

Strasbourg, 04/04/06

CAHDI (2006) 16 rev

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

**31st meeting, Strasbourg, 23-24 March 2006**

**List of items discussed and decisions taken  
Abridged report**

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 31st meeting in Strasbourg on 23 and 24 March 2006, with Ms Phani Dascalopoulou-Livada (Greece) in the chair. The list of participants is appended to the meeting report (document CAHDI (2006) 17 prov.) and the agenda is set out in Appendix I to this report (the references of the documents submitted in advance or in the course of the meeting are listed in Appendix II to document CAHDI (2006) 17 prov.).

2. The Secretariat informed the CAHDI of developments concerning the Council of Europe since its last meeting. Specific reference was made to developments concerning the Council of Europe Treaty series and the Secretary General's report under Article 52 ECHR on the question of secret detention and transport of detainees suspected of terrorist acts, notably by or at the instigation of foreign agencies.

3. The CAHDI was informed of the decisions of the Committee of Ministers of interest to its work.

4. In the framework of its activity as a *European Observatory of Reservations to International Treaties*, the CAHDI considered:

a) a list of outstanding declarations and reservations to international treaties: the Committee considered delegations' observations as well as the follow-up certain delegations have given or are likely to give to these declarations and reservations.

b) reservations to international treaties applicable to the fight against terrorism in accordance with the Committee of Ministers' decision of 21 September 2001 (CM/Del/Dec (2001) 765 bis, item 2.1).

The CAHDI agreed to pursue the examination of this issue at its next meeting.

5. The CAHDI took note with satisfaction of the forthcoming publication of the book "State Practice Regarding State Immunities".

6. The CAHDI welcomed the publication of two databases on the CAHDI's website: one on the Office of the Legal Adviser of the Ministry of Foreign Affairs and the other on State Practice Regarding State Immunities. With respect to the first of these databases, the Committee agreed on the inclusion of the introductory note submitted by the United Kingdom. Delegations were invited to review their contributions on a regular basis with a view to keeping the databases up to date. Those delegations having not yet submitted a contribution were invited to do so at their earliest convenience.

7. The CAHDI examined delegations' replies to a questionnaire on national implementation measures of UN sanctions and respect for human rights and agreed to a publication of the replies received to date on the CAHDI's restricted website. Furthermore, the CAHDI took note with interest of Professor Iain Cameron's (University of Upsala, Sweden) presentation on "The ECHR, Due Process and UN Security Council Counter-Terrorism Sanctions", and held an exchange of views further to this presentation. Professor Cameron's statement is set out in Appendix III to document CAHDI (2006) 17 prov.

8. The CAHDI discussed the proposal by a publishing house to create a database of state practice on international law. The CAHDI expressed certain queries as to the exact scope of the proposal. However, it took the opportunity to remind its members of Resolution (64) 10 on publication of digests of state practice in the field of public international law, Resolution (68) 17 concerning a model plan for the classification of documents concerning state practice in the field of public international law and Recommendation No. R (97) 11 of the Committee of Ministers to member states on the amended model plan for the classification of documents concerning state practice in the field of public international law. It furthermore invited delegations to submit information on the implementation of these instruments on a national level. It agreed to include this item on the agenda of its next meeting.

9. The CAHDI considered issues relating to the peaceful settlement of disputes. It agreed to pursue the discussion on compulsory jurisdiction of the International Court of Justice and on overlapping jurisdiction of international courts and tribunals at its next meeting, on the basis of working documents CAHDI (2006) 4 and 5, which were to be revised in the light of contributions to be submitted by delegations.

10. The CAHDI considered developments related to the UN Convention on Jurisdictional Immunities and its implications as far as the European Convention on State Immunity is concerned. It was informed of the outcome of an informal meeting of the Parties to the Convention held on 23 March 2006. The interim report of the meeting is set out in Appendix II to this report. It agreed to discuss this item at its next meeting following the 2nd informal meeting of the Parties to the Convention which will be held during the 32nd CAHDI meeting.

