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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)

32nd meeting
Athens, 13-14 September 2006

MEETING REPORT

Secretariat Memorandum
prepared by the Directorate General of Legal Affairs

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A. INTRODUCTION

1. Opening of the meeting by the Chair

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 32nd meeting in Athens on 13 and 14 September 2006. The meeting was opened by Ms Dascalopoulou-Livada, Chair of the CAHDI.

2. Ms Dascalopoulou-Livada welcomed all the participants to the meeting. The list of those who took part is set out in **Appendix I**.

2. Adoption of the agenda and approval of the report of the 31st meeting

3. In line with the discussion which the CAHDI had had at its last meeting, the Chair suggested adding a sub-item entitled "State practice in connection with digests of international law on the basis of the texts adopted by the Council of Europe" under agenda item 9 "Digest of state practice on international law, proposal for a new activity". The delegation of Norway suggested adding a sub-item on the "Status of ratifications of Protocol 14 to the European Convention on Human Rights" under "Other business". With these two amendments, the CAHDI adopted the agenda, as set out in **Appendix II.**

4. The Chair then suggested that the CAHDI approve the report of the 31st meeting (document CAHDI (2006) 17 prov). In this regard, changes were submitted by the delegations of Norway and the United Kingdom. With these changes, the report was adopted unanimously.

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

5. Mr Roberto Lamponi, Director of Legal Co-operation, reported on developments at the Council of Europe since the CAHDI's last meeting (Strasbourg, 23-24 March 2006). He first mentioned the follow-up given to the Third Summit of Heads of State and Government (Warsaw, 16-17 May 2005), making specific reference to the recommendations (notably on EU accession to the European Convention on Human Rights) contained in the report prepared by Mr Jean-Claude Juncker, Prime Minister of Luxembourg, on relations between the Council of Europe and the European Union, and to the setting up of a Group of Wise Persons to consider the issue of the long-term effectiveness of the European Court of Human Rights.

6. As regards political developments, the Director of Legal Co-operation referred to the referendum held in Montenegro on 21 May, the declaration of independence made by the Republic of Montenegro on 3 June 2006 and its subsequent request to join the Council of Europe. The Republic of Montenegro had expressed its intention to honour and implement the commitments and obligations contracted by the State Union of Serbia and Montenegro as a member state of the Council of Europe. As regards the two agreements signed with UNMIK in 2004, Mr Lamponi mentioned the adoption in June by the Committee of Ministers of the first resolution on the implementation of the Framework Convention for the Protection of National Minorities in Kosovo and NATO granting the European Committee for the Prevention of Torture access to NATO-run detention centres in Kosovo in July.

7. The Director of Legal Co-operation then reported on developments relating to the Council of Europe Treaties Series, notably in the field of terrorism (Council of Europe Convention on the Prevention of Terrorism, Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism), bioethics (Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin), nationality (Council of Europe Convention on the avoidance of statelessness in relation to State succession), and family law (draft European Convention on the adoption of children

(revised)). He also reported on the state of ratifications of Protocol 14 to the European Convention on Human Rights, amending the control system of the Convention with a view to reducing the backlog of cases.

8. Mr Lamponi went on to refer to the work carried out by the CODEXTER as regards the fight against terrorism, the GRECO with respect to the fight against corruption and the Venice Commission in the field of constitutional and electoral law. He also mentioned three upcoming high-level events: the 27th Conference of European Ministers of Justice on "Victims: place, rights and assistance" (Yerevan, 12-13 October 2006), the High-level Conference of the ministries of Justice and of the Interior on "Improving European co-operation in the criminal justice field" (Moscow, 9-10 November 2006) and the Joint OSCE/Council of Europe expert workshop on "preventing terrorism: fighting incitement and related terrorist activities" (Vienna, 19-20 October 2006).

9. The Director of Legal Co-operation concluded by paying tribute to the work of the CAHDI. He also hoped that the 4th multilateral consultation on the International Criminal Court (ICC) would help boost the development of an international justice system and contribute to the optimal functioning of the ICC.

10. Mr Lamponi's statement is reproduced in **Appendix III** to this report.

B. ONGOING ACTIVITIES OF THE CAHDI

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

11. The Chair stated that there had been no requests for the CAHDI's opinion, but that there were a number of decisions, listed in document CAHDI (2006) 18, which were of interest to the CAHDI.

12. She then made reference to the decision taken by the Ministers' Deputies first welcoming the holding of the 4th multilateral consultation on the implications for Council of Europe member states of the ratification of the Rome Statute of the International Criminal Court (ICC) and then taking note of the abridged report of the CAHDI's 31st meeting.

13. The Chair also referred to a particularly important statement made in the framework of the Ministers' Deputies' Rapporteur Group on Legal Co-operation, which suggested giving the meetings of the CAHDI more attention and looking into the possibility of organising an exchange of views with the Chair of the CAHDI at one of its forthcoming meetings or at the level of the Ministers' Deputies. The delegations of France, Portugal and the United Kingdom welcomed this proposal. The Secretary of the CAHDI added that he had since been informed of the wish expressed to have this exchange of views at the level of the Ministers' Deputies and that the most suitable time would no doubt be in November when they were asked to take note of the abridged report of the present meeting.

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

14. 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 information supplied by the Secretariat (document CAHDI (2006) 19).

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

16. With regard to the declaration and reservation made upon signature by Turkey on 14 September 2005 to the International Convention for the suppression of acts of nuclear terrorism, New York, 13 April 2005, the delegation of Poland stated that it was studying closely the reservation made by Turkey upon its country's ratification to the convention.

17. With regard to the reservation made upon signature by Egypt on 20 September 2005 to the International Convention for the suppression of acts of nuclear terrorism, New York, 13 April 2005, the delegation of Germany stated that it would proceed in the same way as with the reservation made by Egypt to the International Convention for the suppression of terrorist bombings, on which it had made a declaration.

18. The delegation of the Russian Federation stated that it was not going to formally object to the reservation made by Egypt, but it did not exclude making a political statement addressed to the government of Egypt. In this statement, it may argue that Egypt could not unilaterally place on other parties to the convention an additional international obligation to recognise its right, on the basis of this convention, to exercise criminal jurisdiction with regard to military personnel. The delegation of the Russian Federation could not accept the broadening by Egypt of the scope of application of the convention.

19. The delegation of Italy stated that it had already objected to this reservation and the delegation of Poland that it was studying it closely.

20. With regard to the reservations made by Brunei Darussalam to the Convention on the Elimination of all forms of discrimination against women, New York, 18 December 1979, the observer of Canada stated that it considering what it would do as regards this reservation which, in its opinion, was too broad and too vague even to be defined as a reservation. In the event of the statement being considered as a reservation, it thought it to be contrary to the object and purpose of the convention. The delegation of Portugal agreed with the observer of Canada, stating that it was also unsure as to whether this could be considered as a reservation as it did not meet the definition and criteria established by the Vienna Convention. As a result, it was considering objecting and possibly commenting on this as well. The delegation of Germany understood the point made by the observer of Canada and the delegation of Portugal, but stated that for its part, if Brunei Darussalam used the word reservation, it would consider it as a reservation (see paragraph 22).

21. The delegations of Belgium, the Czech Republic, Denmark, Finland, France, Greece, Hungary, Ireland, the Netherlands, Norway, Poland, Spain, Sweden and the United Kingdom stated that they intended to object to this reservation, which they qualified as too broad, too vague and too far-reaching. The delegations of Austria and Germany also announced their intention to object and specified that this reservation was in two parts: parts 9.2 and 29.1 and that the problematic part for them was Article 9, paragraph 2.

22. The Chair stated that the fact that eighteen member or observer states were considering objecting showed how unacceptable this reservation was.

23. With regard to the reservations made by Oman to the Convention on the Elimination of all forms of discrimination against women, New York, 18 December 1979, the delegations of the Czech Republic, France, Finland, Greece, Hungary, Ireland, Norway, Sweden and Turkey stated that they intended to object to these reservations. The observer of Canada took note of the point made by the delegation of Germany with respect to the reservations by Brunei Darussalam (see paragraph 21) and stated that it intended to object to these reservations. The delegations of Austria, Belgium, Denmark, Poland, Portugal, Spain and the United Kingdom stated that they intended to object to the first four reservations. The delegations of Germany and the Netherlands stated that they had already objected to these reservations, with the exception of the fifth one.

24. The Chair stated that the number of states having or considering objecting showed that these reservations would be almost universally objected to.

25. The observer of Canada informed the CAHDI that it had objected to the reservation made by Egypt to the International Convention for the suppression of terrorist bombings, New York, 15 December 1997. It had filed the objection to the declaration which was described as a reservation, considering it to be a unilateral extension of the terms of the convention by the government of Egypt.

26. As regards the declaration by Turkey to the International Convention for the Suppression of Terrorist Bombings, New York 15 December 1997, the delegation of Turkey stated that its declaration with regard to Article 29 was explicit. It reiterated its position that in the settlement of disputes with regard to this convention, the consent of both parties to the dispute must be given before the arbitration procedure had started. It concluded that it was satisfied that this had been clarified at the last meeting of the CAHDI.

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

28. With regard to the reservation made by Bulgaria to the Convention on Cybercrime (ETS no. 185), 23 November 2001, the delegation of Bulgaria referred to its written comments contained in document CAHDI (2006) 26. In addition, it provided the following information on the Bulgarian Penal Code: Article 21 of the Convention on Cybercrime was governed in Bulgarian law by Chapter 2, section 8 of the Penal Code and Article 20 by Chapter 9. Chapter 2, section 8 had a prescribed penalty of two to eight years' imprisonment while Chapter 9 had one of one to eight years' imprisonment. The delegation of Bulgaria stated that this meant that Chapter 2, section 8 applied to a narrower range of offences than Chapter 9 so the condition of Article 14 was thereby completed. However, it added that a new draft Penal Code had been submitted to the Bulgarian Parliament. Once it was adopted, Bulgaria would reconsider the need for this reservation and was likely to withdraw it.

29. The observer of the United States reported that the Senate had submitted its advice and given its consent to the Convention on Cybercrime, which was now awaiting the President's signature.

30. With regard to the declaration made by Latvia to 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, with respect to point 2, the delegation of Sweden asked whether this would only be applied to cases against Latvia. The delegation of Latvia stated that it would provide clarifications on this point at the next meeting of the CAHDI. The Chair nevertheless stipulated that it was up to the European Court of Human Rights to judge the admissibility of declarations and reservations.

