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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW
(CAHDI)

30th meeting
Strasbourg, 19-20 September 2005

MEETING REPORT

Secretariat Memorandum
prepared by the Directorate General of Legal Affairs

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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 30th meeting in Strasbourg, on 19 and 20 September 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 and especially Mr Rosas, President of Chamber and member of the Court of Justice of the European Communities (ECJ), and the new representatives of the Observer States of Japan, Mexico and the United States of America.

3. The Chair proposed adding for discussion the UN Secretary-General's Report "In larger freedom: towards development, security and human rights for all" together with the UN High-level Panel Report. The agenda, as set out in **Appendix II**, was adopted unanimously. The Committee also approved the previous meeting report (document CAHDI (2005 8 prov.) and authorised its publication on the CAHDI website (**www.coe.int/cahdi**).

4. The Director General of Legal Affairs, Mr Guy De Vel, reported on developments in the Council of Europe since the last meeting of the Committee, including those relating to the European Treaty Series. He drew the attention of the CAHDI members to the results of the Third Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005) and normative texts adopted over the past few months. He underlined the intention to strengthen co-operation between the Council of Europe and the United Nations and with the European Union. The text of his statement appears in **Appendix III**.

5. The Chair thanked Mr De Vel for his intervention and the information provided. She stressed the importance of the Warsaw Declaration and the Action plan for relations between the European Union and the Council of Europe and she confirmed that CAHDI would continue to work towards the goals of the Council of Europe.

6. The United Kingdom delegation thanked Mr De Vel for his words on the London terrorist attacks and stated that the debate in the United Kingdom on security versus liberty in connection with the fight against terrorism takes into account the work of the Council of Europe in this field. It urged the member States to become Party to the new Convention on the prevention of terrorism, especially since the Security Council had just stressed its importance in connection with the "incitement to terrorism" provision.

B. ONGOING ACTIVITIES OF THE CAHDI

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

7. The Secretariat referred to the decisions by the Committee of Ministers concerning the CAHDI and requests for CAHDI's opinion (document CAHDI (2005) 12) stating the interest of the Committee of Ministers for the work of the CAHDI.

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

8. 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 document CAHDI (2005) 11).

9. The CAHDI examined the **declarations and reservations to treaties concluded outside the Council of Europe**.

10. With regard to five reservations entered by the United Arab Emirate on 6 October 2004 to the Convention on the Elimination of all Forms of Discrimination against Women, New York, 18 December 1979, the delegations of Austria, Finland, France, Germany, Greece, Netherlands, Poland, Sweden and the United Kingdom, as well as the representative of Canada, stated that these reservations were not consistent with the object and purpose of the Convention and that they would object to most of them.

11. The delegation of the Russian Federation stated that its country was considering a political statement with regard to these reservations.

12. The delegation of Portugal drew the attention of participants to the fact that most of these reservations were linked to Shariah and that Portugal always objected to such reservations. It added that the reservation regarding ICJ jurisdiction was doubtful and should be further examined.

13. The delegation of Norway stated that the reservation to Article 9 did not refer to Shariah and that it could be a simple misunderstanding of Article 9 by the United Arab Emirates. However, Norway would object to this reservation as it considered it to entail discrimination.

14. The Chair estimated that a majority of member States would object to most of the reservations, with the exception, however, of the reservation with regard to article 29.

15. With regard to the declaration made by Pakistan on 3 November 2004 to the International Covenant on Economic, Social and Cultural Rights, New York, 16 December 1966, several delegations expressed their concern, particularly with regard to the last sentence of the declaration which was quite unclear and therefore inconsistent with the object and purpose of the Covenant. In particular, the delegations of Austria, Denmark, Finland, France, Germany, Netherlands, Norway, Poland, Portugal, Sweden, United Kingdom and the representative from

Canada stated that they had already objected or expressed their intention to object to either the entire declaration or its last provision. The delegation of the Russian Federation stated that the Russian Federation was considering a negative reaction.

16. With regard to the reservation and the 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, New York, 25 May 2000, the delegations of Finland, Germany, Netherlands, Norway, Sweden, United Kingdom and the representative of Canada stated that their respective countries either objected or intended to object to the reservation and declaration in question as they give precedence to the Shariah over international law.

17. With regard to the declaration made by Mauritania on 17 November 2004 to the International Covenant on civil and political rights, New York, 16 December 1966, the delegations of Germany, Greece, Finland, France, Netherlands, Norway, Poland, Sweden and the United Kingdom stated that their respective countries objected or were considering objecting, as both parts of the declaration referred to the Shariah. The delegation of the Russian Federation stated that the Russian Federation was considering a negative reaction and the delegation of Portugal reminded CAHDI members that Portugal would object to the present reservation, as it did with all reservations referring to the Shariah.

18. With regard to the reservation made by Egypt on 1 March 2005 and the reservations and declarations made by the Syrian Arab Republic on 24 April 2005, to the International Convention for the Suppression of the Financing of Terrorism, New York, 9 December 1999, the delegations of the Russian Federation and Greece and the representative of the USA stated that the afore-mentioned declarations were similar to the declaration made by the Kingdom of Jordan in 2003, and that their respective countries would react in the same way as they had regarding the Jordanian declaration. The delegations of Austria, Belgium, Denmark, Finland, France, Germany, Poland, Portugal, Spain, Sweden and the United Kingdom as well as the representative of Canada stated that their authorities intended to object or had already done so regarding these reservations and declarations.

19. With regard to the declaration made by Belgium on 20 May 2005 to the International Convention for the Suppression of Terrorism Bombings, New York, 15 December 1997, the delegation of Belgium stated that there was a possibility to withdraw this declaration following the modification of national legislation on extradition. A new draft law was already finalised and, in principle, a similar Belgian declaration to several Conventions on terrorism would be withdrawn in the very near future.

20. With regard to the reservation made by Egypt on 9 August 2005 to the International Convention for the Suppression of Terrorism Bombings, New York, 15 December 1997, the delegation of the United Kingdom expressed some doubts concerning the reservation to Article 19 (2) and the possibility of extending the scope of the Convention by means of a reservation. Therefore, the British authorities were considering a possible reaction to it. The delegations of Germany and The Netherlands echoed similar concerns.

21. The delegation of Greece endorsed the views expressed by other delegations and noted that the reservation to Article 19 (2) implied a restriction to the scope of application of the Convention.

22. The delegation of France stated on the one hand that the reservation of Egypt to article 6 (5) was not problematic. On the other hand, the reservation to Article 19 (2) would amount to introducing a set of conditions for the application of the Convention.

23. The delegations from Finland and Norway stated that the reservation to Article 19 (2) could be objected to as it seemed to be a deviation from the Convention and go against its common understanding.

24. The delegation of Spain was concerned that this reservation would be inconsistent with the object and purpose of the treaty.

25. The delegations of Austria and Portugal suggested seeking clarifications from the Egyptian authorities.

26. The Chair concluded that the reservation to article 6 (5) was not considered problematic. However, a majority of States had not yet taken a decision on whether to object to reservation to Article 19 (2), although the general inclination was that it proposed a restricted interpretation of the Convention. Additional reflection would therefore be necessary and this reservation should be kept on the list of problematic reservations.

27. The CAHDI then turned its attention **to the declarations and reservations to Council of Europe treaties**.

28. With regard to the declaration made by Albania on 26 November 2004 to the European Convention on the Compensation of Victims of Violent Crimes (ETS No. 116), 24 November 1983, it was stated that the declaration was acceptable even if it seemed to extend the scope of the Convention.

29. With regard to the declaration made by Turkey on 13 December 2004 to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141), 8 November 1990, the delegation of the Russian Federation stated that the reference to national legislation made the declaration unclear and that Turkey should provide a clarification on this point.

30. The delegation of the Netherlands agreed with the opinion of the delegation of the Russian Federation and expressed some doubts regarding the correct implementation of the Convention due to the general references to Turkish law.

31. The delegation of Turkey stated that the Ministry of Justice had already been requested to clarify the categories of offences referred to and expressed its hope to be able to explain them at the next meeting of the CAHDI.

32. With regard to the declaration made by Latvia on 6 June 2005 to the Framework Convention for the Protection of National Minorities (ETS No. 157), 1 February 1995, the delegation of the Russian Federation stated that it had already reacted politically to the afore-mentioned declaration and an exchange of views had taken place in the Committee of Ministers. Consideration was still being given to whether or not a formal objection should be made.

33. The delegation of Latvia confirmed that the declaration did not exclude or modify the provisions of the Convention which Latvia was proud to ratify. This declaration only aimed to

stress the national legislation and Latvian accomplishment with regard to protection of minority rights.

34. The Chair stated that, given the deadline for objection, the declaration remained on the list of outstanding reservations and declarations for further input.

35. Concerning the declaration made by Poland on 10 November 2004 to the Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the Control System of the Convention (CETS No. 194), 13 May 2004, the delegation of the United Kingdom stated that the subject of the declaration fell indeed under the control of the European Court of Human Rights and requested an explanation and clarification from the delegation of Poland.

36. The delegation of Poland said that it would make comments at the next meeting of the CAHDI and the Chair requested it to send the explanation in written form to the Secretariat.

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

37. The Chair recalled the historic development of this activity and presented document CAHDI (2004) 22 rev. She further stated that to her knowledge only the Russian Federation, in keeping with the Secretary General's request and the Committee of Ministers decision, had requested Jordan to review its position regarding its problematic declaration to the International Convention for the Suppression of Financing of Terrorism. She then opened the floor for other information.

