

Strasbourg, 20/09/06

CAHDI (2006) 31

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

32nd meeting, Athens, 13-14 September 2006

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

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 32nd meeting in Athens on 13 and 14 September 2006 with Ms Phani Dascalopoulou-Livada in the Chair. The list of participants is set out in Appendix I to the meeting report (document CAHDI (2006)32 prov) and the agenda is set out in Appendix I to the present report.
2. The Director of Legal Co-operation, Mr Roberto Lamponi, informed the CAHDI about developments concerning the Council of Europe since the last meeting of the Committee, in particular the implementation of the priorities set by the Third Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005), and developments concerning the Council of Europe Treaty Series. His statement is set out in Appendix III to document CAHDI (2006)32 prov.
3. The CAHDI was informed about the decisions of the Committee of Ministers of relevance to its work and welcomed the proposed exchange of views between its Chair and the Ministers' Deputies.
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 given by certain delegations to some of these declarations and reservations. A table summarising the position of delegations with respect to certain reservations is set out in Appendix II to the present report.
 - 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 its examination of this issue at its next meeting.
5. The CAHDI welcomed the publication of the book entitled "State Practice Regarding State Immunities".
6. The CAHDI took note of developments concerning its web-based databases on the Office of the Legal Adviser of the Ministry for Foreign Affairs, State Practice regarding State Immunities and National implementation measures of UN sanctions and respect for human rights. It invited those delegations which had not yet submitted their contributions to do so at their earliest convenience and called upon delegations to update their contributions on a regular basis.

7. The CAHDI pursued its discussion on national implementation measures of UN sanctions and respect for human rights on the basis of a proposal from the Chair (document CAHDI (2006) 29).
8. The CAHDI considered the recording of state practice on a national level and invited delegations to submit contributions on their practice at their earliest convenience.
9. The CAHDI considered the work of the International Law Commission (ILC) of the United Nations at its 58th session and held an exchange of views with Mr Constantin Economides, a member of the ILC.
10. The CAHDI pursued consideration of issues relating to the peaceful settlement of disputes, in particular the compulsory jurisdiction of the International Court of Justice (ICJ) and the overlapping jurisdiction of international tribunals. It agreed to continue this discussion at its next meeting on the basis of the contributions from Portugal and the United Kingdom.
11. The CAHDI pursued its consideration of the implications of the UN Convention on Jurisdictional Immunities on the European Convention on State Immunity. It was informed about the outcome of the second informal meeting of the Parties to the European Convention held on 13 September 2006 in the margins of the CAHDI meeting. The interim report of the meeting is set out in Appendix III to the present report.
12. The CAHDI considered current issues of international humanitarian law and took stock of recent developments concerning the functioning of the Tribunals established by UN Security Council Resolutions 827 (1993) and 955 (1994).
13. The CAHDI held an exchange of views with the President, Mr Philippe Kirsch, and the Prosecutor, Mr Luis Moreno-Ocampo, of the International Criminal Court (ICC) and welcomed the holding of the 4th multilateral consultation on the ICC on 14 and 15 September 2006.
14. The CAHDI pursued consideration of the outcome document of the 2005 UN World Summit and agreed to carry out an activity on the basis of the paper submitted by the Swiss delegation on "Advancing the international rule of law" and possible contributions from delegations.
15. The Chair of the Committee of Experts on Terrorism (CODEXTER), Ms Marja Letho (Finland) informed the CAHDI of the Council of Europe's activities on the fight against terrorism. She referred in particular to the thematic review on the implementation of Council of Europe conventions against terrorism, which took place during the CODEXTER's 10th meeting (19-21 June 2006), the ongoing work on cyberterrorism and the follow-up given to the progress report on future priority areas for the Council of Europe's work against terrorism.
16. The CAHDI took note of developments as regards the inquiry made by the Secretary General of the Council of Europe under Article 52 of the European Convention on Human Rights.
17. Following the expiry of the second term of office of Mrs Phani Dascalopoulou-Livada (Greece) and in accordance with the statutory regulations, the CAHDI elected Sir Michael Wood (United Kingdom) as Chair and Mr Rolf Fife (Norway) as Vice-Chair of the Committee for one year as of 1 January 2007. The CAHDI expressed its gratitude to the outgoing Chair for the excellent work she had accomplished. It also thanked the Greek authorities for their warm hospitality.
18. The CAHDI approved its draft specific terms of reference for 2007-2008 and decided to submit them to the Committee of Ministers for adoption as set out in Appendix IV to the present report.
19. The CAHDI decided to hold its next meeting in Strasbourg on 22 and 23 March 2007 and adopted the preliminary draft agenda as it appears in Appendix V to the present report.