31. The delegation of the United Kingdom mentioned having a chart relating to reservations and objections to international treaties. In reply, the Secretary of the CAHDI said that progress had been made in so far as the Finnish Presidency had provided it with information on objections made at the level of the EU. However, given the small number of objections, it felt it would be more useful to produce a chart including not only objections but also intentions to object during the course of the meeting. This chart would be submitted to the CAHDI for approval and a revised version produced, if necessary, before the end of the meeting. The CAHDI welcomed this initiative, which it felt would greatly facilitate its work.

32. The table listing the situation as regards objections (or intentions to object) to reservations and declarations to international treaties appears in **Appendix IV** to this report.

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

33. The Chair introduced this item by referring to the relevant working documents, CAHDI (2006) 6 rev and CAHDI (2006) 7. As document CAHDI (2006) 6 rev contained new reservations as well as reservations that had already been examined by the CAHDI, the Secretariat had prepared and distributed a list of the reservations and declarations made to treaties applicable to the fight against terrorism during the period from 1 September 2005 to 1 September 2006, which included references to the relevant pages of document CAHDI (2006) 6 rev.

34. With regard to the declaration made by Luxembourg on 10 May 2006 to the Convention on the prevention and punishment of crimes against internationally protected person, including diplomatic agents, New York, 14 December 1973, the Chair felt that this declaration still needed looking into.

35. With regard to the declaration made by Brazil on 25 October 2005 to the Convention for the suppression of unlawful acts against the safety of maritime navigation, Rome, 10 March 1988, the Chair felt there might be a problem with article 6.2 and article 8.

36. With regard to the declaration made by Indonesia on 29 June 2006 to the International Convention for the suppression of the financing of terrorism, New York, 9 December 1999, the Chair felt there might be a problem with article 7.

6. State Practice regarding State Immunities

37. The Secretariat informed the CAHDI that a copy of the publication "State Practice Regarding State Immunities" had been distributed to each delegation. In this connection, information provided by the publisher had indicated that there had been a great deal of interest in the book.

38. It then referred to document CAHDI (2006) Inf 7 bil, a printout of the online database on State Practice regarding State Immunities. It appealed to those delegations which had not yet submitted their contributions to do so at their earliest convenience.

39. The delegation of Portugal expressed its gratitude and admiration for the publication, which it intended on distributing to the competent ministries and authorities in its country. It then stated that Portugal was in the process of ratifying the UN Convention on Jurisdictional Immunities of States and Their Property.

40. The delegation of the United Kingdom drew attention to the recent decision of the House of Lords in the case Jones v. Saudi Arabia. It offered to make this judgment available, via the Secretariat, upon request. In reply, the Chair asked the delegation of the United Kingdom to circulate the judgment, which it considered to be of interest to all. The judgment was later circulated as document CAHDI (2006) Misc 01.

41. The observer of Japan welcomed the publication of the book and provided an update on the recent case-law on state immunity in Japan. In July, the Supreme Court of Japan, in a clear statement, adopted the rule of restrictive immunity and overruled the existing case-law of absolute immunity, which dated back to 1928.

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

42. The Chair introduced this item by referring to the relevant working documents, CAHDI (2006) Inf 8, CAHDI (2006) 13 Addendum and CAHDI (2006) 27. Document CAHDI (2006) 13 Addendum, submitted by the observer of Japan, was an illustration of the way in which the database could be updated.

43. The observer of Japan commented on the update it had supplied, indicating that the change was that as of 1 August 2006, the Economic and Social Treaties Division had been split into two: an Economic Treaties Division and a Social Treaties Division. As a result, the International Legal Affairs Bureau of the Japanese Foreign Ministry had four units instead of three, the aim being to strengthen its capability to participate in the negotiation of treaties and to accelerate the ratification process, particularly for those treaties it had already signed but not yet ratified.

44. The delegation of the United Kingdom considered the database now available on the Council of Europe's website as being particularly useful. It occasionally received enquiries from other governments as to how it or others organised their legal office and it was useful to be able to point enquiries towards this database, which contained a great deal of material. It stressed, however, that it would be even more useful if it were complete. It also felt that the observer of Japan had set a very good example with the update it had supplied and encouraged other delegations to update their entries as and when there were significant changes.

45. Sir Michael Wood from the delegation of the United Kingdom recalled that at the last meeting of the CAHDI, it was suggested that the CAHDI might have a discussion about the role(s) of Foreign Office legal advisers. He had submitted a personal non paper (CAHDI (2006) 27) to start the discussion off, which tried to give preliminary thoughts of what the role of Foreign office legal adviser might be in relation to public international law. The paper was in two parts: Page 2 tried to set out what was special about the international legal system and tried to draw some conclusions about the role might involve. The special nature of the international legal system was well known to the CAHDI – customary international law developed from state practice and that included what foreign ministries did and what their lawyers advised them to do. Secondly, there was generally no court or tribunal with compulsory jurisdiction: public international law was often less clear in its details and there was no legislature. As advisers to governments, legal advisers were operating in a different background to those of colleagues who advised other ministries dealing with domestic law or a lawyer advising a private client. On page 3, he had tried to see what the special nature of the international legal system meant for the role of the foreign ministry legal adviser. The first point was that part of the role was to seek to ensure the government she/he advised complied with international law. It was also important to look not only at the government you advised but also local governments or various parts of the state for which it bore responsibility. The second point was to ensure the government supported international legal institutions such as the International Court of Justice, the International Law Commission, etc. and that it took their work seriously. The third element was to work for the sound development of public international law and of institutions of public international law. Fourthly and fifthly, legal advisers often worked together to these ends and the CAHDI was a good example of this, as was the International Law Week. Likewise, they often found themselves working with non-governmental bodies such as the ICRC and the International Law Association.

46. The Chair thanked the delegation of the United Kingdom for its paper, which was of great interest.

47. The delegation of Portugal stressed the importance of this agenda item and the usefulness of the non paper produced by the delegation of the United Kingdom, particularly in so far as it was intending to update its entry as its administration was been reorganised. This paper would help to demonstrate to government and politicians the special role of the Office of the Legal Adviser plays.

48. The delegation of Denmark thanked the delegation of the United Kingdom for putting its thoughts on paper and agreed that the CAHDI should pursue its discussion on this item.

49. The observer of Canada stressed that what it had been trying to do was to help its department and the government in general understand that the Office of the Legal Adviser was not "the place you go to when you run into trouble" but it was part of the DNA of the development of foreign policy. It stressed that it was doing international law within a political framework, which required elasticity of mind and flexibility of vision. It saw itself as a horizontal element in a foreign ministry that is usually divided in stovepipes, and that it created the crosswalks between them.

50. The delegation of the Netherlands agreed that it was important to advise as fairly and as objectively as possible about the state of the law. However, how should it act when its country was involved in a case before the International Court of Justice? In this instance, its role could sometimes be quite different from its internal role, becoming more that of an advocate to defend the position of its country.

51. The delegation of Norway stressed that it felt that the assumption underpinning the non paper was that it was a good idea to have a clear division between legal advice on the one hand and policy making on the other. As regards the challenges to advance and promote international law, this had to be done through international politics and building bridges between legal advice and policy making. Was the Office of the Legal Adviser a foreign body in a foreign ministry or was it an integral part of policy making? Going on the examples provided by the delegation of Denmark and the observer of Canada, it felt it was important to enhance the role of international lawyers in foreign ministries in contributing to policy making. It also agreed with the delegation of the Netherlands in so far the Office of the Legal Adviser had to keep switching roles.

52. The delegation of the United Kingdom stressed that the non paper spoke to the philosophy of the role of legal advisers and how this should be translated in practical terms and how they interacted with policy colleagues. The observer of Canada and the delegation of Norway had given examples of issues that have arisen there. It had been trying to translate this philosophical, holistic approach and come up with a number of tangible comments which it had put to its policy colleagues: 1. the role of the legal adviser was to advise; 2. the role of lawyers was to be the "keeper of the bright lines"; 3. the advantages of meetings such as the CAHDI was that legal advisers had their own networks and when issues arose on legal advisers' networks which they thought ought to be put on the table of policy colleagues, that was their role as well; 4. building on that and as pointed out by the Chair, it is useful for lawyers to be sitting around the strategic policy table from the outset and had, like economists, something to contribute to the debate; 5. a practical point, as highlighted by the delegation of the Netherlands, sometimes when all is said and done, they had to act in the defence.

53. The observer of Mexico suggested that in future the CAHDI concentrate on sub-agenda items to see how different offices had addressed certain issues. The challenge for its office was the implementation at national level of international obligations. International treaties were automatically incorporated into its domestic law, which had to be accompanied by implementation legislation at a given time. Its office had embarked on a difficult exercise in drafting bills to be put forward before Congress for the implementation of international treaties to which Mexico was a party. Examples cited had to do with the Rome Statute establishing the ICC and the Convention against chemical weapons. It added that in other

countries, this task was sometimes delegated to other ministries, such as the Ministry of Justice, but it felt the Ministry concerned was not competent to address the question of implementation legislation. It felt that the Ministry of Foreign Affairs had a responsibility to honour international obligations. On the question of implementation legislation, the observer of Mexico thought that it could learn a great deal from its European partners. The sub-agenda item issues proposed included the implementation of UN sanctions, domestic legislation, and extradition: the decision to extradite was a matter for the competence of the Ministry for Foreign Affairs and not the Attorney General's Office as in Mexico it was regarded as a political decision. This issue, it stressed, became very complex when Mexico began to extradite nationals six years ago.

54. In response, the Chair suggested the observer of Mexico produce a paper of its own and invited other delegations to do so as well.

55. The Secretary of the CAHDI added that a revised version of document CAHDI (2006) 8 bil would be issued as the submissions by Latvia and Serbia, which were already in the online database, had been omitted. To date, the database included a total of 36 replies: 31 from member states and 5 from observer states.

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

56. The Chair reminded the CAHDI that it had decided to have a general discussion on this point at its last meeting. The Chair had circulated a paper (document CAHDI (2006) 29) with an introduction to the database on national implementation measures of UN sanctions and respect for human rights. This introduction was split into two parts: the first part gave a general summary of the responses to the questions that had been addressed to the CAHDI; the second referred to the developments in the UN context and to some academic contributions regarding targeted sanctions. In this connection, the Chair had asked Mr John Smith from the United Nations to check whether the information contained in the second part was accurate.