38. The delegation of the Russian Federation expressed the wish to include this information in document CAHDI (2004) 22 rev. It further requested that the document be revised so as to include the reservations and declarations made by Egypt and the Syrian Arab Republic to the 1999 International Convention for the Suppression of the Financing of Terrorism and the Egyptian reservation to the 1997 International Convention for the Suppression of Terrorist Bombings (examined earlier under item 5.a).

39. The representatives of Japan and the USA informed the CAHDI that their Governments had sent formal objections to the Jordanian authorities on this matter.

40. The delegation of the United Kingdom noted that addressing other States for this purpose was a very serious exercise and that its authorities had refrained from any action up to then in the light of recent developments in connection with the negotiations for a comprehensive Convention against international terrorism. It further put forward the suggestion to keep the document updated, to continue to examine it and review it.

41. The representative of Canada noted that there were various ways of using this list such as, for example, providing it for bilateral meetings of Ministers.

42. The Chair recalled that in order to insert new reservations in the list of problematic ones, the usual process for endorsing them had to be used and that the follow up had to be done not only by the Secretary General of the Council of Europe, but also on an individual State basis. She further presented document CAHDI (2005) 13, containing the reply of the Malaysian authorities to the CADHI concerning the Malaysian declarations to the 1973 Convention on the

Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents and to the 1997 International Convention for the Suppression of Terrorism.

43. The Chair observed that certain explanations provided by Malaysia had some convincing value. However, she drew attention to paragraph 4 where the Malaysian authorities affirmed that their declarations to the said Conventions would remain. She concluded that at the present stage the CAHDI could only take note of this clarification, which later could be used as a platform in possible approaches undertaken by States with the Malaysian authorities.

6. Pilot project of the Council of Europe on State practice regarding State immunities – Presentation of the analytical report by Professor Hafner

44. The Chair welcomed Professor Hafner and asked him to outline the main points of the analytical report of the Pilot Project of the Council of Europe on State practice regarding State immunities (document (2005)5, "Report" and "Project" further in the text).

45. Professor Hafner presented the final version of the Report, which did not contain major changes compared to the previous version, except for additional material supplied in the meantime and comments made with regard to the former version. For instance, the chapter on the question of immunity in the case of torts was changed according to comments in order to reproduce accurately the practice of member States of the Council of Europe. He further added that the report was also modified to reflect the statement made by the Chair of the Ad Hoc Committee delivered at the presentation of the UN Convention on jurisdictional immunities of States and their property in the Sixth Committee of the General Assembly of the UN.

46. Professor Hafner outlined the structure of the report, which was divided into 10 chapters, the first dealing with the State entities that enjoy immunity, the second with the difficult matter of the distinction between *acta jure gestionis* and *acta iure imperii*, the third with the distinction between State immunity and diplomatic immunity, the fourth with the waiver of immunity, the fifth with employment contracts, the sixth with the issue of immunity in case of torts, the seventh with intangible property, the eighth with the matter of ships, the ninth with immunity and arbitration, and finally, the tenth with immunity in enforcement matters. These chapters are supplemented by a presentation of the cases presented by the States in the order of the various issues. This arrangement follows the main items addressed in the two existing international conventions, the European and the UN Convention, and has been adjusted to the practice of the States.

47. Professor Hafner further pointed out that the tendency towards a restricted grant of State immunity was clearly established with regard to the definition of the State and the definition of *acta jure gestionis*. He further noted that the distinction between diplomatic and State immunity was not always respected and that diplomatic missions were sometimes even considered as enjoying separate legal personality. While the issues of: waiver of immunity, arbitration, and intellectual property did not raise particular difficulties to national courts, the issue of employment contracts of diplomatic staff posed certain problems what mirrors the difficulties in the genesis of the relevant article of the UN Convention. It seemed nevertheless that this provision coincided to a large extent with State practice.

48. Finally, regarding immunity in case of torts, Professor Hafner indicated that this was an issue which had recently emerged and that the provisions of the UN Convention reflect the practice of the majority of States. This was also the case as far as immunity for enforcement

measures was concerned. In this area the UN Convention reflected State practice to a greater extent than the European Convention on State Immunity.

49. On behalf of the CAHDI, the Chair thanked Professor Hafner for his presentation, asked him to transmit her thanks to his collaborators and opened the floor for discussion.

50. The representative of Japan considered the project very useful and welcomed this initiative. He expressed his wish that the project would be published in an accurate form.

51. The delegation of Portugal welcomed the auspicious coincidence of the finalisation of the UN Convention on Jurisdictional Immunities and the pilot project. It added that a dissemination of the project in Portugal was in preparation and asked how it would be communicated to member States.

52. The delegation of the United Kingdom expressed its gratitude to the authors of the report, which would help determine the rules of customary law existing in this field. It underlined the necessity to introduce a disclaimer clause stating that the views expressed in this report were those of its authors and did not reflect the views of the Council of Europe or its member States.

53. The delegation of Germany stressed the need to find a way to update the study on a constant basis and to create an observatory mechanism in order to identify and discuss new developments in this field.

54. The Secretariat of the CAHDI drew the attention of delegations to paragraph 170 of the last meeting report CAHDI (2005) 8, where it was stated that a disclaimer clause would be inserted as in previous publications sponsored by the CAHDI and that the report would be published by the end of 2005. As for the German request, the Secretariat suggested to use the CAHDI web-site and to establish direct links to States' replies, which would be updated when necessary.

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

55. The Chair recalled 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 (OLA further in the text). The contributions submitted by States appear in document CAHDI (2005) 3 rev.

56. The delegation of the United Kingdom urged those who had not replied to the questionnaire to do so at their earliest convenience. It proposed publishing the compilation of replies once completed on the web-site of CAHDI and to update it on a regular basis. It further proposed to accompany the database by an introduction that would emphasise the importance of the issue and the main differences between the different Offices. It volunteered to produce an extensive draft introduction that would be circulated among delegations in time for it to be discussed at the next meeting of the CAHDI.

57. The representative of the USA made some general comments on US OLA and assured the CAHDI of the support and the commitment of USA to international law, its promotion and implementation. It recalled that Ms Condoleezza Rice, Secretary of State, was committed to international law issues as she is a professor of international relations and that she is very

supportive of the work of OLA. She had taken significant and important steps in this field, such as for example, complying with the ICJ ruling in the *Avena and other Mexican Nationals case (Mexico v. USA*)[1], despite the internal difficulties to do so after the case went to the US Supreme Court. She also tried to address various humanitarian issues, such as the Darfur crisis. This autumn, the American Senate will act in order to ratify a certain number of treaties, especially the Council of Europe Convention on Cybercrime, as treaty ratification process had been delayed for too long and the Secretary of State is very supportive of this point.

58. The delegation of the Netherlands asked whether it was possible to consult the text of the decree made by the US President concerning compliance with and implementation of the ruling of the ICJ.

59. The representative of the USA would provide the CAHDI with the link to the web-site where the relevant brief before the Supreme Court and the briefs before the federal courts could be found.

60. The Chair thanked the representative of the USA for his presentation and welcomed the initiative of the delegation of United Kingdom. She stated that the introduction would be put on the web-site with new versions of replies to the questionnaire.

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

61. The Chair presented the compilation of contributions made by member States (document CAHDI (2005) 4 rev) and other relevant documents on this matter (documents CAHDI (2005)7, 9 &13). She outlined two categories of replies, those from European Union member States and those from other member States of the Council of Europe or observers.

62. She noted that very few cases of clash between UN sanctions and respect for Human Rights had been reported in these contributions. However, the replies of Sweden and the United Kingdom indicated that some problems may exist, as was shown in the case-law of national courts. (British case *Quin app Helal Abdul v. Secretary of Defence* and the *Bosphorus v. Ireland* case[2] in front of the European Court of Human Rights (ECHR further in the text).

63. She further raised the question of the listing and "de-listing" procedures with regard to persons targeted by UN sanctions and other various guidelines, referring in particular to the Security Council Committee established pursuant to Resolution 1572 (2004) concerning the Côte d'Ivoire.

64. The delegation of Ireland presented to the CAHDI the facts of *Bosphorus Airways v. Ireland* case and welcomed the unanimous decision of the Grand Chamber of the ECHR that there had been no violation of Article 1 of Protocol N°1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Convention further in the text).

65. It particularly underlined the fact that the Court had found that the protection of fundamental rights by EC law could have been considered to be, and to have been at the relevant time, "equivalent" to the protection granted by the Convention system. Consequently, a presumption arose that Ireland did not depart from the requirements of the Convention when it

1 http://www.icj-cij.org/icjwww/icjhome.htm
2 Bosphorus Airways v. Ireland (30 June 2005), www.echr.coe.int

implemented its legal obligation flowing from its membership of the EC. Such presumption could be rebutted if, in a particular case, it was considered that the protection of the rights guaranteed by the Convention was manifestly deficient. In such cases, the interest of international co-operation would be outweighed by the Convention's role as a constitutional instrument of European public order in the field of human rights.

66. The delegation of Italy stated that it was necessary to clarify a point in the *Bosphorus* case, i.e. whether the ECHR was judging *in concreto* on this case after it went through the ECJ or *in abstracto*, as the Luxembourg Court had already deemed that the State behaviour complied with its obligations under EC law.

67. The Chair stated - and the delegation of Ireland confirmed - that it seemed from the ECHR ruling that the *in concreto* judgement was the accurate proposition.

68. The delegation of Cyprus referred to the *Bosphorus* case and asked whether the ECHR had verified whether or not Ireland had exercised its capacity of discretion properly with regard to human rights principles when it had implemented EC regulation in Irish law.

69. The delegation of Ireland recalled that the ECHR held that the EC regulation was binding on Ireland in its entirety and directly applicable in Irish law under article 8 of the EC regulation; the alleged violation did not therefore involve an exercise of discretion by the Irish authorities.