11. The CAHDI discussed current issues of international humanitarian law, namely the protection of cultural property in the event of armed conflict and the adoption of an additional distinctive emblem. Given the importance of these issues, the CAHDI agreed to keep them on the agenda of its next meeting. Furthermore, it held an exchange of views with Professor Martin Scheinin (Abo Akademi University, Finland) on the relationship between human rights law and international law, including international humanitarian law. Professor Scheinin's statement is set out in Appendix IV to document CAHDI (2006) 17 prov.

12. The CAHDI took stock of recent developments concerning the functioning of the Tribunals established by UN Security Council Resolutions 827 (1993) and 955 (1994) and the International Criminal Court (ICC). In this connection, the CAHDI was informed of the organisation by the Council of Europe of the 4th Multilateral Consultation on the implications for Council of Europe member states of the ratification of the Rome Statute of the ICC. The Multilateral Consultation will be held at the close of the 32nd meeting of the CAHDI in Athens, Greece, on 14 and 15 September 2006.

13. The CAHDI considered the outcome document of the 2006 UN World Summit and in this connection discussed a paper presented by the Swiss delegation concerning the issue of "advancing the international rule of law". It agreed to pursue its discussions on this topic at its next meeting.

14. The Secretariat informed the CAHDI of the Council of Europe's activities against terrorism and referred in particular to those of the Committee of Experts on Terrorism (CODEXTER) and to the progress in the number of signatures and ratifications of the new Council of Europe conventions on the prevention of terrorism and on money laundering and the financing of terrorism. Specific

reference was made to the progress report on future priority areas for the work of the Council of Europe in the fight against terrorism.

15. The CAHDI agreed that Mr Martin Sørby (Norway) act as its representative in the Group of Specialists on Human Rights and the Fight against Terrorism (DH-S-TER).

16. The CAHDI decided to hold its next meeting in Athens, Greece, on 13 and 14 September 2006 and adopted the preliminary draft agenda which is set out in Appendix III to this report. Moreover, the Secretariat informed the CAHDI that the 4th Multilateral Consultation on the implications for Council of Europe member states of the ratification of the Rome Statute of the ICC would be held in Athens, Greece, in the afternoon of the 14th and on 15 September 2006.

## APPENDIX I

**AGENDA****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 Secretariat

**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  
- *Observations submitted by Poland*
  - b. Consideration of reservations and declarations to international Treaties applicable to the fight against terrorism  
- *Observations submitted by Turkey*
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
  - Presentation of a report by and Exchange of views with Professor Iain Cameron, University of Upsala (Sweden)
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
  - Report on the Informal Consultation of the Parties to the 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: Exchange of views with Professor Martin Scheinin, Åbo Akademi University, Finland
14. Developments concerning the International Criminal Court (ICC) - Organisation of the 4th Council of Europe multilateral consultation on the implications of the ratification of the Rome Statute, September 2006
15. Implementation and functioning of the Tribunals established by United Nations Security Council Resolutions 827 (1993) and 955 (1994)
16. Outcome document of the 2005 U.N. World Summit
  - *Document submitted by Switzerland*
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
  - Participation of a representative of the CAHDI in the Group of Specialists on Human Rights and the Fight against Terrorism (DH-S-TER)

## APPENDIX II

**INTERIM REPORT OF THE INFORMAL MEETING OF THE PARTIES TO THE  
EUROPEAN CONVENTION ON STATE IMMUNITY  
STRASBOURG, 23 MARCH 2006**

**Presented by the Chair of the meeting, Sir Michael Wood, Vice-Chair of the CAHDI**

This is an interim report of the informal meeting of parties to the European Convention on State Immunity, which took place on 23 March 2006 in the margins of the 31st meeting of the CAHDI. The participants had a useful initial discussion and agreed that there should be a further meeting in the margins of the next CAHDI.

There are eight parties to the European Convention (Austria, Belgium, Cyprus, Germany, Luxembourg, the Netherlands, Switzerland and the United Kingdom) and one state that has signed but not ratified (Portugal).

The participants in the informal meeting included seven of the eight parties, the signatory, other interested Council of Europe member states (which included states where the European Convention had been referred to by the courts as reflecting customary international law), as well as the Council of Europe Secretariat.