57. The representative of the United Nations confirmed that the information was accurate but sought to provide an update. As regards the footnote in paragraph 2 and the work being done by the OLA at the UN, a few months ago, the Legal Counsel of the UN, Mr Michel, outlined to the Security Council certain minimum standards of due process that he and the Secretary General thought necessary for the sanctions committee. With respect to footnote 3, he specified that not only the Chairman but also members had proposed further amendments to the listing but also the delisting sections of the guidelines. He also reported on the progress made in an open briefing to members of the UN and the Committee had reached agreement on most of the listing recommendations and would move to delisting in the autumn.

58. The delegation of Switzerland added that with respect to footnote 6 the report by the Watson Institute had been commissioned by the governments of Germany, Sweden and Switzerland. This report (document R/60/887-S/2006/331) entitled "Strengthening targeted sanctions through fair and clear procedures" had, at the request of the three permanent representatives in New York, been translated into all the official languages of the UN.

59. The observer of Canada considered the topic to be very useful, pertinent and timely. The deficiencies had already been discussed. It mentioned the experience it had had with an individual who had been listed, then had sued the government, which had had to pay out compensation. There was an incentive for a new system. It had recently amended its regulations which implement sanctions against terrorists, essentially Resolutions 1373, 1267 and 1333. As regards improving sanctions, it had been working on clearer listing and delisting procedures, the protection for mistaken identity cases, the granting of exemptions from the asset freeze for basic personal or extraordinary expenses and streamlined reporting

and monitoring requirements. It was motivated by the fact that the Security Council should continue its work to put in place due process guarantees including those related to the listing and delisting of individuals and entities, which were essential to the credibility of targeted sanctions regimes.

60. In response, the Chair thought that this meant that these new developments could be added in the database by means of an amended contribution by the observer of Canada. In response, the observer of Canada stated that it would gladly supply information on the measures it had put in place in order to address some of the concerns mentioned.

61. The delegation of Sweden stated that its country had always been quite critical as regards the procedure in the sanctions system, had moved for improvements in the system, had tried to see to it that clearer criteria for listing and delisting were developed and wished to see some sort of remedy against a decision to list. It saw from the Watson Institute report that this could be done in many different ways and it stressed that some sort of remedy should be found. Sweden supported many of the ideas contained in the report. It wondered, now that the report was available in all languages, what the next steps would be. Like Canada, Sweden had been confronted with three Swedish citizens being put on the list, two of them having been delisted two years ago and the third having been delisted two months ago. This raised the question of compensation, but no case had so far been brought before a Swedish court. It asked those members of the Security Council as to developments there.

62. The delegation of Germany reminded the CAHDI that the joint Swiss-Swedish-German initiative started in the 1990s with a number of ideas which helped to ensure sanctions were better targeted and a sharper tool. In the framework of the Interlaken process, they dealt with financial sanctions. In the framework of the Bonn-Berlin process, they provided sets of model sanctions in travel and air traffic and arms embargo, as it did also in the Stockholm process. This step-by-step approach reflected the common view of all three countries in favour of targeted, sharp and efficient sanctions. However, they saw that some kind of balance to ensure a fair listing and delisting process was required. It also asked Security Council colleagues as regards two current proposals: the French idea of having a focal point within the Secretariat, which it supported, and the US proposal for the ATC guidelines, which allowed a direct access to the members of the Security Council Committee for listed persons if they had followed the local remedy rule.

63. The delegation of France confirmed that it had recently proposed the setting up of a focal point mechanism to serve as a single entry and exit point for all delisting and exemption requests. The aim was to establish common standards for delisting and exemption procedures for all committees, to improve knowledge and transparency of procedures for those concerned and to guarantee that all requests reach the relevant/competent sanctions committee.

64. The delegation of the United Kingdom stated that it was taken by the French focal point proposal, that it had been discussed with colleagues having put in other proposals and that great progress had been made towards this, which it fully supported.

65. The Chair informed the CAHDI that document CAHDI (2006) 29 would be amended accordingly and a revised version produced.

9. Digest of state practice on international law

a. Proposal for a new activity

66. The Chair referred to the proposal made by Oxford University Press (OUP) to create an online digest of state practice on international law and the discussion the CAHDI had had on this subject at its last meeting, which was recorded in the report of the meeting (document CAHDI (2006) 17).

67. The Secretary of the CAHDI had conveyed the CAHDI's misgivings to OUP, which had replied by providing some preliminary comments, pending a full formal response which would follow in due course.

68. As regards the question of who would compile the collections, OUP responded that the model it had in mind was the one that it used in the United Kingdom where a research department (at the University of Durham) worked with the Foreign Office. The Foreign Office did not do anything to organise materials but did keep files of useful or important documents that they thought the people in Durham might use in their compilation. It added that Durham had also found a lot of material on its own – usually from the Parliamentary record or by monitoring Government websites. In some other countries the research institutes (for instance the Asser Institute in the Netherlands) worked very closely with the Foreign Office on other issues which obviously facilitated matters. In the United Kingdom, the Foreign Office also checked what the researchers had chosen and how it had been categorized. The involvement that it envisaged for CAHDI was in convincing Legal Advisers to co-operate with OUP and suggest good law faculties with which it could work. Ideally it thought they might even make the initial contact with the universities or at least allow OUP to write to the law faculties citing the support or approval of their Legal Advisers for the project.

69. With respect to competition for existing collections, it stated that in its experience the paper versions of publications were rarely affected by the availability of online services, partly because the habit that libraries had of subscribing to yearbooks was quite hard to break. Furthermore, the issue mentioned of current compilations being too lengthy was not an issue in an electronic environment.

70. On translations, OUP did not think that it ever envisaged translating all content, because of the cost of translation. Two approaches were a) to translate selected materials or passages, or b) to try to get the people compiling it to write some description/commentary so that users knew whether it would be worthwhile getting the material translated into their language.

71. As regards general coverage of subject specific, OUP was considering sticking to a core set of topics such as immunity, terrorism, justiciability of government action. Alternatively it could aim high and try to cover the full range of what was in the Model Plan.

72. On the subject of definitions, OUP did not want to risk definitions at this point. It tended to think of state practice as falling into categories: legislation, treaty practice, parliamentary practice, judicial decisions, and then a miscellaneous category for diplomatic letters, legal adviser opinions, submissions to the UN, etc. Regarding one of these categories it wished to direct the CAHDI to the online law reporting service which it was about to launch: International Law in Domestic Courts. OUP had stated that this project was still a pre-launch version but it gave an idea of the sort of project it could take on: 120 reporters from around the world, a central editorial team (in Amsterdam), lots of translations.[1]

73. OUP had kindly provided CAHDI delegations the login and password to access this site[2] which the Secretariat stressed should be treated as restricted information and kept within the confines of the Committee.

74. The Chair suggesting postponing any further discussion on this point until a full, formal response was received from OUP.

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[1] See http://ildc.oup.semcs.net/.

[2] Delegations wishing to have the Login and password codes are kindly requested to contact the CAHDI Secretariat.

b. State practice in connection with digests of international law

75. The Secretariat reminded the CAHDI that the delegation of the United Kingdom had suggested the CAHDI have a discussion of a more general nature entitled "Publication of state practice" and put forward the idea that states each prepare a short note on the publication of state practice in their country, along the lines of the submission by the delegation of the United Kingdom. This could possibly be done by means of an easily accessible database.

76. The delegation of the United Kingdom did not necessarily think of this in terms of a database but more a collection of references. It thought it would be very interesting to know from each CAHDI member what, if anything was published in their own country, whether officially or unofficially, that reflected state practice. For its part, it knew the position in certain countries but certainly not in all member and observer states represented in the CAHDI.

77. The Chair reminded the CAHDI that it had decided to look at the Council of Europe resolutions and recommendations to see whether and in what way each state had incorporated these texts. It encouraged states to respond to this in time for the next meeting.

78. The delegation of the United Kingdom thought that the focus should be on the publication of state practice in each of the countries and did not think adding the reference to the Council of Europe decisions was necessary. Most of national state publications would not doubt be based on the Council of Europe's decisions but it was not linked to those Council of Europe decisions. It added that a short paragraph from each delegation would enable the CAHDI to decide on how to proceed on this question.

79. The CAHDI agreed to follow the suggestion made by the delegation of the United Kingdom.

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

80. The Chair welcomed Mr Constantin Economides, member of the ILC and invited him to present an account of the work of the ILC over the last year.

81. Mr Economides started off by pointing out that he was not speaking on behalf of the ILC but in his own name and in his capacity as a member of the ILC. Under the chairmanship of Mr Guillaume Pambou-Tchivounda (Gabon), the ILC had achieved very satisfying results during its twelve-week session. It had adopted on second reading the draft articles on Diplomatic Protection with commentaries. Mr Economides made specific reference to three out the nineteen articles, which he said formed part and parcel of the development of international law: Article 8 on *Stateless persons and refugees*, Article 18 on *Protection of ships' crews* and Article 19 on *Recommended practice*. He also indicated that in the framework of the discussions on the draft articles, the suggestion had been made to merge Articles 16 on *Actions or procedures other than diplomatic protection* and 17 on *Special rules of international law* into a single provision, which as *lex specialis* would have priority over diplomatic protection. The ILC recommended to the General Assembly the elaboration of an international convention on the basis of the draft articles on Diplomatic Protection. He hoped that states would follow the recommendations contained in the draft articles and that the General Assembly would take a similar decision to the decision it took on the articles on responsibility of States for internationally wrongful acts as he considered diplomatic protection to be part of the international responsibility of a state.

82. Mr Economides then referred to the adoption on second reading of the Principles on International liability in case of loss from transboundary harm arising out of hazardous activities together with commentaries. These principles were part of a wider issue, that of International liability for injurious consequences arising out of acts not prohibited by international law. This project, which contained eight principles, complemented the 2001 ILC project on Prevention of transboundary damage from hazardous activities. These principles were recommendations to states on how to settle questions of international liability stemming from transboundary damage from hazardous activities. Mr Economides thought that it would be interesting to look at the impact that these principles would have on state practice.