The representative of the European Commission welcomed the *Bosphorus* judgement and its conclusion on the protective nature of EC law. With regard to the Italian question, it stated that the ruling had been made *in concreto* and that the result could be different in another case. The European Commission stated that it was confident that no main problem would appear in the future on the compatibility of two systems.

70. The delegation of Sweden agreed about the importance of the *Bosphorus* case which stipulates and clarifies the relationship between EC law and ECHR law and shared the analysis made by Ireland. With regard to the implementation of the UN sanctions regime in general, it recalled that at the beginning of the examination of the UN Sanctions, some member States expressed their concern that certain problems could appear with regard to the respect for the human rights of the individuals targeted by those sanctions. Later, the CAHDI study focused on the issue of implementation in the national legal systems and the legal problems which could arise. Finally, it pointed out the importance of producing a document compiling the States' replies to the question concerning the way they are dealing with their obligations. Sweden offered to draw up the introduction to this document.

71. The representative of Canada stated that, under Canadian law, the national measures implementing international law obligations and UN sanctions may be subject to judicial review. Canada was in the process of improving the domestic implementation of UN sanctions, especially regarding procedure of listing and de-listing, and it would provide CAHDI with information on the result once the process was fully completed.

72. The delegation of Portugal welcomed the large amount of replies by member States and joined with the Swedish position regarding their publication. It asked whether it would be useful to re-shape the answers before distributing, in order to focus more on the system of implementation where in a general manner the member States had poor solutions.

73. The delegation of France explained that the reason for the delay in submitting its reply was that some questions were very important and sensitive and required time for them to be answered. It would submit the French reply shortly. However, it pointed out that, given the fact that States were answering in the most complete manner, some information should remain confidential. It expressed the wish that the question of publication and possible selection of information for publication be postponed to the next meeting.

74. The representative of Interpol said that the Security Council Resolution 1617 (2005) on threats to international peace and security caused by terrorists acts required more intensive co-operation on the part of Interpol, especially with regard to the distribution to all police agents of the list of persons targeted by UN sanctions. In this case it is an international implementation of international measures which is at stake.

75. The Chair summed up the discussion by stating that the issue should be postponed until the next meeting as delegations would send new contributions or update their previous ones. The decision on publication and distribution of the document would be taken in the light of new replies and after further reflection on the matter.

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

9. Exchange of views with Mr Rosas, President of Chamber, member of the Court of Justice of the European Communities (ECJ)

76. The Chair welcomed Mr Allan Rosas, Judge at the Court of Justice of the European Communities (ECJ further in the text).

77. Mr Rosas thanked the CAHDI for inviting him to its meeting and referred to the document distributed under the reference CAHDI (2005) 15 “European Court of Justice: “Sources of law and methods of interpretation, with special emphasis on questions of relevance for public international law”.

78. He began by mentioning the different types of cases and internal legal matters of the European Union dealt with by the ECJ (e.g.: taxation, labour law, etc.) and the fact that 1000 cases are completed every year. He also referred to the creation of a new Court within the European Union judicial system, the EU Civil Service Tribunal, established in virtue of the Treaty of Nice provisions on the possibility to set up specialised courts.

79. Mr Rosas recalled the approach of the ECJ regarding public international law, which is monist rather than dualist. Thus, the ECJ recognises direct applicability to all international treaties and a direct effect to some of them, depending on the fact that they are not providing for several alternatives of implementation, as was the case with Agreements with the WTO and the Animal Welfare Conventions of the Council of Europe. He further stated that the ECJ recognises the binding force of customary international law but is rather cautious in its implementation through its case law. The methods of interpretation of the ECJ demonstrated reliance on other courts’ case law and in particular the ECHR, the ICJ and even the WTO appellate body.

80. The delegation of Cyprus asked Mr Rosas for more details about the newly established Court and especially about its relationship with the ECJ.

81. Mr Rosas explained that the EU Civil Service Tribunal had been created to cope with the overloading of the Court of first instance. This Tribunal would be composed of 7 elected judges and all personnel matters within the European institutions would go through this body with a right to appeal of its decisions.

82. The delegation of Ireland stated that both the Treaty of Nice and the European judicial system reforms were inspired by the present difficulties. It asked if this could be a source of encouragement or inspiration to the ECHR.

83. Mr Rosas replied that the reform output was slow because there was still a large number of cases pending before the ECJ, but that for the first time in 2004 the Court had completed more cases than there had been new cases brought.

84. The delegation of the United Kingdom asked about the degree of expertise in public international law of the Court and its judges, about the type of relations with other international Courts and whether or not the personal contacts were important in this regard. Finally it asked about the extent of lessons that could be learnt from this interaction, especially regarding the process of nomination of judges from a procedural point of view.

85. Mr Rosas replied that the level of expertise in public international law might be deemed sufficient: the backgrounds of judges are varied and some of them come from the ECHR. Nonetheless, he recalled that the main task of the ECJ was to apply and respect EC law and international law, but not to ensure their development. As for relations with other international Courts, such relations are generally more linked with awareness than personal contacts and it is greatly facilitated by modern technologies. In this light, he quoted a pending case concerning the EC and Chile in front of one of the Chamber of the Law of the Sea Tribunal. As for nomination of judges, a new procedure had been adopted last year after examination of the proceedings of other international Courts. There was an open procedure and an expert committee had been set up where experts were short-listed and could be called to the ECJ or other Courts.

86. The delegation of the Netherlands asked if conflicts between EC law and public international law might occur and, in which case, how the ECJ would deal with it.

87. Mr Rosas said that in some recent case law, it had been stated that international agreements prevailed over EC regulations or directives and if, indeed, there were such a conflict, the Court would have to try to make a harmonious interpretation.

88. The delegation of Italy referred to Article 35 of the EU treaty dealing with its new competences and the third pillar and noted a possible tendency of the Court to try to adapt the first pillar to the third one.

89. Mr Rosas replied that there was no case-law matching this conclusion and he referred to the ECJ case law.

90. The delegation of Greece asked if it was accurate to speak of a trend towards specialisation within the EC judicial system.

91. Mr Rosas said that the creation of specialised tribunals is permitted by the Treaty of Nice, but such creation would occur in the next 10 years after the question had been carefully examined on how such specialised tribunals could help the Court of first instance.

92. The delegation of Germany asked about the opinion of ECJ judges on possible introduction of individual requests on violation of fundamental rights.

93. Mr Rosas stated that such an issue was political rather than judicial, and it had to be decided as such by member States. On the judges' side, up to 1996 this issue was clear, as EC law does not provide for this type of request. Since then, some judges, including the ECJ former President Mr Rodriguez-Iglesias, have stated that such development would be welcomed.

94. The Chair closed the discussion on this point and thanked Mr Rosas for his contribution.

10. The work of the Sixth Committee of the General Assembly of the United Nations and 57th session of the International Law Commission (ILC): Exchange of view with Professor Koskenniemi, member of the ILC

95. The Chair welcomed Mr Koskenniemi and drew attention to the report of the ILC on the work of its 57th session (document CAHDI (2005) Inf. 8).

96. Mr Koskenniemi gave an overview of the work of the International Law Commission in 2005 on eight different issues and the draft articles on those matters: shared natural resources, effect of armed conflicts on treaties, responsibility of international organisations, diplomatic protection, expulsion of aliens, unilateral acts of States, reservations to treaties, fragmentation of international law, i.e., difficulties arising from the diversification and expansion of international law.

97. The representative of Mexico pinpointed some topics which might be relevant for CAHDI. He referred to the question of shared national resources and the nature of the rights on them and underlined that the emphasis which has been put on permanent sovereignty might prevent trans-frontier co-operation with regard to trans-boundary resources. In this respect, some notions imported from the Law of the Sea Convention could be helpful and topics such as oil and gas, linked to shared natural resources, were even more sensitive issues.

98. He further referred to the effect of armed conflict on treaties and stressed the importance of a global report by the Special Rapporteur as part of the law of treaties and not part of the law related to the use of force. As for the question of responsibility of international organisations, the pattern is the same as that of the responsibility of States for wrongful acts, even if it has some particularities. Diplomatic protection, on the other hand, is a subject that the ILC would be able to complete next year.

99. On the expulsion of aliens, he stated that the work was just beginning and there were two conflicting issues: the absolute right of each State to expel aliens is confronted with human rights minimum standards which have to be respected. Thus, the right of States is limited, but such limits are not sufficiently specified.

100. Regarding reservations to treaties, he noted some novelties in the language used, like the notions of invalidity and validity of reservation, which differ from the notion of admissibility and inadmissibility, permissibility and impermissibility. He finally referred to the fragmentation issue, which may be seen as a confrontation between universalism and regionalism, but it is just a specific topic in the wider panorama of fragmentation of international law.

101. The representative of Canada drew the attention of the CAHDI to the issues of diplomatic protection and predominant nationality and noted that the draft articles appear to be based on the assumption of diplomatic protection and not of consular protection where most problems emerge. Therefore, some clarification on the primary obligation provided in the Vienna Convention on consular relations was necessary.

102. The delegation of the United Kingdom raised the issue relating to fragmentation of international law and said that ILC should carefully think about the names it was going to give to its conclusions: guidelines, principles or statements. It then asked whether there would be an opportunity for States to make comments on those conclusions before the finalisation of the report. As for Article 103 of the UN Charter, it emphasised its importance for the collective security system and the fact that it would come up more often in practice. This occurred in August 2005, when British courts had to consider whether the authorisation given to armed forces in Iraq by the Security Council to detain and to intern people on grounds of public security overrode UK obligations under Article 5 of the European Convention of Human Rights. The courts considered Article 103 in the international legal order and said that it did override these obligations.

