of the Council of Europe.

76. However, a certain number of disputes that had arisen or were likely to arise remained outside the field of application of the Convention, mainly due to the fact that over half of the Council of Europe member States were not Parties to the Convention.

77. The Slovakian Delegate informed the CAHDI that his country was examining the Convention with interest with a view to early accession to it.

78. The Netherlands Delegate pointed out that certain States which, in principle, were to accede to the Convention had not done so in practice and he wondered about the reasons for this state of affairs.

79. The Chairman concluded that through this Convention a substantial number of disputes could be settled by the international Court of Justice without any particular problem. He invited the Member States of the Council of Europe to consider the possibility of acceding to it.

⁹ See document CAHDI (99) 5. For an overview of the legal texts coming under the responsibility of the CAHDI see document CAHDI (99) 4.

APPENDIX V

AGENDA OF THE 30TH MEETING OF THE CAHDI**A. INTRODUCTION**

1. Opening of the meeting by the Chair, Ms Dascalopoulou-Livada
2. Adoption of the agenda and approval of the report of the 29th meeting (Strasbourg, 17-18 March 2005)
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. Law and practice relating to reservations and interpretative declarations concerning international treaties: European Observatory of Reservations to International Treaties:
 - a. List 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
7. Organisation and functions of the Office of the Legal Adviser of the Ministry of Foreign Affairs
8. National implementation measures of UN sanctions, and respect for Human Rights

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

9. Exchange of views with the President of the Court of Justice of the European Communities (ECJ), Mr Skouris
10. The work of the Sixth Committee of the General Assembly of the United Nations and of the International Law Commission (ILC)
11. Peaceful settlement of disputes:
 - a. Compulsory jurisdiction of the International Court of Justice (ICJ) (Article 36 (2))
 - b. Jurisdiction of the ICJ under other agreements, including the European Convention on the Peaceful Settlement of Disputes
 - c. Overlapping jurisdiction of international courts and tribunals

12. UN Convention on Jurisdictional Immunities and European Convention on State Immunities
13. Consideration of current issues of international humanitarian law:
 - a. Presentation of the ICRC study on customary international humanitarian law
 - b. 2nd Protocol to the Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict
14. Developments concerning the International Criminal Court (ICC)
15. Implementation and functioning of the Tribunals established by United Nations Security Council Resolutions 827 (1993) and 955 (1994)
16. UN High-level Panel Report and response by the UN Secretary-General
17. Fight against Terrorism - Information about work undertaken in the Council of Europe and other international bodies

D. OTHER

18. Election of the Chair and Vice Chair
19. Date, place and agenda of the 31st meeting of the CAHDI
20. Other business