83. Mr Economides went on to mention the adoption on first reading of a set of 19 draft articles on the law of transboundary aquifers together with commentaries. This question, like that on petrol and gas, were part of the issue on shared natural resources. The draft articles on transboundary ground waters were modelled on the 1997 Convention on the Law of Non-Navigational Uses of International Watercourses. Given that the question of transboundary aquifers were fairly new, the ILC was awaiting the observations from governments with great interest and hoped to resume consideration of this project in 2008 with a view to adopting it on second reading. Mr Economides stressed that this was an important project for the ICL in so far as it was destined to become an international convention.

84. As regards the responsibility of international organisations, the ILC examined the fourth report of the Special Rapporteur and adopted 14 draft articles together with commentaries, dealing with circumstances precluding wrongfulness and with the responsibility of a State in connection with the act of an international organisation.

85. With respect to reservations to treaties, Mr Economides informed the CAHDI that the ILC had adopted five draft guidelines dealing with the validity of reservations together with commentaries. The ICL also considered the second part of the Special Rapporteur's tenth report and referred to the Drafting Committee's 16 draft guidelines dealing with the definition of the object and purpose of the treaty and the determination of the validity of reservations.

86. On unilateral acts of States, the ILC reconstituted the Working Group on Unilateral Acts with the mandate to elaborate conclusions and principles on the basis of work already carried out. The ILC adopted a set of 10 guiding principles together with commentaries relating to unilateral declarations of states capable of creating legal obligations and commended the guiding principles to the attention of the General Assembly.

87. With respect to the effects of armed conflicts on treaties, the ILC considered the second report of the Special Rapporteur. Mr Economides stated that this had provided the opportunity for another general debate on the issue and that a majority of members were of the opinion that this question should take account of the fundamental distinction between a State committing an aggression and a State exercising its rights of individual and collective self-defence in accordance with the Charter of the United Nations and as outlined in Resolution 1985 of the Institute of International Law.

88. As regards the obligation to extradite or prosecute ("*aut dedere aut judicare*"), the ILC had examined the preliminary report of the Special Rapporteur.

89. On the question of the fragmentation of international law and the difficulties arising from the diversification and expansion of international law, the ILC considered the report of the Study Group and took of note of its forty-two conclusions, which it recommended to the attention of the General Assembly. The conclusions were split into 6 parts: 1. General; 2. The maxim *lex specialis deorgat legi generali*; 3. Special (self-contained) regimes; 4. Article 31 (3) (c) of the Vienna Convention on the law of treaties; 5. Conflicts between successive norms and 6. Hierarchy in international law: *Jus cogens*, Obligations *erga omnes*, article 103 of the Charter of the United Nations. The report and its conclusions were prepared on the basis of an analytical study finalised by the Chairman of the Study Group, which summarised

and analysed the phenomenon of fragmentation taking account of studies prepared by the various members of the Study Group itself. The ILC requested that the analytical study be made available on its website and be published in its Yearbook. On this issue, Mr Economides regretted that a study on the fragmentation of international law did not comment on and thus take on board the distinction between positive and negative fragmentation.

90. Mr Economides then informed the CAHDI that the ILC endorsed the inclusion of the following topics in its long-term work programme: immunity of State officials from foreign criminal jurisdiction, jurisdictional immunity of international organisations, protection of persons in the event of disasters, protection of personal data in transborder flow of information and extraterritorial jurisdiction. These issues were all of particular interest, said Mr Economides, but he felt the ILC should also look at more important issues which had a bearing on the consolidation and development of international law. He concluded by saying the ILC had pursued its co-operation with the International Court of Justice, the Council of Europe's European Committee on Legal Co-operation and the CAHDI as well as the Asian-African Legal Consultative Organization and the Inter-American Juridical Committee.

91. The Chair thanked Mr Economides for his presentation and asked Ms Paula Escarameia, who was present among the Portuguese delegation and was also member of the ILC, whether she had anything to add. Ms Escarameia pointed out that among the most contentious issues raised during the 58th session was that of diplomatic protection. Mr Economides had mentioned Articles 8, 18 and 19, however, Article 9 on the State of nationality of a corporation was equally contentious. The debate on what nationality should be given to corporations had been very lengthy and this also applied to non-corporations, legal persons who were not corporations such as NGOs, universities, etc. As regards Articles 16 and 17, Ms Escarameia was of a different opinion than Mr Economides and believed they should be kept separate as the first dealt with other methods of protecting the individual besides diplomatic protection such as human rights protection whereas Article 17 dealt mostly with bilateral investment treaties. In Article 16, diplomatic protection did not prejudice other means of protection of human rights whereas in Article 17, it was *leg specialis* and would oversee the diplomatic protection.

92. On the question of International Liability, Ms Escarameia was very critical of the draft adopted by the ILC, but hers was an isolated position. There had been a strong debate on whether to adopt articles or principles and the language to be used, which in the end was recommendatory language, which she disapproved of. However, the work on liability had led to something concrete, which was positive in itself.

93. As regards the law of transboundary aquifers, Ms Escarameia noted the innovative method used and highlighted the valuable input provided by the scientific community.

94. On reservations, she stated that an issue which was being debated on and would no doubt be of interest to the CAHDI was the question of the role of treaty monitoring bodies in human rights treaties as well as categories of reservations that should not be allowed. A seminar on these issues was foreseen next year with UN human rights bodies.

95. With respect to unilateral acts, the main question was what type of unilateral acts was one talking about? The principles were adopted, but they were for a specific set of unilateral acts, formal declarations. More informal declarations, such as silence, were referred to in the preamble and were not prejudiced by what was adopted for the more formal declarations.

96. As regards the effects of armed conflicts on treaties, an issue raised by Mr Economides was the position of the aggressor versus the victim, which could not have the same position regarding the validity of treaties. The last issue Ms Escarameia mentioned was the open debate as to whether to set criteria/factors for the continuity of treaties or not.

97. The delegation of Germany stated it was satisfied with the work of the Special Rapporteur on diplomatic protection, Mr John Dugard, however, the question of who might exercise the right to protect in cases of economic enterprises remained problematic. The ILC allocated this right in principle to the state where a company had been registered, with two exceptions: when an enterprise had ceased to exist then shareholders or the state of the residence of shareholders took over and exercised diplomatic protection/jursidiction and if the state where the company was registered was part of the international wrongful act which was being attacked. In its view this was too narrow and no longer reflected the current modern globalised world where shareholders and shares divided among more parties.

98. As regards responsibility of international organisations, the delegation of Germany commended the work of Professor Gaja of Italy but believed it was now most important to deal with the conditions under which certain acts of international organisations could be attributed to their member states. With regard to transborder natural resources, the delegation of Germany considered the work done by Mr Yamada as being very valuable, however, it favoured the elaboration of flexible guidelines and was less convinced about the feasibility of a treaty framework. On the issue of reservations to international treaties, the delegation of Germany was grateful to Professor Pellet but was keen that the ILC focus on issues with practical relevance. Finally, as regards the expulsion of aliens and the work of Mr Kamto, the delegation of Germany expressed criticism as to Mr Kamto's approach, which focused more on procedural guarantees for those who will be returned to their home countries and less on the duty of a nation state to take its own citizens back. It called for a clearer balance between the two. As a practitioner, he said, he had several cases of embassies of third states actively "co-operating" with aliens in Germany by hiding their nationally, not giving them passports or other documents for return, thus ensuring their nationally remained unclear and that they could not be expulsed.

99. The delegation of the United Kingdom welcomed the conclusion of the process overseen by Mr Dugard on Diplomatic Protection but stated that not all the draft articles crystallised existing international law and referred to the question of continuous nationality or that of corporations. It was certain that there would be some discussion about Article 19, which was usual as it was a recommendation. The delegation of the United Kingdom would also be considering how the draft should be taken forward and noted that the Commission had changed its view in favour of a treaty process and there were risks associated with this. On the responsibility of international organisations, the delegation United Kingdom expressed concern that the proposal followed the state responsibility model a little too closely. On the question of reservations, it found it interesting and hoped it moved forward fully, noting the current work being carried on objects and purposes. On fragmentation, the delegation of the United Kingdom would be studying the reports very closely, but one concern was the Group's disinclination to allow States to comment as the process had gone on. Finally, the delegation of the United Kingdom stated that it thought the forward programme was a very serious programme of topics and hoped that one or more would be taken forward.

100. The representative of the European Commission commented on the Articles on the Responsibility of International Organisations and in particular the new Article 28 on "Use by a State that is a member of an international organization of the separate personality of that organization" and the provision that by providing competence to an international organisation, this may lead to circumvention of a state's own obligation. It considered the provision over-inclusive as it did not mention the case where there existed a comparable level of protection in a particular area in the international organisation.

101. The delegation of Norway stated the work carried out on diplomatic protection had progressed very far and wished to see the final product consolidated and integrated into the body of international law. With regard to the point raised by the delegation of Germany on expulsion of aliens, the delegation of Norway agreed that this element needed to be focused upon before continuing further in a practical way. The delegation of Norway also fully subscribed to the issues raised by the delegation of the United Kingdom.

102. In response, Mr Economides noted that the question of the expulsion of aliens would only be taken up next year so could not present a position on the all-important balance referred to by the delegations of Germany and Norway. With regard to the comment made by the representative of the European Commission on the new Article 28, Mr Economides stated that the wording was not yet final but the essence was that if a State assumed an international obligation and did not respect this obligation by trying to act through an international organisation, the State should be held responsible. As regards transboundary aquifers, the debate was still open as to whether an international convention or guidelines would be more appropriate. He encouraged states to submit comments on the ILC's work.

103. For her part, Ms Escarameia encouraged states, within the Sixth Committee, to encourage the publication of the excellent analytical study of the Study Group on Fragmentation of International Law, chaired by Professor Koskenniemi.

104. The Chair thanked the Secretariat for putting the report of the ILC on the work of its 58th session (document CAHDI (2006) Inf. 10) at the disposal of the CAHDI in advance of the meeting.

105. The delegation of Sweden recalled the initiative taken by Sweden and Austria a couple of years ago to make the debate concerning the ILC report more vivid and to create a more informal atmosphere. The delegation of Sweden asked whether they should continue to support this approach and encouraged more in-depth discussions on specific topics within the Sixth Committee.

106. Ms Escarameia welcomed the initiatives taken and proposals made by Austria and Sweden but acknowledged difficulties in making the work of ILC more "exciting". She added that one of the problems with the ILC is that it worked in enormous isolation from the world. This had to some extent been remedied by the participation on certain topics of the scientific community and UN human rights bodies. She did feel, however, that a stronger link needed to be established between the ILC and the Sixth Committee. More informal consultations between ILC and Sixth Committee members should be scheduled, both during sessions and throughout the year.