103. The delegation of Italy drew the attention of ILC members to the outcome of the conclusion of the study group on fragmentation that could serve as guidelines for States when they are drafting international treaties.

104. The delegation of Poland said that it supported ILC work on the obligation to extradite or prosecute persons in the light of human rights standards, taking into account the fight against terrorism and various forms of organised crime.

105. The delegation of Norway mentioned that it was looking forward to further work of the ILC. It disagreed with the Canadian observation on a possible problem with consular protection, as the draft articles were quite clear on this topic. It joined with the UK statement on the importance of Article 103 and added the importance of Article 311 of the Law of Sea Convention.

106. The Chair expressed her interest in the fragmentation issue and the way it had been handled by the ILC. She was in agreement with the decision to depart from the question of proliferation of institutions and decisions of tribunals, which she did not see as a matter of real concern.

107. As for the Canadian comment on possible confusion between diplomatic protection in the context of claims and consular protection, Mr Koskenniemi stated that it had been a concern for the ILC as well, and that he was ready to take information and remarks about it into account for the re-drafting of some articles. Regarding the UK comments, the name “conclusions” of the report was discussed within the ILC and no decision had yet been taken. He then recalled that the Study Group worked for the ILC and it was thus up to the ILC to decide whether States would be able to make comments and, if so, to which extent. Concerning Article 103, the Study Group was aware of the situation in Iraq and its possible influence on this particular topic, and it had therefore tried to work in the most technical way in order to keep away from political divergences on how to deal with Article 103 when it is used to extend the powers of an occupying State, a point that could be found objectionable by a large number of States. Finally, Mr Koskenniemi replied to the Italian comment by stating that the Study Group debated the disconnection clause and in this regard the report might influence the treaty drafters’ work.

11. Peaceful settlement of disputes

108. The Chair referred to documents CAHDI (2005) 18, submitted by the delegation of United Kingdom and CAHDI (2005) 17, submitted by the delegation of Portugal.

a. Compulsory jurisdiction of the International Court of Justice (ICJ) (Article 36(2))

109. The delegation of the United Kingdom presented its document on Article 36(2) of the Statute of the ICJ which provides for the acceptance of the compulsory jurisdiction of the ICJ. It recalled that the §144 of the outcome document of the Summit of Heads of States and Governments in New York (September 2005) called upon States to consider acceptance of the ICJ. An overview of the optional clause showed that 23 States members of the Council of Europe had accepted the jurisdiction, and that 3 out of 6 observers had done so. It encouraged States to accept the jurisdiction of ICJ under Article 36(2).

110. The delegation of Portugal stated that it had signed the optional clause in 1955. As, however, this was very open, as shown in the case raised against Portugal and other NATO member States, it had changed its acceptance of the optional clause in February 2005 by adding some new reservations.

b. Jurisdiction of the ICJ under other agreements, including the European Convention on the Peaceful Settlement of Disputes

111. The delegation of the United Kingdom stated that acceptance of the jurisdiction of the ICJ under other agreements, which contain a dispute settlement clause, was also to be encouraged, as shown by the examination of selected treaties in document CAHDI (2008) 18. The examination of some other treaties might also be useful. As for the United Kingdom, it had accepted all clauses providing for the jurisdiction of the ICJ.

112. The Chair proposed to add the UN Convention on the Law of the Sea to this possible list.

113. The delegation of Romania declared that Romania was not a party to any of the treaties cited in the afore-mentioned document. Indeed, in the past Romania was reluctant to accept ICJ compulsory jurisdiction. However, now Romania had accepted it in various multilateral treaties, which contain provisions on mechanisms of peaceful settlement of disputes including the ICJ. It further stated that on 16 September 2004, Romania introduced a case in front of the ICJ against Ukraine on the delimitation of the continental shelf and the exclusive economical zone of the two countries in the Black Sea. The basis for this application was a bilateral treaty concluded in 1997 which regulated, among other issues, the possibility for either of the two countries to seize the ICJ, subject to certain conditions which had been fulfilled last year. As the proceedings before the ICJ were going on, Romania was contemplating withdrawing its reservation made in the past about ICJ jurisdiction.

114. The delegations of Norway and Denmark thanked the delegation of the United Kingdom and asked for the review of the document in order to have a more precise number of States which have accepted ICJ jurisdiction.

115. The delegation of Germany welcomed the discussion on the compulsory jurisdiction of the ICJ, which Germany had not yet accepted under the optional clause of Article 36(2). It recalled that Germany was a Party to all conventions listed in the British document and that it

had accepted the jurisdiction of the ICJ under other treaties that might be multilateral or bilateral. At present, Germany was proceeding to the re-examination of the acceptance of the optional clause, bearing in mind the discussions held in the CAHDI and COJUR meetings.

116. The delegation of Portugal stated that Portugal was not party to any of the Conventions listed, but it had accepted the optional clause and that there were discussions on the possibility to sign some of these Conventions. It added that there was an ongoing examination of the Vienna Convention on the Law of Treaties, especially of Article 67 thereof which provides for ICJ jurisdiction under certain conditions.

117. The delegation of Poland expressed its gratitude to the United Kingdom for its proposition to work on the ICJ jurisdiction, declared that the Polish Parliament had accepted the compulsory jurisdiction of the ICJ under Article 36(2) and that Poland withdrew in 1998 all reservations on provisions about the compulsory settlement of disputes contained in various treaties.

118. The delegation of Austria suggested to the Secretariat of the CAHDI to elaborate further on the British document by providing a complete list of States having accepted Article 36(2) and being party to other Conventions.

119. The delegation of the United Kingdom proposed confining the list to the treaties of codification of international law that derived from the work of the International Law Commission, the main Human Rights Treaties and Terrorism Conventions, which contain clauses of dispute settlement.

120. It was agreed that Secretariat would prepare this document for the next meeting of the CAHDI.

c. Overlapping jurisdiction of international tribunals

121. The delegation of Portugal referred to the document it had submitted (see para. 109) and proposed to pursue consideration of this issue using *inter alia* this document as a basis. The Committee agreed with this proposal and the Chair concluded that this item would be kept on the agenda of the CAHDI.

12. UN Convention on Jurisdictional Immunities and European Convention on State Immunities

122. The Chair asked delegations to declare whether their authorities intended to adhere to the UN Convention on Jurisdictional Immunities (UN Convention) and present their opinion on the relationship between this UN Convention and the European Convention on State immunities.

123. The delegation of the Czech Republic and the representative of Mexico declared that their respective authorities were preparing for the signature of the UN Convention.

124. The delegation of Norway stated that the legal system established by the UN Convention left the decisions to the Courts and provided legal certainty and applicability. It said that Norway had already signed it and expected to ratify it as soon as possible. Norway's interpretation of the declaration made by the Chair of the *Ad Hoc* Committee, was that the UN Convention is not applicable either to military activities or to special immunity regimes (*rationae personae*).

125. The delegation of Germany welcomed the adoption of the UN Convention and considered the possibility to make a reservation on its non-retroactivity effect. It joined the Norwegian position.

126. The delegations from Romania and Iceland announced that their authorities had already signed the UN Convention and would ratify it as soon as possible.

127. The delegation of France expressed its hope that France would sign the UN Convention in the near future, after the inter-departmental process had been completed. It expressed its concern about the fact that certain military activities might be excluded from the scope of this Convention and this issue should therefore be approached with particular attention.

128. The delegation of Sweden stated that Sweden had already signed the UN Convention. It intended to ratify it in the near future, after it had made certain amendments to national law. It was possible that a new law on State immunity would be established.

129. The delegation of Austria said that Austria had already signed the UN Convention, which would be submitted to Parliament for ratification in the near future, probably at the beginning of 2006.

130. The delegation of Finland declared that Finland had signed the UN Convention during the previous week in New York and hoped to ratify it by the spring of 2006. It joined Norway in the interpretation of the declaration of the Chair of the Ad Hoc Committee.

131. The representative of Japan welcomed the adoption of the UN Convention and announced that Japan was taking steps towards possible signature. It expressed concern on the issue of foreign armed forces in another country and expressed its concern about cases where their immunity could be larger than for other intergovernmental agencies.

132. The representative of the USA said that his authorities were looking closely at a possible signature of the afore-mentioned Convention and were analysing their internal legislation. It welcomed signature by other States and the exchange of names of experts between agencies.

133. The delegation of the United Kingdom declared that the United Kingdom was close to taking a decision on the signature of the UN Convention and was looking at points raised by Norway before considering ratification. As for the European Convention, this issue was not urgent and its few States Parties could meet and decide what should be done in this regard.

134. The delegation of the Russian Federation announced that the internal procedure for signature of the UN Convention was under way. The possibility of some declarations or reservations had not been considered at this stage of the process, but might be considered later. Moreover, Russian legal departments already referred to provisions of the convention in their day-to-day practice. Regarding the immunity of armed forces, it suggested that CAHDI examine this very actual issue.

135. The delegation of Belgium stated that Belgium had signed the Convention on April 2005 and was examining the question of its compatibility with the European Convention. In this respect, it joined with the suggestion of the United Kingdom delegation on this point. Finally, it added that some future declarations and reservations were under consideration.

136. The delegation of Portugal announced that Portugal signed the UN Convention on 25 February 2005, that the process of ratification was under way and was expected to be completed by the end of the year 2005. However, Portugal did not intend to exit the European Convention. It would share its study on the UN Convention and European Convention relationship (document CAHDI (2005) 16) with other members of CAHDI. This text would also be distributed to other Portuguese speaking countries.

137. The representative of Canada welcomed the UN Convention, which had to be analysed for its consistence with Canadian legislation, namely the State Immunity Law.