APPENDIX I

AGENDA OF THE 32ND MEETING

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
3. Statement by Mr Roberto Lamponi, Director for Legal Co-operation

B. ONGOING ACTIVITIES OF THE CAHDI

4. Decisions by the Committee of Ministers concerning the CAHDI and requests for the 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 for Foreign Affairs
8. National implementation measures of UN sanctions and respect for Human Rights
 - Report by Prof. Cameron
 - Report by Prof. Fassbender
9. Digest of state practice on international law
 - a. Proposal for a new activity
 - b. State practice in connection with digests of international law

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

10. The work of the Sixth Committee of the General Assembly of the United Nations and 58th session of the International Law Commission (ILC): Exchange of views with Mr Economides, member of the ILC
11. Peaceful settlement of disputes: Compulsory jurisdiction of the International Court of Justice (ICJ) (Article 36 (2)) and overlapping jurisdiction of international tribunals
12. UN Convention on Jurisdictional Immunities and European Convention on State Immunity - Report on the second Informal Consultation of the Parties to the European Convention on State Immunity
13. Consideration of current issues of international humanitarian law
14. Developments concerning the International Criminal Court (ICC)
 - a. Exchange of views with Mr. Philippe Kirsch, President and Mr. Luis Moreno-Ocampo Prosecutor of the ICC
 - b. 4th multilateral consultation on the ICC, 14-15 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 UN World Summit
17. Fight against terrorism - Information about work undertaken in the Council of Europe and other international bodies

D. OTHER

18. Election of the Chair and Vice-Chair
19. Adoption of preliminary draft specific terms of reference for 2007-2008
20. Date, place and agenda of the 33rd meeting of the CAHDI
21. Other business
 - a. Inquiry of Secretary General under Article 52 of the European Convention on Human Rights
 - b. Status of ratification of Protocol 14 to the ECHR

APPENDIX II

OBJECTIONS TO RESERVATIONS AND DECLARATIONS TO INTERNATIONAL TREATIES

State/ État	Reservations to CEDAW/ Réserves à la CEDEF*		Reservations to the Inter. Conv. Suppression Acts of Nuclear Terrorism / Réserves à la Convention internat. répression des actes de terrorisme nucléaire	
	Oman 28/02/07	Brunei Darussalam 15/06/07	Egypt / Egypte	Turkey / Turquie
Albania / Albanie				
Andorra / Andorre				
Armenia / Arménie				
Austria / Autriche	○	○		
Azerbaijan / Azerbaïdjan				
Belgium / Belgique	○	○		
Bosnia and Herzegovina / Bosnie- Herzégovine				
Bulgaria / Bulgarie				
Croatia / Croatie				
Cyprus / Chypre				
Czech Republic / République tchèque	○	○		
Denmark / Danemark	○	○		
Estonia / Estonie				
Finland / Finlande	○	○		
France	○	○		
Georgia / Géorgie				
Germany / Allemagne	●	○	○	
Greece / Grèce	○	○		
Hungary / Hongrie	○	○		
Iceland / Islande				
Ireland / Irlande	○	○		
Italy / Italie			●	
Latvia / Lettonie				
Liechtenstein				
Lithuania / Lituanie				
Luxembourg				
Malta / Malte				
Moldova				
Monaco				
Netherlands / Pays- Bas	●	○		
Norway / Norvège	○	○		
Poland / Pologne	○	○		
Portugal	○	○		
Romania / Roumanie				
Russian Federation / Fédération de Russie			○***	

San Marino / Saint-Marin				
Serbia / Serbie				
Slovakia / Slovaquie				
Slovenia / Slovénie				
Spain / Espagne	●	●		
Sweden / Suède	●	●		
Switzerland / Suisse				
FYROM**				
Turkey / Turquie				
Ukraine				
United Kingdom / Royaume-Uni	●	●		
Canada	●	●		
Holy See / Saint-Siège				
Israel				
Japan / Japon				
Mexico / Mexique				
United States of America / Etats-Unis d'Amérique				

Legend:

- State has objected / *L'Etat a fait une objection*
- State intends to object / *L'Etat envisage de faire une objection*
- (*) Convention on the Elimination of All Forms of Discrimination against Women/ *Convention sur l'élimination de toutes les formes de Discrimination à l'égard des Femmes*
- (**) "The former Yugoslav Republic of Macedonia" / « l'ex-République yougoslave de Macédoine »
- (***) Consideration of political statement / *Considération d'une déclaration de nature politique*

APPENDIX III**INTERIM REPORT OF THE SECOND INFORMAL MEETING OF THE PARTIES TO THE
EUROPEAN CONVENTION ON STATE IMMUNITY
ATHENS, 13 SEPTEMBER 2006**

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

This is the report of the second informal meeting of the parties to the European Convention on State Immunity, which took place on 13 September 2006 in the margins of the 32nd meeting of the CAHDI. The participants concluded that the most straightforward way to proceed was for each party to the European Convention to denounce that Convention once the United Nations Convention on the Jurisdictional Immunities of States and their Property had entered into force.

The participants in the informal meeting included six of the eight parties to the European Convention and the signatory (Portugal). As at the previous meeting (see Appendix V to the report of the 31st meeting of the CAHDI, CAHDI (2006) 17) most of the parties to the European Convention confirmed that they were proceeding towards ratification of the United Nations Convention. They further confirmed that in due course the United Nations Convention regime should supersede that of the European Convention.