107. The Chair stated that one of the ICL's ongoing complaints was not getting sufficient input from the Sixth Committee. She stated that the proposals put forward by Sweden and Austria had gone a long way to address the type of concerns expressed by Ms Escarameia. She did not know whether it was possible to accommodate more meetings during the two-week timeframe but stated that the possibility of contacts outside the period of the General Assembly should be examined and informal contacts should not be confined to this period.

108. Mr Economides thanked the delegation of Sweden for its role in promoting co-operation between the ICL and the Sixth Committee and stated the Swedish-Austrian initiative had been welcomed wholeheartedly. He also supported the statement made by Ms Escarameia. He added that the ILC should systematically point out any controversial issues in its report to the Sixth Committee. The last issue of concern raised was the lack of transparency in the work of the ILC as well as a need for more work on the part of Sixth Committee.

109. The Chair closed the discussion by thanking the members of the International Law Commission for their input.

11. Peaceful settlement of disputes: Compulsory jurisdiction of the International Court of Justice (ICJ) (Article 36 (2)) and overlapping jurisdiction of international tribunals

110. The Chair referred to a revised document presented by the delegation of Portugal (document CAHDI (2006) 5 add) and working document CAHDI (2006) 4.

111. The delegation of Portugal had produced a revised version of its first paper in order to meet the concerns expressed by the CAHDI. It had attempted to simplify and narrow the subject matter in the light of new court decisions such as the Bosphorus case and the Mox Plant case. From that, it had tried to extract possible principles set up by the courts in dealing with overlapping jurisdictions. It had concluded by attempting to raise three main questions it thought the CAHDI could look at.

112. The delegation of Poland thought the issue of the jurisdiction of international courts and tribunals was important and deserved further elaboration. The rapid multiplication in international courts and tribunals had already created a number of problems, some of which were listed in the documents submitted by the delegation of Portugal. It was of the opinion that the creation of a coherent international judicial system was essential for advancing the international rule of law and would be one of the building blocks of a balanced international order, as described in the discussion paper on advancing the international rule of law submitted by the delegation of Switzerland.

113. The delegation of the United Kingdom agreed with the delegation of Poland and stated that it thought this was a useful and interesting initiative. The Portuguese paper referred to the Bosphorus case, the Mox Plant case and at the CAHDI's last meeting, there was reference to the Swordfish case which raised law of the sea and WTO issues. It would like to see further discussion on this, not to take undue responsibility, but would be happy to put forward a small paper of its own for the next meeting which would touch upon some of these issues. The delegation of the United Kingdom added that it would welcome if others did so as well.

114. The delegation of France considered this as one of the most interesting yet complex issues before the CAHDI. It proposed having exchanges of views on specific cases, as suggested by the delegation of the United Kingdom and as listed in the Portuguese paper, but thought that elaborating a theory would be more difficult.

115. The delegation of Sweden felt this was a very complex issue and did not see what governments could do about it. It thought that scientists could look into it and make an analysis of the principles that could be applied.

116. The representative of the European Union stated that there was an important distinction between the overall problem of overlapping jurisdictions and specific cases to be looked at. From its point of view, the Mox Plant case was a very special case involving norm of the EC treaty which had been authoritatively interpreted by the Court. It would be difficult to see now whether suggestions would be made that deviated from the Court judgement. This said, it thought it important to look at other open issues and some had already been addressed in the report by the Study Group on the fragmentation of international law finalised by Professor Koskenniemi. This could constitute a reference point to discuss specific recommendations.

117. The Chair concluded that there was a vivid interest in the subject as such, which could be contained in the overall fragmentation issue. Any future discussion would have to take the report mentioned by the representative of the European Union into account. The

CAHDI should pursue its discussion on this issue, with a view to better understanding the problem. She suggested keeping this item on the agenda of the next meeting and invited CAHDI members to study the Portuguese paper or produce their own paper in time for the next meeting.

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

118. Sir Michael Wood informed the CAHDI of the outcome of the second informal meeting of the Parties to the European Convention held in the margins of the CAHDI meeting on 13 September 2006. The report of the meeting is set out in **Appendix V** to the present report.

13. Consideration of current issues of international humanitarian law

119. The delegation of the International Committee of the Red Cross (ICRC) reporting on two major developments. Nauru and the Republic of Montenegro had recently acceded to the Geneva Conventions, which brought the total to 194 states and meant universality of the movement. This is the first time in modern international law that an international law treaty had become universal. The 3rd Protocol to the General Conventions was ratified by five states and would enter into at the end of 2006. The adoption of this new instrument had enabled the holding of the June International Conference of the Red Cross and Red Crescent, which led to amendments to the Statutes of the International Red Cross and Red Crescent Movement and relating to the adoption of an additional distinctive emblem.

120. As regards developments in the field of international humanitarian law, the delegation of the ICRC had conducted a number of meetings on the conduct of hostilities so as to find guidelines for the interpretation or rules relating to the conduct of hostilities (principle of proportionality, precaution measures, etc.). With respect to penal repression, the ICRC was promoting the adoption of national legislation to punish war crimes. It had initiated reflections with a view to better enforcement of international humanitarian law and organising meetings to see to a better application of international humanitarian law sanctions.

121. In the framework of the preparation of the next international conference to take place in 2007, it had sent a questionnaire out to the States Parties to the Genera Conventions to launch an inquiry and prepare a report on the follow-up given to the agenda for humanitarian action. The deadline for the replies to the questionnaire was June 2007.

122. The delegation of Switzerland stated that it was equally satisfied at the movement becoming universal. The 1st protocol counted 166 states parties and the 2nd 162. The 3rd had been signed by 76 states[3] and ratified by five states (Iceland, Norway, Liechtenstein, Switzerland and the Philippines), and would enter into force on 14 January 2007.

123. During the last CAHDI meeting, it had mentioned a Swiss initiative, organised in co-operation with the ICRC, on private and military companies operating in conflict situations. Further information had been circulated and could be found on their website.[4] It also mentioned a different initiative on humanitarian access and international humanitarian law: what were the rights of civil population and what were the obligations of the parties in a conflict? A meeting of experts would be devoted to this subject in the spring of 2007.

[3] Situation at 8 September 2006.
[4] The document is available at http://www.dv.admin.ch/psc.

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

124. Mr Kirsch, President of the ICC, last addressed the CAHDI in 2003: a lot had changed since then. He informed the CAHDI that 102 states had ratified or acceded to the Rome Statute and referred in particular to the two most recent ratifications by Comoros and Saint Kitts and Nevis, but stated that universality was still a long off. States and international organisations needed to pursue their efforts to encourage further ratifications.

125. Mr Kirsch stated that the ICC was now well into the exercising of its judicial activities: three states parties had referred situations occurring on their territories to the Court and the Security Council had referred the situation in Darfur, Sudan. On 17 March, the first wanted person was surrendered to the Court, Mr Thomas Lubanga Dyilo, a national of the Democratic Republic of Congo, who was alleged to have committed war crimes, namely conscripting and enlisting children under the age of 15 years and using them to actively participate in hostilities. A hearing to confirm the charges was expected shortly and if confirmed, the trial would begin.

126. Arrest warrants had been issued in the situation in Northern Uganda for five members of the Lord's Resistance Army (LRA), including its leader, Mr Joseph Kony. In this case, the alleged crimes against humanity and war crimes included sexual enslavements, rape, intentionally attacking civilians and enlisting child soldiers. The arrant warrants were initially issued under seal because of concerns about the security of victims and witnesses. These warrants were only made public once the pre-trial chamber was satisfied that the court had taken adequate measures to ensure security. None of the five members of the LRA had yet been arrested or surrendered to the court.

127. The pre-trial chambers had issued decisions in other areas such as forensic examinations, the right of victims participating in pre-trial proceedings and disclosure of evidence before the confirmation of charge hearings. The appeals chamber had already issued a number of decisions including on issues relating to the procedural matters and the scope of appellate review of pre-trial chamber decisions. It was currently considering an appeal concerning the regime governing restrictions on the obligation of the Prosecutor to disclose material to the defence prior to confirmation of charge hearings.

128. The question today was what one could expect in the coming years as far as trials were concerned. The first trial was expected to take place in 2007. It was uncertain as to when other persons could be surrendered to the Court and as it was committed to avoiding unnecessary budgetary expansion, it was not budgeting for another trial in 2007. However, if a second trial did begin, it would use a contingency fund to cover the costs. In addition to co-operation in arrest, the number of trials depended on the strategy pursued by the Prosecutor.

129. Mr Kirsch added that alongside developments in the judicial process, the Court was developing its supporting structures and administrative framework taking into account the comments and suggestions made by states and by the Assembly of States Parties.

130. As regards the direction the Court was taking, particularly through the development of a strategic plan, Mr Kirsch informed the CAHDI that the Court's senior management had adopted a first version of the strategic plan which was devised with a view to assisting the Court in co-ordinating many different activities, ensuring a longer term perspective in its planning and setting common priorities for its work. Through the strategic planning process the Court aimed, in dialogue with States, international organisations and non-governmental organisations, to set a clear direction for the next three years and beyond. It set out three

interrelated strategic goals for the Court: to ensure the quality of justice, to be a well-recognised and adequately supported institution and to be a model for public administration. To reach these goals, it had identified 30 strategic objectives for the next ten years with emphasis on objectives to be achieved within the next three years.

131. Mr Kirsch added that the Court was now turning the strategic plan into action by linking it to the preparation of the proposed budget for 2007. In the proposed budget, the objectives were for units and sections of the Court, thus establishing an overall strategic direction for the budget. One part of the process was the development of a court capacity model, which was a simulation tool to assist it in planning. The model indicated what the Court could achieve within a given number of resources, the approximate number of staff needed to conduct a certain number of investigations or trials, or be used to estimate the number of investigations or trials it could conduct with a fixed number of staff.

132. As regards co-operation between the ICC and other actors such as states, international organisations and non-governmental organisations, its experience had confirmed that trials depended on many elements, some of which were not within the Court's control. The most critical factor that depended on other actors was obtaining arrests and surrender of persons. The Court and more specifically the Office of the Prosecutor had been developing co-operation mechanisms to help secure arrests but the ICC's success in obtaining arrests, Mr Kirsch stressed, would continue to depend primarily on states and international organisations.