138. The representative of Israel informed the CAHDI about the finalisation of a national draft State Immunity Law. Israel would consider the work of the ILC and the draft CAHDI Pilot Project, which was more or less in line with the Convention. It would join the Convention when the legislation process was completed.

139. The delegation of Switzerland declared that the Swiss procedure to sign the UN Convention was underway. Switzerland had to examine its consequences on tort claims. As a party of the European Convention, Switzerland supported the suggestion of United Kingdom regarding the organisation of the meeting.

140. The Chair proposed keeping the item on the agenda. The State Parties to the European Convention on State Immunities agreed to organise their meeting during the next session of the CAHDI.

13. Consideration of current issues of international humanitarian law

a. Presentation of the International Committee of the Red Cross study on customary international humanitarian law by Mr Henckaerts

141. The Chair welcomed Mr Henckaerts from the International Committee of the Red Cross (ICRC), who presented the key characteristics of ICRC study on customary international law (CIL).

142. Firstly, Mr Henckaerts recalled the origins of this study, which is divided into two parts, one on rules and the other on practice and which has resulted from a widespread consultation of various experts. He then stated that the examination of the formation, the practice and the opinio juris were the basis of the methodology used. Therefore the study contains numerous chapters divided between main topics: principle of distinction, specifically protected persons and objects, specific methods of warfare, weapons, treatment of civilians and persons *hors de combat*, and implementation. He also referred to three issues that still required clarification: the definition of civilians in non-internationalised armed conflict, direct participation in hostilities and qualification in case of doubt. He concluded that it appeared from this study that there was a widespread acceptance of basic rules and principles, a normative framework for non-internationalised armed conflicts further detailed in CIL and a common standard applicable in all armed conflicts.

143. The delegation of Norway stated that the study had already been well received in Norway, as it is a high quality source of information for States.

144. The delegation of the United Kingdom underlined the value of the study and the significance of the work carried out. However, it asked to which extend the rules reflect CIL

since the rules cannot be exact and comprehensive in areas where States' practice is unclear and the crystallisation process is going on. In the study, they are limited to those presented as such by the authors but, in fact, to know why a country is acting in a specific manner is a complex issue. As for the United Kingdom, even if some treaties are not applicable, the authorities might respect their rules. For example, the United Kingdom may well apply the rules of Additional Protocol 1 when involved in conflict even though, as a matter of treaty law, Additional Protocol 1 is not applicable. Thus, there is no *opinio juris* in this case. However, this logic is somehow misunderstood in the study which leads to wrong conclusions regarding the existence of *opinio juris* within State practice. The same applies to the presentation of the degree to which the action of non-state actors is relied upon as relevant practice, e.g. resolutions of UN bodies, guidelines, statements by ICRC, etc.

145. The delegation of France stated that the first value of the study was to offer a complete view of international humanitarian law and the question that arose was the impact that the study would have. Indeed, like the United Kingdom, France had doubts about certain conclusions and did not recognise itself in some of the practices described. Therefore, France could not be legally confronted with the study results even if the study stated that it contained rules of CIL. With regard to methodology, it thanked the intellectual fairness of the authors who recalled that *opinio juris* was a very difficult question and that it could only be found in practice. Practice must be clear and sufficient, but this is not always the case in this study where the examination of practice is limited in place or in time, as for example is the case of practice in connection with grave damage to the environment. It further pointed out the close relationship established between treaty law and customary law, which sometimes led to an assimilation that was contestable. Finally, it addressed the way the study deals with the issue of persistent objector where the doubt remains on the possibility to admit such a persistent objector in the context of international humanitarian law.

146. The representative of Mexico thanked the ICRC for its study and stressed its usefulness in Mexico where written law is a more traditional source of law than customary law. A presentation of the study to the Mexican armed forces could be considered useful in order to show the scope and richness of the international humanitarian law that goes beyond conventional values.

147. The delegation of Germany said it had carefully examined the ICRC study and stressed the importance of State practice in identifying norms of the CIL. It recalled that if the Geneva Conventions are largely accepted, this is not the case with regard to the additional Protocols of 1977. Thus, CIL could fill the gap in the non-internationalised armed conflicts and the ICRC study could be helpful in this area.

148. The delegation of Finland stated that some rules in the study were contestable, which was quite natural given its dimension. "Awareness raising" was one of its practical aims and a short summary in Finish would be prepared. It also strengthened the ICRC and it may have an impact on further efforts to settle some minimum human rights standards.

149. The representative of the USA considered the study as a valuable reference, but he echoed concerns about its methodology and some conclusions. In fact, some governments which have chosen not to be bound by conventional rules would find it hard to become bound by way of customary law. It questioned the actual existence of the *opinio juris* of States engaged in a particular practice, a point that has not always been convincing in the study.

150. The delegation of Switzerland emphasised the merit of the study with regard to the transparency of the sources of international law and the methodology used. It disagreed with the American representative on this point and, in particular, in the analysis of *opinio juris*. It recalled that the main question concerned non-compliance with a rule of CIL, whether it had to be regarded as a violation of the rule or denial of its existence. Thus, the discussion on CIL should be continued.

151. Mr Henckaerts gave details of an example of attacks against journalists, which are specifically mentioned in Protocol I but not in Protocol II, even if most violations in this issue occurred within non-internationalised armed conflicts. Therefore, State practice has reacted to it and State armed forces have been required to respect journalists. He also referred to a similar concern on missing persons. As for the continuation of the discussion on CIL, he noted that the issue of the update and debate on this study is being analysed, especially regarding the possible inclusion of State comments.

152. The Chair thanked Mr Henckaerts for his presentation and proposed to continue the discussion on the issue.

b. 2nd Protocol to the Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict

153. The Chair recalled that the 2nd Protocol to the Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict (Protocol further in the text) had entered into force in March 2005 and that there would be a meeting of its 30 States parties in October 2005.

154. The representative of the ICRC stated that this meeting was organised by UNESCO and aims to elect the members of the Committee for the strengthened protection of cultural property. Moreover, the Protocol and its Committee are also important for the development of preventive, co-operation and restoration measures between States on this matter.

155. The delegation of the United Kingdom recalled that it was at the origin of the discussion of this item in the CAHDI because, so far, there were rather few States members of the Council of Europe, which are party to the Protocol. The United Kingdom was in the process of ratifying it and encouraged other States to adhere to this instrument. It also proposed to be an observer at the UNESCO October meeting.

156. The representative of Japan stated that Japan would ratify in the very near future both Protocols on protection of cultural property and the 1954 Hague Convention.

157. The delegation of Portugal declared that Portugal would proceed with accession to the Protocol following some modifications in its national legislation.

158. The delegation of Poland said that Poland was about to start the process of ratification of the Protocol.

159. The delegation of Germany stated that it had no substantial difficulties regarding the provisions of the Protocol, but the federal structure of the State made the process of ratification very long since the matter had to be discussed by Landers.

160. The representative of Canada said that a bill was going through Parliament in order to adhere to the Protocol by the end of year. It contains provisions which are criminalising such

attacks on cultural property, and provides for the return of property taken from occupied territories.

161. The delegation of the Czech Republic declared that the discussion on ratification was going on, and that no need for supplementary legislation had been identified.

162. The delegation of Finland stated that Finland had ratified the Protocol in 2004 and that it had been implemented by way of an inter-ministerial working party which focused on three areas: dissemination and awareness raising, training of the armed forces, international cooperation and technical aid.

163. The delegation of Norway said that Norway had started the process of ratification.

164. The delegation of Switzerland stated that the Protocol had entered into force for its country on 8 October 2004. It further proceeded with the presentation of three items of international humanitarian law. As for the Swiss mandate given by the UN General Assembly subsequent to the ICJ opinion on the Israeli wall, a report on possible improvements to the implementation of the fourth 1949 Geneva Convention had been completed and distributed among UN member States. Switzerland also started an exchange of views with ICRC in order to identify rules dealing with private military companies and their activities, especially those relating to human rights and international humanitarian law. In fact, the obligations of States under international humanitarian law on this issue had to be clarified, but this process is neutral and should not be seen as an effort to legitimise the private companies. Remarks and contributions of other States on this point were welcomed. Finally, it referred to the new emblem of the ICRC and noted that the limitation of questions which are going to be dealt with in the next conference was a success for the adoption of the third additional Protocol. These questions are: the territorial use of the emblem and the relationship between the two rescue societies in Israel and Palestine.

165. The Chair thanked the delegation of Switzerland for the informative presentation, added that Greece has also ratified the afore-mentioned Protocol and in conclusion proposed to keep the item on the agenda.

14. Relationship between human rights law and international humanitarian law

166. The CAHDI agreed to postpone this item to its next meeting in order to take into account the suggestion of the delegation of Finland on the relationship of Human Rights Law and International Law.

15. Developments concerning the International Criminal Court (ICC)

167. The Chair recalled Security Council Resolution 1593 (2005) on reports of the Secretary-General on the Sudan, 31 March 2005, which referred the situation in Darfur to the ICC.

168. The Secretariat informed the CAHDI of the proposal to organise a 4th multilateral consultation on the implication of the ratification of the Rome Statute. The event is supposed to take place just after the CAHDI meeting in 2006, but it is subject to voluntary contributions of member States.

169. The representative of Japan declared that Japan was seriously contemplating joining the ICC and that preparatory work was in process in order to overcome all legal difficulties. He

thanked the European delegations of experts who had come to Japan and provided a useful advice on the matter.

170. The delegation of Denmark referred to Resolution 1593 (2005), which is the product of hard compromises and expressed its appreciation of the US flexibility shown in order to arrive at that compromise. It also hoped that persons who have committed crimes in Darfur might now be prosecuted. However, it recalled that the ICC is not a solution to all problems, and therefore other legal solutions needed to be examined for improvement of crime accountability. Consequently, the delegation proposed organising a side-event to ICC member States meeting where issues regarding Darfur could be addressed.