The meeting had three documents before it: a document submitted by Portugal giving a comparative analysis of the European Convention on State Immunity and the United Nations Convention on Jurisdictional Immunities of States and their Properties (CAHDI (2005) 16); a document submitted by Austria containing a draft of a supplemental agreement between the States Parties to the European Convention (CAHDI (2006) Misc 1); and a document submitted by Belgium assessing the compatibility between the European Convention and the UN Convention (CAHDI (2006) Misc 2).

The Secretariat described the very limited practice of the Council of Europe in respect of the termination of European Conventions.

Most of the participants from the parties to the European Convention confirmed that they were proceeding towards ratification of the UN Convention in due course. One such participant said they would no doubt consider the question if others proceeded in this way. Portugal confirmed that they no longer intended to ratify the European Convention. It was recalled that the UN Convention would enter into force only when it had been ratified by thirty states.

The participants from the parties to the European Convention all considered that in due course the UN Convention regime should supersede that of the European Convention. They noted that this should be seen as a mark of the success of the European Convention, the first multilateral treaty to cover the field, which had been very influential in shaping the world-wide regime established by the UN Convention.

The participants noted that there were at least two broad options for achieving this objective:

First, each of the parties to the European Convention and its Additional Protocol could simply proceed to denounce the Convention (in accordance with its Article 40) and Protocol as and when the UN Convention entered into force for it. Portugal would make it clear that it no longer intended to proceed to ratification (see Article 18 of the Vienna Convention on the Law of Treaties).

Second, the parties to the European Convention could agree among themselves (possibly in some kind of declaration) that the European Convention and, if applicable, the Additional Protocol, would cease to be applied as between those of its parties which had become parties to the UN

Convention from the date on which the UN Convention entered into force. It could thus be made clear that the UN Convention, as a subsequent treaty, superseded the earlier European Convention (in accordance with the Vienna Convention), notwithstanding the provisions of Article 26 of the UN Convention.

The Chairman of the meeting undertook to circulate in the near future a draft of a possible declaration illustrating the second option.

The possible need to make upon ratification of the UN Convention some kind of a reservation or declaration concerning its Article 26 was also raised.

The second option might achieve in substance what was proposed in the Austrian draft supplemental agreement. The form of the Austrian proposal was considered by some to require an unnecessary and possibly lengthy process.

The informal meeting agreed to consider further these two options, and any others that might be proposed, at a further informal meeting in the margins of the next CAHDI.

## APPENDIX III

**PRELIMINARY DRAFT AGENDA OF THE 32nd 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 31st meeting (Strasbourg, 23-24 March 2006)
3. Communication by Mr Roberto Lamponi, Director of Legal Co-operation of the Council of Europe

**B. ONGOING ACTIVITIES OF THE CAHDI**

4. Decisions by the Committee of Ministers concerning the CAHDI and requests for CAHDI's opinion
6. 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

**C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW**

10. Peaceful settlement of disputes: Compulsory jurisdiction of the International Court of Justice (ICJ) and Overlapping jurisdiction of international tribunals
11. UN Convention on Jurisdictional Immunities and European Convention on State Immunity
  - Report on the Informal Consultation of the Parties to the European Convention on State Immunity
12. Consideration of current issues of international humanitarian law
13. Developments concerning the International Criminal Court (ICC) – 4th Council of Europe multilateral consultation on the implications of the ratification of the Rome Statute, 14-15 September 2006
14. Implementation and functioning of the Tribunals established by United Nations Security Council Resolutions 827 (1993) and 955 (1994)



15. Outcome document of the 2005 U.N. World Summit
  - *Document submitted by Switzerland*
16. Fight against Terrorism - Information about work undertaken in the Council of Europe and other international bodies
  - Report by the CAHDI representative within the Group of Specialists on Human Rights and the Fight against Terrorism (DH-S-TER)
17. The work of the Sixth Committee of the General Assembly of the United Nations and 58th session of the International Law Commission (ILC)

**D. OTHER**

18. Election of the Chair and Vice Chair
19. Date, place and agenda of the 33rd meeting of the CAHDI
20. Other business