133. Other forms of judicial co-operation required by the Court included sharing and securing information and evidence, and enforcing the sentences of the convicted. In many aspects, Mr Kirsch said, the Court's work had been facilitated by co-operation agreements. For example, in October 2006, the Court had signed the first enforcement of sentences agreement with Austria, had entered into relocation of witness agreements with a number of states and received technical assistance. The conclusion of more of these agreements was essential for the Court to fulfil its mandate. The statute of the Court foresaw the importance of the relationship agreement with the UN as well as co-operation with states under Part 9 of the Statute. In this respect, Mr Kirsch reported that the Court had appointed Ms Socorro Flores Liera as the Head of the New York Liaison Office, who had taken up her duties that same week.

134. Mr Kirsch went on to say that the Court had also recognised that co-operation with regional organisations would facilitate the success of the Court. In April 2005, it concluded a co-operation agreement with the European Union and it hoped to soon conclude a similar agreement with the African Union and was in contact with the Organisation of American states. It would then rely on other forms of co-operation such as the transport of victims and witnesses and sharing of information on trial proceedings.

135. To conclude, Mr Kirsch stated that the Court had made considerable progress over the last three and half years since the judges and the Prosecutor took office. At the same time, it was a young institution, which expected to learn from its experience as it conducted the first trials. To be fully effective, however, it was increasingly clear that it had to pursue its efforts to ensure the Court had the support necessary to dispense justice as fairly and as efficiently as possible.

136. Mr Luis Moreno-Ocampo, the Chief Prosecutor of the ICC, considered this meeting very timely as the ICC had in effect moved on a stage. The first confirmation hearing would take place at the end of September followed by two other hearings, and the first trial would take place in 2007. Rulings were expected as was victim participation and award compensation or convictions. With respect to the first trial, he wondered whether the person would be found guilty or not and what impact this case would have on the situation in Congo. The Thomas Lubanga Dyilo case was perceived as a signal, he thought, and would make clear to the world that enlisting children under the age of 15 and transforming them into soldiers and killers was a crime, which occurred in all regions of the world and had to be

stopped. The co-operation of the CAHDI was called for to send this message to African departments. He was of the opinion that thanks to this trial, the Court in The Hague would have a worldwide impact and the international community would be sending out the message that this type of crime had to be stopped.

137. Mr Moreno-Ocampo then referred to the Office of the Prosecutor's 30-page report on the activities performed during the first three years (June 2003-June 2006), on which he welcomed comments and questions. However, he stressed that what was most important for him was to establish how the legal advisers from foreign ministries could help states to plan and to execute arrest warrants, how legal advisers connected with African departments and those who were dealing with conflict, and how legal advisers explained the law and the way in which the law could help solve conflicts.

138. In selecting its cases, the Office of the Prosecutor was guided by gravity. Uganda and Congo were chosen first as they were the gravest situations under the jurisdiction of the Court. Geographical balance was not a criterion for situation selection. Even though he was proud to have *proprio motu* power - which was critical for his independence – as a first instance, he invited territorial states to give him referrals. A policy to invite voluntary referrals actually facilitated the Office's investigations.

139. The Prosecutor went on to say that investigations during ongoing conflicts were extremely difficult. He referred notably to the security of the investigators, the security of the witnesses, how to transport witnesses to safe sites, etc. He added that in Bunya, for instance, he had to check all the brothels whose owners were connected to the militia under investigation. In addition, there were four languages in Northern Uganda and three languages in Congo, both of which only had four to five thousand words (as compared to the 350,000 words of the English language): legal terminology did not exist therefore. He also mentioned that 90% of his investigators fell ill having travelled. This was to illustrate that investigating the case had been very difficult, but evidence had been found and the judges had issued a warrant. The problem now was how to execute the arrest warrant. In Darfur, for instance, the smallest group of potential suspects was made up of around 7,000 people. Some states, he said, were blaming the Court for not arresting people but he stressed that it was up to states to arrest people.

140. Mr Moreno-Ocampo then said that the ICC had started to plan ahead and this might include political operations or operations through peace keepers. It was very difficult to arrest someone who had 7,000 soldiers as this meant war. States needed time, he added, citing the example of Pinochet who could not be arrested when he was a dictator, when he was a chief of staff but only when he was a senator. He also stressed that arrest warrants did not mean arresting people.

141. As regards peace and justice, he had found that African departments had different views to legal departments in foreign ministries and what was required was that they work together. He had found from his own experience that a different language had to be used. One mediator had once said to him that the Prosecutor had taken "a tool out of his toolbox": immunity for top people. This mediator had added that if the Prosecutor could demonstrate to him that he was giving him a different tool in exchange, this would facilitate matters. In fact, said the Prosecutor, this is what was happening: there was a prohibition for blanket amnesty for top people. His intervention in Northern Uganda facilitated the current conflict agreement because it prevented support from other states connected with Uganda who were supporting the LRA. Their intervention stopped. They signed an agreement with Sudan and Sudan committed itself to executing the arrest warrant. Today, peace was possible and there were no more crimes in Uganda. The Court had in this way been part of the solution to the problem. He added that if there was an agreement, a way to conciliate an agreement with the law had to be found.

142. The last point Mr Moreno-Ocampo made was with respect to the ICC strategic plan, adding the judges could not plan what the defendants would do. This only happened in trial. The five goals the Prosecutor's strategy included were to complete two trials in the next three years, to carry out between four and six new investigations in the current or in new situations within the current budget, to improve the way it interacted with victims during investigations and to establish a form of co-operation with states and organisations to maximise the Office of the Prosecutor's contribution to the fight against impunity and the prevention of crimes.

143. The Prosecutor's report and strategy would be discussed in The Hague on 25-26 September with states, civil society and NGOs and in New York in October. He would welcome the CAHDI's comments on these two documents, with a view to adjusting them in time for the October meeting.

144. The delegation of the United Kingdom picked up on a point made by Mr Kirsch as regards lawyers and geographic departments not always speaking to one another. It invited the Prosecutor to expand on some of the issues he touched upon, notably on how to conciliate a domestic agreement with the law, and considering withdrawing, for example, the warrants in respect of the LRA in Uganda, which was a public discussion being held in New York and elsewhere.

145. The delegation of Germany also commented on reconciliation of politics and law and mentioned the Uganda situation, where the Ugandan government had referred the issue to the Court and the Darfur situation, where referral had been made by the Security Council. It asked for more information regarding these different referrals.

146. The delegation of Norway stated that international lawyers interacted with African but also regional departments. However, explaining treaty obligations to those fighting malaria when travelling, to those working in very difficult conditions to bring about an end to a conflict, was not an easy task. It expanded on previous questions and asked to what extent one could interpret the treaty. Some regional desks had asked whether the fact that a state had referred a case to the Court gave the state concerned a particular say in recommending how to proceed. It added that this had to do with the principle of complementarity.

147. The Chair asked the Prosecutor about the relation between justice and peace and how to reconcile the two. One of the answers provided by the Prosecutor was the trade off between the requirements of peace and the requirements of justice: loss of immunity against non-intervention by other countries, the deterrent effect. She was appreciative of the concrete answer given to a concrete question.

148. Mr Moreno-Ocampo considered this to be a fascinating topic as it was a topic he was learning a little bit more about each day. In reply to the question by the delegation of Norway, it did not think that because a state referred a case that it could withdraw a case. Referral was one way of triggering a case. Once it had started, only the judges could put an end to it. As regards the Ugandan case, he stated that Uganda was not intending on withdrawing the case.

149. The second issue Mr Moreno-Ocampo mentioned was Article 53, which was a compromise without which the Rome Statute would not have been adopted and was now being debated upon. The ICC's policy paper stated that its main duty was to investigate and prosecute. So the procedure to stop an investigation had to be exceptional and not for reasons of peace and security, which was the responsibility of the Security Council or territorial states. Therefore the ICC did not see Article 53 as a way of stopping the conflict between the two.

150. As regards the legal possibilities in the Northern Uganda case, the crimes were no longer in Uganda but in Southern Sudan, which is why Sudan insisted on an agreement. Uganda had been trying to develop a national solution, which included punishment. The alternative would have been Article 16, which the Security Council was in charge of.

151. The last point the Prosecutor made was with respect to working in these areas, which were divided communities. Uganda was the best situation for them, so to speak, as there no more crimes. In Darfur, there were still crimes, the political situation was very fragile and they were very worried about how things would evolve in coming months. It was catastrophic from a humanitarian point of view. As a result, information could not be collected in Darfur so it had been collected in some other fifteen countries. It was made up of 9,000 documents and a large number of accounts from witnesses. This had provided enough substance for the case. This is why he considered it important to stay in touch with the CAHDI, to explain to members what they were learning from individual situations. To sum up, he stated that because the Court was working on ongoing conflicts, this would be an ongoing challenge. He added that he thought the Court could contribute to lasting peace by stopping crimes today and exposing what was happening.

152. Mr Kirsch made three points which had a common denominator: now that the ICC was operational, it was important to remember that it did not work in isolation. It was part of a system. That is how the states designed the Court when they created it in Rome. As regards operations, the ICC was designed to be a strong judicial body. In the earliest stages of operation of the ICTY, Judge Cassese had said it was like “a giant without arms and legs”. He added that if the ICTY was in that position with the full backing of the Security Council, an analogy can be made with the ICC. The ICC had listened over the past three years to what states had to say, at the UN, at the Assembly of States Parties, and in various meetings such as the CAHDI. Every time, comments had been made with a view to improving the ICC’s operations, efficiency, develop the quality of its proceedings, etc. and the Court had always taken these comments on board. However, there were limits to what it could do if it did not fully enjoy the co-operation that was promised under the Statute. The time was ripe for states to think of what mechanisms they could develop to enhance their co-operation with the Court.

153. Mr Kirsch then stated that the ICC was a legal, not a political institution. The Prosecutor had made clear that the ICC was very sensitive to the international environment, but the ICC could not be expected to make political decisions. The ICC could only be expected to make legal decisions on the basis of the Statute. The relationship between peace and justice was primarily a matter for states and there were tools that existed that allowed states to take the necessary states. The ICC could not in law deviate from its legal, judicial role.