171. The representative of the ICRC informed the CAHDI about the ICRC database on international humanitarian law conventions and 80 national legislations implementing the ICC statute. It encouraged States to consult this database in order to implement the ICC statute in their national law and asked them to transmit their legislation to the ICRC.

172. The delegation of the United Kingdom declared that it was pleased that Resolution 1593 (2005) institutes a co-operation procedure with regard to the Darfur crisis. Indeed, the ICC is required to report to the Council and therefore the Security Council can have an oversight, which would permit to create a practical co-operation between the United Nations and the ICC. It further reminded the CAHDI that the United Kingdom had recently passed an Act of Parliament on privileges and immunities provided for by the ICC Statute. Once the second grade legislation implementing those provisions is achieved, the privileges and immunities necessary to the ICC will be activated.

173. The representative of Canada informed the CAHDI about a handbook available on the Internet in the framework of Canadian campaign to provide assistance to countries in implementing the ICC statute and for joining the ICC Treaty.

16. Implementation and functioning of the Tribunals established by the United Nations Security Council Resolutions 827 (1993) and 955 (1994)

174. The Chair noted that a discussion on the future of these Tribunals would be useful as the ICTY and ICTR are supposed to terminate their work in 2010. There are already some reflections on issues such as outstanding trials, appeals, relocation of witnesses and enforcement of sentences.

175. The representative of Japan declared that Japan felt strongly about the necessity to terminate the mandate of ICTR and ICTY as soon as possible, since the strategy had not been reached as decided. This opinion is linked to the fact that Japan is joining the ICC, which has financial implications. Japan has a heavy burden in the financing of ICTR and ICTY and due to its present financial difficulties it can no longer face similar international commitments.

176. The CAHDI agreed to keep the item on the agenda.

17. UN Secretary-General's Report "In larger freedom: towards development, security and human rights for all" and UN High-level Panel Report

177. The Chair referred to the UN Secretary-General's Report "In larger freedom", the UN High-level Panel Report and the Outcome Document of the Summit of Heads of States and

Governments in New York, September 2005. She then gave the floor to delegations which attended the Summit.

178. The representative of Mexico noted that the Outcome Document was approved by consensus despite very divergent opinions between States. He pointed out some successful outcomes in the document, such as the establishment of the Peace-Building Commission. The post-conflict States want the Commission to be linked with the Economic and Social Council (ECOSOC), while the General Assembly and the Security Council will both have to vote a resolution for this purpose. He also recalled another success with regard to the establishment of the "responsibility to protect", which is a good balance between the rights of State and its responsibility to protect individuals whenever their own governments are unwilling or unable to protect them.

179. As for the Rule of Law Unit for Post-conflict Situations, it was established despite huge resistance by some States. Mexico believes it should belong to the Office of Legal Affairs rather than the Peacekeeping division.

180. With regard to the use of force, thanks to the Swiss delegation, the discussion on the "preventive self-defence" notion was successful and the outcome document states that Article 51 must remain as such. There was no agreement on the idea to develop the criteria that the Security Council should use.

181. Finally, the Mexican representative regretted that some questions were still pending, namely the issue of the Human Rights Council and the definition of terrorism, as established in the text negotiated by the President of the General Assembly. The need for a Convention on the latter issue was reiterated. The reform of the Security Council remains the main concern of Mexico.

18. Fight against Terrorism – Information about work undertaken in the Council of Europe and other international bodies

182. The Secretariat presented document CAHDI (2005) Inf 10 on the new Convention on the Prevention of Terrorism. As it needs only six ratifications for its entry into force, the Secretariat reiterated its appeal for signature and ratification of this instrument.

183. It further stated that the work of CODEXTER continues since the next meeting will take place in November 2005, and it will identify *lacunae* in international law and action against terrorism. It also drew attention to new publications of the Council of Europe on the fight against terrorism.

D. OTHER

19. Election of the Chair and Vice Chair

184. In accordance with the statutory regulations, the CAHDI re-elected Ms Phani Dascalopoulou-Livada (Greece) and Sir Michael Wood (United Kingdom) respectively Chair and Vice-Chair of the Committee for one year term.

20. Date, place and agenda of the 31st meeting of the CAHDI

185. The CAHDI agreed to hold its 31st meeting on 23 and 24 March 2006 in Strasbourg.

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

21. Other business

a. Digest of state practice on international law

257. The Chair presented document CAHDI (2005) 10 submitted by Oxford University Press in which it proposes to establish an on-line data-base on State practice and proposed to add this item on the agenda of next meeting of the CAHDI.

b. Note of the last developments concerning the new procedure of notification of acts related to Council of Europe Treaties

258. The Secretariat presented the documents CAHDI (2005) 14 on new procedure which will be applied by Council of Europe Treaty Office in the very near future.

APPENDIX I

LIST OF PARTICIPANTS

ALBANIA/ALBANIE:
Mme Ledia HYSI, Director of Legal Affairs and Treaties Department, Ministry of Foreign Affairs

ARMENIA/ARMENIE:
Mrs Liana AVETISYAN, 2nd Secretary, Legal Department, Ministry of Foreign Affairs

AUSTRIA/AUTRICHE:
Mr Helmut TICHY, Head of the International Law Unit, Office of the Legal Adviser, Federal Ministry of Foreign Affairs

AZERBAIJAN/AZERBAIDJAN:
Mr Emin EYYUBOV, Deputy Head of the Department of International Law and Treaties, Ministry of Foreign Affairs

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

M. Patrick DURAY, Conseiller, Direction Générale des Affaires Juridiques, Service public fédéral des Affaires Etrangères, du Commerce extérieur et de la Coopération au développement

BOSNIA AND HERZEGOVINA/BOSNIE-HERZEGOVINE:
Mme Gildzana TANOVIC, Ministère des Affaires Etrangères

BULGARIA/BULGARIE:
Ms Emilina POPOVA, Director, International Law Directorate, Ministry of Foreign Affairs

CROATIA/CROATIE:
Apologised/Excusé

CYPRUS/CHYPRE:
Mr Nicos MICHAELIDES, Law Officer, Law Office

CZECH REPUBLIC/REPUBLIQUE TCHEQUE:
Mr Jan CIZEK, Director of the International Law Department, Ministry of Foreign Affairs

Mr Pavel CABAN, Public International Law Division, Ministry of Foreign Affairs

DENMARK/DANEMARK:
Mr Peter TAKSOE-JENSEN, Head of the Legal Service, Ministry of Foreign Affairs

ESTONIA/ESTONIE:
Mrs Kairi KÜNKA, Director General, Legal Department, Ministry of Foreign Affairs

FINLAND/FINLANDE:
Mrs Irma ERTMAN, Ambassador, Director general for Legal Affairs, Ministry of Foreign Affairs

Mrs Marja LEHTO, Director, Ministry of Foreign Affairs

FRANCE:
M. Pierre BODEAU-LIVINEC, Chargé de mission, Sous-direction du droit international public général, Ministère Public Général

Mlle Amélie LE PROVOST, Rédactrice, Direction des Affaires Juridiques, Sous-direction du droit international public

GEORGIA/GEORGIE:
Mrs Xatuna TORTLADZE, 1st Secretary, Ministry of Foreign Affairs, International Law Department

GERMANY/ALLEMAGNE:
Dr Thomas LÄUFER, Legal Adviser, Director General for Legal Affairs, Federal Foreign Office

Mrs Suzanne WASUM-RAINER, Head of Division, Public International Law Department

GREECE/GRECE:
Mrs Phani DASCALOPOULOU-LIVADA, Legal Adviser, Head of the Section of Public International Law, Ministry of Foreign Affairs **(Chair/Présidente)**

Mr Michael STELLAKATOS-LOVERDOS, Member of the Legal Service, Ministry of Foreign Affairs

HUNGARY/HONGRIE:
Mr Istvan GERELYES, Deputy Director, International Law Department, Ministry of Foreign Affairs

ICELAND/ISLANDE:
Mr Tomas H. HEIDAR, Legal Adviser, Ministry for Foreign Affairs
IRELAND/IRLANDE:
Mrs Patricia 0'BRIEN, Legal Adviser, Department of Foreign Affairs

ITALY/ITALIE:
M. Ivo Maria BRAGUGLIA, Chef du Service du contentieux diplomatique et des traits, Ministère des Affaires Etrangères

Dr Annalisa CIAMPI, Professeur, Université de Florence

LATVIA/LETTONIE:
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Mr Andrius NAMAVICIUS, Director of Law and International Treaties Department, Ministry of Foreign Affairs

MALTA/MALTE: Apologised/Excusé

MOLDOVA:
Mr Aureliu CIOCOI, Head of Direction of Council of Europe and Human rights, Ministry of Foreign Affairs and European Integration

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NETHERLANDS/PAYS-BAS:
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Ms Linn ECKHOFF DOLVA, Executive Officer, Ministry of Foreign Affairs)

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Ms Alina PAPUC, Third secretary, Ministry of Foreign Affairs

RUSSIAN FEDERATION/FEDERATION DE RUSSIE :
Mr Roman KOLODKIN, Director of the Legal Department, Ministry of Foreign Affairs

SAN MARINO/SAINT MARIN:
Mme Alessandra RENZI

SERBIA AND MONTENEGRO/SERBIE ET MONTENEGRO:
Mr Milan PAUNOVIC, Chef Legal Advisor, Ministry of Foreign Affairs