The participants recalled that there were at least two broad options to achieve this objective: denunciation of the European Convention, or an agreement (possibly some kind of declaration) that the European Convention would cease to apply. Having considered the options further, the participants concluded that the clearest and most straightforward approach would be for each party to the European Convention to denounce that Convention at an appropriate time once the United Nations Convention had entered into force for it.

The participants recalled that the entry into force of the United Nations Convention would take place on the thirtieth day following the date of deposit of the thirtieth instrument of ratification. They suggested that a further informal meeting of the parties to the European Convention should be convened when the entry into force of the United Nations Convention seemed imminent, in order to take stock of the position at that time.

APPENDIX IV

DRAFT SPECIFIC TERMS OF REFERENCE OF THE CAHDI FOR 2007-2008

1. Name of Committee:

Committee of Legal Advisers on Public International Law (CAHDI)

2. Type of Committee:

Ad hoc Committee of Experts

3. Source of terms of reference:

Committee of Ministers

4. Terms of reference:

Having regard to:

- Conclusions and Decisions of the Committee of Ministers (CM/Del/Concl(91)455/24, Appendix 5, extended by CM/Del/Dec(2004)904, item 10.1, para. 4 and Appendix 11);
- The need of development of legal and judicial systems and of law enforcement systems respectful of the rule of law and human rights.

Within the framework of the Programme of Activities, under Programme 3.4 - International law and law making, the Committee is instructed to:

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

5. Composition of the Committee:

5.A. Members

Governments of member states are entitled to appoint representatives of the highest possible rank, preferably chosen among the Legal Advisers to the Ministries of Foreign Affairs.

The Council of Europe budget will bear the travel and subsistence expenses on one representative from each Member State (two in the case of the State whose representative has been elected Chair).

5.B. Other participants

- i. The European Community may send representatives to meetings of the Committee, without the right to vote or defrayal of expenses.
- ii. The States with observer status with the Council of Europe (Canada, Holy See, Japan, Mexico, United States of America) may send representatives to meetings of the Committee, without the right to vote or defrayal of expenses.

iii. The following intergovernmental organisations may send representatives to meetings of the Committee without the right to vote or defrayal of expenses:

The Hague Conference on Private International Law
 North Atlantic Treaty Organisation (NATO)¹
 The Organisation for Economic Co-operation and Development
 The United Nations and its specialised agencies²
 European Organisation for Nuclear Research (CERN)³
 International Criminal Police Organisation (INTERPOL).

5.C. Observers

The following non-member States and non-governmental organisations may send representatives to meetings of the Committee, without the right to vote or defrayal of expenses:

Australia
 Israel⁴
 New Zealand
 International Committee of Red Cross (ICRC)⁵

6. Working Methods and Structures:

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

7. Duration:

The present terms of reference expire on 31 December 2008.

¹ See CM/Del/Dec/Act(93)488/29 and CM/Del/Concl(92)480/3.

² For specific items at the request of the Committee.

³ For specific items at the CERN's request and subject to the Chair's approval.

⁴ Admitted as observer « for the whole duration of the Committee » by the CAHDI, March 1998. The same is valid for subordinated committees. Decision confirmed by the Committee of Ministers (CM/Del/Dec(99)670/10.2 and CM(99)57, para.D15). See CM/Del/Dec(2000)735, item 2.1a, para. 4 and SG/Inf(2000)48, para. 34. See CM/Del/Dec(2001)742, item 10.1 and Appendix 8, see CM/Del/Dec(2002)816, item 10.1 and Appendix 7.

⁵ Admitted as observer for the whole duration of the Committee, see CM/Del/Dec(2003)861, item 10.1, para. 2 and CM(2003)146, para; 12; see CM/Del/Dec(2004)883, item 10.1, para. 1 and Appendix 16.

APPENDIX V

PRELIMINARY DRAFT AGENDA FOR THE 33rd MEETING

A. INTRODUCTION

1. Opening of the meeting by the Chair Sir Michael Wood
2. Adoption of the agenda and approval of the report of the 32nd meeting
3. Statement by the Director General of Legal Affairs

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12. Consideration of current issues of international humanitarian law
13. Developments concerning the International Criminal Court (ICC)
 - a. Conclusions of the 4th multilateral consultation on the ICC, 14-15 September 2006
14. Implementation and functioning of the Tribunals established by United Nations Security Council Resolutions 827 (1993) and 955 (1994)
15. Follow-up to the Outcome document of the 2005 UN World Summit - Advancing the international rule of law
16. Fight against terrorism - Information about work undertaken in the Council of Europe and other international bodies

D. OTHER

17. Date, place and agenda of the 34th meeting of the CAHDI
18. Other business
 - a. Inquiry of Secretary General under Article 52 of the European Convention on Human Rights
 - b. Status of ratification of Protocol 14 to the ECHR