154. Mr Kirsch’s last point related to the Chair’s comments and to deterrents: it was important in the future for states to look at the ICC in a reasonably broad way, to realise that the ICC did not only exist to carry out proceedings but as laid down in the Statute, to achieve deterrence. It now had indications that the ICC had had a real impact in several situations. But the ICC relied on the support of states.

155. Mr Luis Moreno-Ocampo added that the Court never took part in any discussions, remained impartial and kept a low profile to avoid any form of confrontation.

156. The delegation of Denmark stated it was also discussing these issues with its African departments and the current discussion would be of assistance in this regard. It took the point made by Mr Kirsch that peace and justice was really a matter for states and not for the ICC, which should be a legal not a political institution. As regards Uganda and the possibilities there, it had tried to see whether peace and justice could be accomplished at the same time. The second possibility mentioned, Article 16, was something to be discussed by

the Security Council. However, there was a limit to how long you could use this possibility for. It also referred to the complementary principle used by Uganda to start national prosecution. It asked if the Court would feel obliged to stop investigations or prosecutions, if that were the case.

157. In reply, the Prosecutor said he would, or rather could not, stop his investigations. Once an arrest warrant was issued, it could not be withdrawn. It could understand, however, that for political reasons, an arrest warrant would be kept pending for a year or two. Any solution, however, had to be compatible with the law and the Rome Statute.

158. The delegation of Italy understood that it was not in the Prosecutor's or the Judge's mandate to stop an investigation in order to achieve peace, but what about a decision not to prosecute? It asked whether they would consider this as a legal tool and what would the attitude of the judges might be in this instance.

159. In reply, Mr Luis Moreno-Ocampo said that Article 53 enabled him to stop investigations, but in the Court's policy paper it was made clear that it had to be in the interests of justice, not in the interests of peace and security. As regards Uganda, it had no legal reason to stop investigations. A survey in Uganda showed that people were concerned by violence and food. However, when asked what one should do with the leader and members of the LRA, 50% said trial and punishment. He added that there was still a great deal of confusion about the ICC's role.

160. The delegation of the United Kingdom put a question to Mr Kirsch: the Prosecutor had spoken the issues at the coalface in respect of investigations and his powers and the limits of Article 53 touched on the institution. These issues went to the security or fragility of the ICC as the institution. How secure did he feel the ICC to be and how did he see the security of the ICC in respect of these issues which were having to be addressed and what was the read across from those into some of the other ad hoc tribunals? What was going on in Cambodia, Sierra Leone? Did he feel the pressure on the ICC as having read across consequences for other tribunals?

161. Mr Kirsch stated that the Court had taken into account other tribunals, particularly the ICTY and the ICTR. This was reflected in the Statute and in the way in which a number of internal rules had been developed. However, there were two fundamental differences between the ICC and other international tribunals. Other international tribunals had essentially be dealing with crimes that were committed in the past, in the course of conflicts that were over and in situations of relative stability compared with the previous situations. Arrests had consequently been relatively less difficult than what the Court was currently experiencing. The ICC was also designed as a strong judicial institution and nothing more. In practice, this meant that the ICC did not have the tools that in any national systems would be considered as obvious necessities for a court to operate, such as an army or a police force. It did not have these tools because the system was based on states' obligations to provide those tools in case of need. In this respect, he was also thinking of the role of international organisations. International organisations were hampered in what they could do, not only for operational reasons but because they did not have the mandate to do certain things. Issues such as these could only be resolved by resolutions by states. The Court was the legal institution and operational tools were run by states and by extension, international organisations.

162. The delegation of Switzerland stated that it was important to stress that there was shared responsibility in establishing peace and justice and in trying to find the balance between the two. Shared responsibility meant to a certain extent division of responsibility. With respect to Uganda, it thought that this could be understood as it being willing but not able to exercise jurisdiction. The obvious solution to overcoming the conflict between peace and security would be for the international community to assist the country in question to

become able to prosecute and successfully challenge the ICC's jurisdiction. The delegation of Switzerland felt that this was a role for the international community.

163. As regards the Charles Taylor trial which had taken place at the seat of the ICC, the delegation of Switzerland asked whether that trial had an impact on the operations of the ICC that states parties needed to be aware of. Another point was the question of the presence of the suspect. Under the Statute, the person was not required to be present until the confirmation of the accusation and this gave the Prosecutor and the Court some leeway to go forward with proceedings in spite of the person not being present at The Hague. In the Darfur situation and in Congo, this gave some policy leeway even though there was a problem with the execution of arrest warrants, if issued. This was a difference it saw in the the way in which the ICC on the one hand and the ICTY and ICTR on the other had to proceed.

164. Mr Kirsch stated that the Court had concluded a very detailed memorandum of understanding with the Sierra Leone Special Court which included that expenditure related to the Charles Taylor trial and the Sierra Leone Court had to be paid upfront. The Security Council Resolution authorising this transfer mentioned that any other entities than the Special Court should not incur any costs. The Court considered it important that this provision be included in the Security Council Resolution because the Sierra Leone Special Court was funded on a voluntary basis, not by fixed contributions. The international community had a responsibility as a whole to ensure that the Special Court was provided with the necessary funds to carry out this trial, whatever the length. The Memorandum of Understanding stated very clearly that in cases of conflicts between priorities of the Court and priorities of the Sierra Leone Special Court in terms of facilities and resources, the ICC had priority. It followed from this that no resources from the ICC were devoted to the Charles Taylor trial except to the extent that co-ordination was necessary between the two tribunals and with the host country, the Netherlands.

165. Mr Luis Moreno-Ocampo added that the rationale of the support to the Sierra Leone tribunal was that they were both part of an emerging international justice system and needed to support one another. Convictions created deterrents but the beginning of an investigation was also a deterrent. The Court was now thinking of how it could maximise the deterrent impact during an investigation or even a pre-investigation stage. Another point was that was happening in Uganda was been followed closely in Columbia. This was the difference he saw between the ICC, which had a global scope, and ad hoc tribunals.

166. The Chair thanked both Mr Kirsch and Mr Moreno-Ocampo for their presentations and for having replied so readily to the questions put to them by the CAHDI.

b. 4th multilateral consultation on the ICC, 14-15 September 2006

167. The Secretariat reminded the CAHDI that the 4th multilateral consultation on the ICC would take place on 14 and 15 September, after the meeting of the CAHDI.[5]

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

168. The Chair thought it premature to discuss this matter as it was awaiting information on this subject from the Office of the Legal Adviser in New York.

169. The delegation of the United Kingdom stated that the paper of the Office of Legal Adviser was issued in December 2005, but the OLA's authorisation for circulation would have to be sought.

[5] Information about this consultation meeting is available at www.coe.int/cahdi/icc.

170. The Secretariat informed the CAHDI that it had approached the Office of the Legal Affairs in order to obtain this report, but had not received it as of yet.

171. The Chair suggesting postponing this item to the next meeting the CAHDI.

16. Outcome document of the 2005 U.N. World Summit

172. The Chair summed up the discussion the CAHDI had had so far on this question. She had contacted the delegation of Switzerland to see whether any follow up was required at this stage. The delegation of Switzerland had said not as there was an ongoing initiative in the United Nations, there was a proposal by Mexico and Liechtenstein for a new agenda item for the Sixth Committee and a discussion within the Sixth Committee.

173. The observer of Mexico expressed its appreciation for the background document drawn up by the delegation of Switzerland. On this basis, the delegations of Liechtenstein and Mexico, at the UN in New York, took the initiative to put forward a new agenda item, now allocated to the Sixth Committee, the 61st session of the UN General Assembly under the heading “the rule of law at international and national levels”. Delegations in New York had the benefit of the explanatory memorandum as well as document A/61/42, and a non paper prepared by members of the Bureau of the Sixth Committee which was also being circulated.

174. The observer of Mexico explained the purpose of the new agenda item. The 2005 UN World Summit Document addressed the importance of the implementation of the rule of law at both the national and the international levels and made a number of concrete commitments aimed at strengthening the rule of law. In fact, the concept of the rule of law permeated the document as a whole and lent itself to follow-up action in a number of areas. It did not want to duplicate the efforts carried out by other UN bodies, such as the Security Council which had already increased its focus on tools aimed at strengthening the rule of law at the national level, in particular in conflict and post-conflict situations. But it thought the time was right to focus the debate on areas which fall within the purview of the General Assembly and the Sixth Committee. In fact, the General Assembly, as the chief deliberative normative policy-making and representative organ, was in a unique position to fill the existing gap and promote universal adherence to the rule of law at an international level.

175. By putting forward this agenda item, the delegations of Liechtenstein and Mexico expected that delegations in New York would, in their statements, address particular developments, trends and areas for future action with regard to some of the following topics: the importance of the rule of law at the international and national levels; the interplay between international and national law in the implementation of international obligations; the role of the International Court of Justice, the International Tribunal for the Law of the Sea and other judicial bodies in the peaceful settlement of disputes; the role of the UN Secretariat in promoting the rule of law, through the newly created Rule of Law Assistance Unit. In addition, delegations might want to exchange views regarding the way in the Sixth Committee should deal with this item in the future. In particular, a suggestion was made to annually choose a sub-topic to which the Committee and the Secretary-General’s report could devote particular attention to. The observer of Mexico encouraged all delegations present at the CAHDI to actively participate in the forthcoming UN General Assembly.

176. The delegation of Denmark welcomed the explanations provided by the observer of Mexico. It had studied the non paper put forward by Liechtenstein and Mexico and thought it was a potentially far-reaching exercise. It supported having the topic of strengthening the international rule of law in international relations on the agenda of the General Assembly and the Sixth Committee and would be active in the debate on that issue. Secondly, the Security Council had had a debate in June, during the Danish Presidency, on the rule of law in the Security Council and the way the Council was acting in respect of that. From its perspective, it was very successful exercise and it hoped that everyone had seen the statement by the

President of the Security Council (PRST)[6] that came out of the debate. Thirdly, it agreed with the idea of keeping the item and the Swiss paper on the CAHDI's agenda.

177. The delegation of Austria agreed that this was an important subject that should be retained on the CAHDI's agenda but that given the ongoing discussion in New York, supported the proposal to postpone the discussion to the next meeting.