SLOVAK REPUBLIC/REPUBLIQUE SLOVAQUE:
Mr Igor GREXA, General Director, Direction of International Law and Consular Affairs, Ministry of Foreign Affairs

SPAIN/ESPAGNE:
Mme Concepción ESCOBAR HERNÁNDEZ, Chef du Département Juridique International, Ministère des Affaires Etrangères

M. Maximiliano BERNAD ALVAREZ DE EULATE, Professeur de Droit international public et d'Institutions et droit communautaire européens, Université de Zaragoza

SWEDEN/SUEDE:
Mr Carl Henrik EHRENKRONA, Director General for Legal Affairs, Ministry for Foreign Affairs

Mr Bosse HEDBERG, Director, International Law and Human Rights Department, Ministry for Foreign Affairs

SWITZERLAND/SUISSE:
M. Jürg LINDENMANN, Suppléant du Jurisconsulte, Direction du Droit international public, Département fédéral des affaires étrangères

M. L'Ambassadeur Paul SEGER, Directeur, Direction du droit international public, Département fédéral des affaires étrangères

"THE FORMER REPUBLIC YUGOSLAV OF MACEDONIA"/"L'EX-REPUBLIQUE YOUGOSLAVE DE MACEDOINE":
Mrs Magdalena DIMOVA, Head of International Law Department, Ministry of Foreign Affairs

TURKEY/TURQUIE:
Mr Cinar ALDEMIR, Ambassador, Chief Legal Adviser, Ministry of Foreign Affairs

UKRAINE:
Mr Olexander KUPCHYSHYN, Legal and Treaty Department, Ministry of Foreign Affairs

UNITED KINGDOM/ROYAUME-UNI:
Sir Michael WOOD, Legal Adviser, Foreign and Commonwealth Office

Mr Chanaka WICKREMASINGHE, Legal Researcher, Foreign and Commonwealth Office

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Mme Eglantine CUJO, membre du Service juridique de la Commission européenne

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Mr Yasushi FUKE, Consul, Consulat Général du Japon

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Ministro Joel HERNANDEZ, Consultor Juridico de la Secretaria de Relaciones Exteriores)

Embajador Juan Manuel GOMEZ ROBLEDO, Representante Permanente Alterno de Mexico ante las Nacionas Unidas, Mission of Mexico to the UN, NEW YORK

Mr Bernardo SEPÚVEDA, ICA, Member of the United Nations International Law Commission, MEXICO

UNITED STATES OF AMERICA/ETATS-UNIS D'AMERIQUE:
Mr John B. BELLINGER, III, Legal Adviser for Treaty Affairs, US Department of State

Mr Robert DALTON, Assistant Legal Adviser for Treaty Affairs, US Department of State

ISRAEL/ISRAËL:
Mr Ehud KENAN, Legal Adviser, Ministry of Foreign Affairs

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

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:

INTERPOL:
Mme Sandrine CAPSALAS, Juriste principal, Bureau des Affaires Juridiques, INTERPOL

INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC)/COMITE INTERNATIONAL DE LA CROIX ROUGE (CICR) :
Mme Maria Teresa DUTLI, Chef des Services consultatifs en droit international humanitaire, GENEVE

Mr Jean-Marie HENCKAERTS, Legal Adviser, ICRC, GENEVA

NORTH ATLANTIC TREATY ORGANISATION (NATO) / ORGANISATION DU TRAITE DE L'ATLANTIQUE NORD (OTAN):
M. Baldwin DE VIDTS, Conseiller juridique, Service juridique, BRUXELLES

SPECIAL GUESTS/INVITES SPECIAUX

Mr A. ROSAS, Juge à la Cour de Justice des Communautés Européennes, Président de Chambre, LUXEMBOURG

Mr Martti KOSKENNIEMI, Professor of International Law, The Erik Castren Institute of International Law and Human Rights, HELSINKI

Professor Gerhard HAFNER, Director of the Department of European, International and Comparative Law of the Vienna University, VIENNA

SECRETARIAT GENERAL

M. Guy de VEL, Director General of Legal Affairs/Directeur Général des Affaires Juridiques

M. Giovanni PALMIERI, Head of the Public Law Department/Chef du service du droit public

M. Paul DEWAGUET, Head of Legal Advice Department and Treaty Office / Chef du Service du Conseil Juridique et Bureau des Traités

Mr Rafael A. BENITEZ, Secretary of the CAHDI/Secrétaire du CAHDI, Deputy Head of the Public Law Department/Chef adjoint du Service du droit public

M. Patrick TITIUN, Deputy Head of the Legal Advice Department and Treaty Office/Adjoint au Chef du Service du Conseil Juridique et Bureau des Traités

Mme Christina OLSEN, Administrator/Administratrice, Legal Advice Department and Treaty Office / Service du Conseil Juridique et Bureau des Traités

Mme Albina LACHERET-OVCEARENCO, Administrative assistant/Assistante administrative, Public Law Department/Service du droit public

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Mme Francine NAAS, Assistant/Assistante, Public Law Department / Service du Droit public

Mme Laurence WEBER, Assistant/Assistante, Public Law Department / Service du Droit Public

INTERPRETERS/INTERPRETES:
Mme Chloé CHENETIER
Mr Nicolas GUITTONNEAU
Mr Didier JUNGLING

APPENDIX II

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
   - Observations submitted by the Authorities of Malaysia

6. Pilot Project of the Council of Europe on State practice regarding State immunities – Presentation of the analytical report by Professor Hafner

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 Mr Rosas, President of Chamber, member of the Court of Justice of the European Communities (ECJ)

10. The work of the Sixth Committee of the General Assembly of the United Nations and 57th session of the International Law Commission (ILC): Exchange of views with Professor Koskenniemi, member of the 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 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 by Mr Henckaerts (ICRC)

b. 2nd Protocol to the Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict

14. Relationship between human rights law and international humanitarian law

15. Developments concerning the International Criminal Court (ICC)

16. Implementation and functioning of the Tribunals established by United Nations Security Council Resolutions 827 (1993) and 955 (1994)

17. UN Secretary-General's Report "In larger freedom: towards development, security and human rights for all" and UN High-level Panel Report

18. Fight against Terrorism - Information about work undertaken in the Council of Europe and other international bodies

D. OTHER

19. Election of the Chair and Vice Chair

20. Date, place and agenda of the 31st meeting of the CAHDI

21. Other business
- Digest of state practice on international law
- Note of the last developments concerning the new procedure of notification of acts related to Council of Europe Treaties

APPENDIX III

COMMUNICATION BY Mr GUY DE VEL, DIRECTOR GENERAL OF LEGAL AFFAIRS

Madam Chair,
Ladies and Gentlemen,

It is both an honour and pleasure for me to be with you today to report on the latest developments at the Council of Europe since your last session.

The most important recent political event in our organisation was the **Third Summit of Heads of State and Government of the Council of Europe**, which was held in Warsaw on 16 and 17 May 2005 at the invitation of the Polish Government.

The two previous Summits had given strong impetus to the process of integrating the European continent.

The Third Summit took place in a changing Europe and was particularly concerned with defining the Council of Europe's position in the European and international institutional landscape, with a view to providing the organisation with a clear political mandate for the coming years.

At the end of the Summit, the Heads of State and Government of the Council of Europe member states adopted a final declaration, entitled the ***Warsaw Declaration,*** in which they pointed out that further progress in building a Europe without dividing lines must continue to be based on the common values enshrined in the Council of Europe Statute: democracy, human rights and the rule of law.

They highlighted the fact that Europe is guided by a political philosophy of inclusion and complementarity and by a common commitment to multilateralism based on international law.

They undertook to enhance the role of the Council of Europe as an effective mechanism of pan-European co-operation by strengthening and streamlining its activities, structures and working methods still further, thus ensuring that it plays its due role in a changing Europe.

The Heads of State and Government also undertook to ensure complementarity between the Council of Europe and the other organisations involved in building a democratic and secure Europe by creating a new framework for enhanced co-operation with these organisations.

They consequently asked Mr Jean-Claude Juncker, the Prime Minister of Luxembourg, to draw up, in a personal capacity, a report on relations between the Council of Europe and the European Union, on the basis of the decisions taken at the Summit and taking into account the importance of the human dimension of European construction. A *memorandum of understanding* should soon be drawn up between the Council of Europe and the EU to define relations between our two institutions.

In the Warsaw Declaration, the Heads of State and Government also expressed their commitment to fostering co-operation between the Council of Europe and the United Nations and to achieving the Millennium Development Goals in Europe.

They also adopted an Action Plan, a copy of which has been handed out to you along with a copy of the Warsaw Declaration.

Both these documents consider how the effectiveness of the European Convention on Human Rights can be guaranteed in the long term.

That is why the Committee of Ministers of the Council of Europe has just agreed on the composition of a Group of Wise Persons, which is to consider how the continued effectiveness of the European Convention on Human Rights and its supervisory machinery can be ensured. The Group has been asked to submit, as soon as possible, proposals which go beyond the measures already taken, "while preserving the basic philosophy underlying the ECHR".

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You will notice that the Warsaw Declaration and the Action Plan give special attention to the legal activities of the Directorate General for which I am responsible, and I would now like to give some details of those activities.

* * *

Over the past year, a great many of our efforts have been focused on **combating terrorism**. The latest terrorist attacks in London unfortunately demonstrate once more that we must keep up our efforts relentlessly.

You will no doubt remember that, as early as November 2001, we made a practical contribution in this area, drawing on the added value which the Council of Europe can offer. The aim is to strengthen judicial action against terrorism and its sources of funding, while safeguarding fundamental values.

The first outcome of the implementation of our action plan against terrorism, adopted by the Committee of Ministers in the wake of 11 September 2001, was the **amending Protocol to the 1977 European Convention for the Suppression of Terrorism,** which was opened for signature in May 2003 and which I talked about at the previous session. It has, to date, been signed by 26 countries and ratified by 18. Before it can come into force, all 44 States Parties to the 1977 Convention must be parties to the Protocol. We are therefore making considerable efforts to ensure that it comes into force as soon as possible and I call on your support in this matter.

A whole range of priority areas were identified in 2001 and, as a result, several international standard-setting instruments were drafted and have been adopted over the last six months.

Firstly, a new **Convention on the Prevention of Terrorism.**

This convention is designed to fill in some of the gaps in international legislation and action against terrorism by various means.

On the one hand, certain acts that may lead to the commission of acts of terrorism, including public provocation, recruitment and training, are established as criminal offences. The tragic events in London prove how important this is. On the other hand, co-operation on prevention is to be stepped up both domestically, in the context of the definition of national prevention policies, and internationally.

We have also closely followed developments at national and international level, for example the measures introduced by the UN last week to criminalise indirect incitement to terrorism, and we are prepared to offer our experience and expertise in this sensitive area.

This treaty has been supplemented by a new **Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism,** which takes account of the latest developments in this field, in particular the recommendations of the FATF on preventing the financing of terrorism in accordance with Resolution 1373 (2001) of the UN Security Council. In this field, we also have an excellent tool at our disposal in the form of the MONEYVAL committee, which appraises, at regional level, the action taken by its member states to counter money laundering and the financing of terrorism, using the methods recommended by the FATF.

Both these conventions were opened for signature at the Third Summit of the Council of Europe and have been signed by 20 and 13 member states respectively. In order to come into force, they must be ratified by six States Parties. We very much hope that they will be able to come into force as soon as possible.

Finally, **three Recommendations from the Committee of Ministers** to the Governments of member states concerning special investigation techniques, the protection of witnesses and collaborators of justice, and identity documents, have recently been adopted.

The other existing standard-setting instruments are the **Guidelines on human rights and the fight against terrorism**, adopted by the Committee of Ministers in 2002, an additional series of **Guidelines on the Protection of Victims of Terrorist Acts** (2005), a **Declaration on freedom of expression and information in the media in the context of the fight against terrorism** (2005), and an ECRI **general policy recommendation on national legislation to combat racism and racial discrimination** (2004).

The Council of Europe's efforts to step up legal action against terrorism are based on the vital principle that it is possible and necessary to combat terrorism in full compliance with human rights, fundamental freedoms and the rule of law.

Before finishing this part of my speech, I would also like to mention the action taken to tackle the root causes of terrorism by promoting intercultural and interfaith dialogue, which is of particular and growing significance.

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The Third Summit also provided the opportunity to open a third convention for signature**: the Council of Europe Convention on Action against Trafficking in Human Beings**.

This treaty, which has already been signed by 15 states, is aimed at preventing and putting an end to people trafficking, irrespective of whether it is national or transnational and whether or not it is linked to organised crime.

What is special about this convention is its human rights approach, the attention it pays to victim protection and its independent monitoring machinery, which ensures that the Parties comply with the provisions of the convention.

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As regards the **fight against corruption**, the Council of Europe has an integrated and fully operational monitoring system – the GRECO, the Group of States against Corruption – which could serve as an example for worldwide action.

Various bodies are currently considering the idea of monitoring the UN Convention against corruption. If this idea is taken on board, it will be necessary to decide how to co-ordinate this monitoring with other monitoring processes and systems to make sure that there is no duplication of effort or overlapping of activities and that the various processes strengthen one another. This is particularly important since, as a rule, monitoring places a heavy burden on the countries concerned. At present, at least in Europe, there are signs that countries are becoming weary of monitoring. These signs need to be taken seriously.

The GRECO is continuing to evaluate the situation in its 39 members – one of which, the United States, is a non-member state – using well-tested methods. It is just about to complete its second evaluation round which concerns proceeds of corruption, corruption in public authorities and the use of legal persons as shell companies to shield corruption offences.

The first round of evaluation concerned the independence and specialisation of bodies in charge of preventing corruption and immunities from investigation and prosecution in corruption offences.

At its latest plenary meeting in June, the GRECO decided that its third round of evaluation should concern the following two main themes: transparency in the funding of political parties and the incriminations provided for by the Council of Europe Criminal Law Convention on Corruption (ETS 173).

Fighting cyber-crime is another key area of our work.

We are making considerable efforts to give fresh impetus to the widest possible ratification of the Convention on Cybercrime, which came into force on 1 July 2004, and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, which only needs one further ratification in order to come into force.

These two instruments are open to non-member states of the Council of Europe. Indeed, their scope extends well beyond the European continent, as we saw at the 11th UN Congress on Crime Prevention and Criminal Justice, which took place in Budapest last April. I would like to point out that we will be holding a conference in Madrid this year to promote the accession of Latin American countries to the convention.

Before finishing this chapter, I would like to mention two other areas which are of very great importance.

The Action Plan of the Third Summit of the Council of Europe reflects the agreement between the Heads of State and Government to seek to put an end to the sexual exploitation of children, and, where necessary, draw up corresponding legal instruments.

At a Conference held by the Council of Europe and UNICEF in Ljubljana on 8 and 9 July on a review of the Yokohama commitments concerning the sexual exploitation of children, the relevant working group recommended that a new convention should be drafted. It is essential to

co-ordinate activities in this field with those of the United Nations, in particular as regards monitoring the optional protocol to the Convention on the Rights of the Child, which concerns the sale of children, child prostitution and child pornography.

At the request of the European Ministers for Justice and in accordance with the Warsaw Action Plan, we are currently completing the revision of the European Prison Rules, the latest version of which dates back to 1987. The revised text, taking account of the technological, legal and social changes in our societies, should be adopted before the end of the year.

* * *

In the field of bioethics, it is important to mention the **Additional Protocol to the Convention on Human Rights and Biomedicine concerning Biomedical Research,** opened for signature in January 2005 to supplement the aforementioned convention, which is still the only international treaty on the subject.

We are continuing our standard-setting work in this field, including, in particular, the drafting of an additional protocol to the convention concerning genetic tests, and also the preparation of a draft instrument on biobanks.

* * *

Another important area in which we are active concerns **nationality** laws.

We have just finished preparing a **draft protocol on the avoidance of statelessness in relation to state succession,** which was forwarded to the Parliamentary Assembly of the Council of Europe for opinion last June and should be adopted in the coming months.

The protocol supplements the 1997 European Convention on Nationality, in particular its chapter on state succession and nationality. It was drafted in response to a Recommendation from the Committee of Ministers to member states in 1999 on the prevention and reduction of statelessness and is based on the practical experience gathered over the past few years with regard to state succession and statelessness in a number of countries.

It also takes account of the UN Convention on the reduction of statelessness and of the Venice Commission's Declaration on the consequences of state succession for the nationality of individuals, and – last but not least – of the work carried out by your committee, in particular the draft articles on nationality of natural persons in relation to the succession of States.

* * *

With regard to our activities in the field of **constitutional and electoral law,** our Venice Commission, with whose excellent work you are already familiar, recently adopted several important opinions on constitutional reforms in Armenia, draft amendments to the electoral codes of Armenia and Azerbaijan, the compatibility of the Italian Gasparri and Frattini laws with Council of Europe standards in the field of freedom of expression and pluralism of the media, the Russian federal law on the *Prokuratura* and the amendments to the Constitution of Ukraine adopted on 8 December 2004. It also helped the Constitutional Council of Kyrgyzstan to reform the country's Constitution.

I would also like to mention our co-operation 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 to Kosovo. A corresponding agreement has been signed with UNMIK.

* * *

This brings me to your Committee's activities, which I will only briefly touch upon given your busy agenda.

I have had several opportunities to underline the unique role your committee plays within the Council of Europe as a forum where the legal advisers of the Ministers of Foreign Affairs of member states and many observer states and organisations can discuss and, indeed, co-ordinate their views in the field of international public law and so contribute to its implementation and further development.

This role has been consolidated and extended over the years and you are, in a way, now "victims of your own success" with an increasingly heavy agenda, including subjects of prime importance, on which the stability of the international community depends to some extent.

Your role is also becoming increasingly appreciated and well-known outside the Council of Europe, as I noticed when taking part in the session of the International Law Commission, of which you have become a major partner.

The *Pilot Project on State Practice regarding State Immunities*, your role as *European Observatory of Reservations to International Treaties,* drawing up a list of "potentially problematic" reservations to treaties against terrorism, and your work in connection with the sanctions imposed by the United Nations and the need to respect human rights have all met with a very positive reaction in other organisations.

That is something we should all welcome.

Ladies and Gentlemen, Madam Chair, by way of conclusion, I would like to reiterate what the Heads of State and Government said in Warsaw in May 2005: our work is aimed at making further progress in building a Europe without dividing lines and must continue to be based on the common values enshrined in the Council of Europe Statute: democracy, human rights and the rule of law.

APPENDIX IV

DRAFT AGENDA OF THE 31st 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 30th meeting (Strasbourg, 19-20 September 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. 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

9. Digest of State practice on international law, proposal for a new activity

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

10. 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 tribunals

11. UN Convention on Jurisdictional Immunities and European Convention on State Immunity

12. Consideration of current issues of international humanitarian law:
    - 2nd Protocol to the Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict

13. Relationship between human rights law and international law, including international humanitarian law

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 Secretary-General's Report "In larger freedom: towards development, security and human rights for all" and UN High-level Panel Report

17. Fight against Terrorism - Information about work undertaken in the Council of Europe and other international bodies

D. OTHER

18. Date, place and agenda of the 32nd meeting of the CAHDI

19. Other business