178. The delegation of the United Kingdom invited Mexico and Liechtenstein to make known the five topics to other delegations, quite apart from those members of CAHDI so that there was a constructive discussion in New York. It considered it very helpful that there was no intention here to duplicate the work being done on this in other fora. Like others, it welcomed picking this up in New York and expressed its thanks and appreciation to the delegation of Denmark for the very helpful rule of law debate that they encouraged in the Security Council and for the invitation to President Rosemary Higgins of the International Court of Justice who participated in that debate.

179. The delegation of Sweden took the opportunity to thank Denmark for the initiative taken in the Security Council to raise the whole issue in the work of the Security Council. It pointed out that it coincided with the initiative taken by Sweden in the European Union and dealt by COJUR. In this connection, it was grateful for the support received there. It agreed to keep the item on the agenda but asked how one was to proceed in a more concrete way. Some sort of action plan could be developed where the CAHDI picked out certain of the items which are listed as objectives in the Swiss paper. It felt that most were of a character that could reach a consensus within the CAHDI.

180. The delegation of Poland thanked all those concerned for raising this important topical issue. The Outcome document called for universal adherence and implementation of the rule of law in international relations. It was the concept which had recently been brought to the forefront in different international fora, such as the EU for instance. For these reasons, it was important to provide support for the proposals by Mexico and Liechtenstein at the UN.

181. The delegation of Portugal expressed support for the initiative by Mexico and Liechtenstein and for the Swiss paper as the Outcome Document set out many of the legal issues that should be discussed, such as the responsibility to protect.

182. The delegation of Switzerland also expressed support for the initiative by Mexico and Liechtenstein. The discussion showed that there was a wealth of ideas and initiatives concerning particular aspects of the international rule of law and it was time to have a debate within the Sixth Committee so as to reach a concept of an international rule of law. It was of the opinion that the CAHDI should keep the item on its agenda and focus on particular aspects of concern to Council of Europe member states so that its discussion was complementary to that being held in the Sixth Committee.

183. To sum up, the Chair suggested keeping this item on the agenda but being more specific and adding the international rule of law after the reference to the Outcome document of the 2005 UN World Summit. She also suggesting focusing on the items listed in the paper presented by the delegation of Switzerland.

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

184. By way of introduction, the Secretariat stated that the fight against terrorism continued to be one of the priority areas of the overall action of the Council of Europe. Current activities focused notably on enhancing co-operation with other international bodies such as the UN and

[6] Document S/PRST/2006/28 of 22 June 2006.

the OSCE and the recent meeting hosted by Denmark of various regional organisations was an example of this type of co-operation. The Council of Europe was moving towards a new qualitative form of co-operation, which involved the joint organisation of activities. In this fashion, the Council of Europe and the OSCE were co-organising a meeting in Vienna on 19-20 October devoted to the Council of Europe Convention on the Prevention of Terrorism and UN Security Council Resolution 1624.

185. The Chair of the Committee of Experts on Terrorism (CODEXTER), Ms Marja LEHTO, reported the Committee's recent activities. She reminded the CAHDI that there were other committees and bodies at the Council of Europe which carried out activities in the area of counter-terrorism in their respective fields of expertise, namely human rights, civil law, criminal law, terrorist financing and money laundering. However, the CODEXTER was the only Committee with a horizontal co-ordinating role and many of the activities carried out by other bodies in this area, including for instance the elaboration of the Council of Europe Convention on money laundering and terrorist financing or the elaboration of the Guidelines on special investigating techniques, were initiated by this Committee or its predecessor, the GMT.

186. Referring to the activities of the CODEXTER, Ms Lehto mentioned the adoption of the Council of Europe Convention of the Prevention of Terrorism, which was a groundbreaking instrument not only because it obliged states parties to criminalize public provocation to commit terrorist acts, which in itself was not violent, but could lead to violent crime. This aspect was highlighted by the adoption of the UN Security Council Resolution 1624, which urged all states to criminalize incitement to terrorist acts.

187. For the member and observer states of the Council of Europe which participated in the negotiations of the convention and were entitled to become parties to it, ratification of the convention would be an important part of the implementation of Resolution 1624. It would also promote greater consistency in this area. As the UN Counter-Terrorism Executive Directorate (CTED) had noted, countries differed significantly in how they understood the notion of incitement to terrorism and in this respect, the convention provided a firm basis for states parties. Another important aspect of the convention was that it expressly required that states parties implement its provisions with due regard to their human rights obligations. Human rights considerations were also taken account in the definition of offences.

188. For both these reasons, Ms Lehto admitted that the ratification of the Convention and its incorporation into national legislation was not necessarily an easy task. It is for this reason that the CODEXTER devoted the main part of its June 2006 meeting to a thematic review focusing on the Convention. The purpose of the review was to support member states in the ratification preparation by exchange of information and views as well as identification of best practices. In the course of the review, eleven states indicated that they would ratify the convention before the end of 2006; several other states also intended to ratify the Protocol amending the European Convention on the Suppression of Terrorism and the Council of Europe Convention on money laundering and terrorist financing.

189. Ms Lehto then stated that CODEXTER would continue to monitor the ratification of Council of Europe anti-terrorism instruments so as to promote their early entry into force and effective implementation. Other current activities of the CODEXTER included the drawing up of country profiles on legislative and institutional capacity to counter terrorism and collecting best practices concerning the protection and compensation of victims.

190. Furthermore, the CODEXTER was tasked to identify lacunae in international law and action against terrorism as well as to make recommendations to the Committee of Ministers on future priority areas of action. In this regard, the Committee had considered a progress report drawn up in 2005 and highlighted particular matters related to the use of Internet for terrorist purposes and cyberterrorism. The purpose of the current discussion, which would be the subject of an independent report, was to determine whether there were any gaps in regulation, which could usefully be filled by Council of Europe action.

191. The delegation of Germany underlined that it considered the CODEXTER's activities as being very important and was very satisfied that it had finalised the Convention on the Prevention of Terrorism in 2005. It was now working towards preparing ratification of the convention. The delegation of Germany also referred to the workshop scheduled to take place in Vienna, which went back to a joint Russian-German initiative. Both countries were co-financing this event. The reason for this initiative was that the Council of Europe Convention on the Prevention of Terrorism contained provisions on public provocation whereas Resolution 1624 referred to incitement. As the scope of application was not necessarily the same, they had considered it useful for the Council of Europe and the OSCE to discuss the exact scope of application of both instruments. They also wished to help partners in the Council of Europe and the OSCE to better understand the two instruments and to help ratify, implement and develop best practices on how to deal with acts of public provocation with acts of instigation. It added that the workshop would also deal with issues such as recruitment and the different stages in "becoming" a terrorist. It hoped that the workshop would be intellectually challenging but also of real practical relevance and thanked its Russian partners for their help in setting it up.

192. The Secretariat added that the Committee of Ministers had adopted a Recommendation Rec(2006)8 of the Committee of Ministers to member states on assistance to crime victims, which also covered victims of terrorism. In addition to that, the Council of Europe would be organising the 27th Conference of European Ministers of Justice on "Victims: place, rights and assistance" that would also be addressing the question of victims of terrorism.

193. The Secretary of the CAHDI stressed that the Council of Europe Convention on the Prevention of Terrorism contained three major offences: public provocation to commit acts of terrorism but also two additional offences – recruitment for terrorist purposes and training for terrorist purposes. This was why the joint Council of Europe/OSCE workshop was so important, timely and considered as a first step in actually promoting greater adherence to the convention and the principles contained in the Resolution. He added that the Secretary General had recently addressed a call to all member states to become a party to the instruments of the Council of Europe against terrorism as early as possible. Two countries have already ratified the convention and eleven others were planning to do so before the end of the year. As the threshold for the entry into force was six states parties, the convention might enter into force before the end of the year, bringing about a new dynamic and promoting greater adherence to the convention.

D. OTHER

18. Election of the Chair and Vice-Chair

194. 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), current Vice-Chair, as Chair and Mr Rolf Einar Fife (Norway) as Vice-Chair of the Committee for one year as of 1 January 2007.

195. The Chair-elect invited CAHDI members to let him know of any suggestions they may have regarding the programme and the organisation of the CAHDI's work for the next year, either directly or via the Secretariat.

196. The Chair-elect, on behalf of the CAHDI, paid tribute to the outgoing Chair for the excellent work she had accomplished over the last two and half years and thanked the Greek authorities for the excellent organisation of the meeting and their warm hospitality.

19. Adoption of the preliminary draft specific terms of reference for 2007-2008

197. The CAHDI examined and adopted its preliminary draft specific terms of reference for 2007-2008, as contained in document CAHDI(2006)21 and as set out in **Appendix VI** to the present report. It decided to forward them to the Committee of Ministers for adoption.

20. Date, place and agenda of the 33rd meeting of the CAHDI

198. The Chair announced that the 33rd meeting of the CAHDI would take place in Strasbourg on 22 and 23 March 2007.

199. The CAHDI adopted the preliminary draft agenda of the 33rd meeting, as set out in **Appendix VII** to this report.

21. Other business

a. Inquiry of Secretary General under Article 52 of the European Convention on Human Rights

200. Mr Christos Giakoumopoulos, Director in the Directorate General of Human Rights at the Council of Europe, informed the CAHDI of developments as regards the inquiry made by Secretary General of the Council of Europe under Article 52 of the European Convention on Human Rights (ECHR), and this was followed by a brief discussion.

b. Status of ratification of Protocol 14 to the ECHR

201. The delegation of Norway reminded member states of the target date set for the entry into force of Protocol 14 to the ECHR, which was May 2006. A very large number of states had ratified the Protocol and there are only a few states remaining. The CAHDI was fully aware of the importance of Protocol 14, which was meant to enhance the effectiveness of the Court in dealing with an ever-increasing number of cases. It felt that Protocol 14 was a small yet important step towards improving the current situation. It is against this background that the delegation Norway felt it would be useful to have an update in the CAHDI on the status of ratification of the Protocol.

202. The delegation of the Russian Federation informed the CAHDI that Protocol 14 was currently on its way to the State Duma and that it would hopefully be ratified in the course of this autumn.

* * *

203. The Committee adopted the abridged report of the meeting as it appears in **Appendix VIII** to the present report.

APPENDIX I

LIST OF PARTICIPANTS

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

ANDORRA/ANDORRE:
Mme Silvia OLIVA TRASTOY, Juriste, Ministère des Affaires extérieures

ARMENIA/ARMENIE:
Ms Ani KOCHARYAN, Ministry of Foreign Affairs

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

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

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

M. Gérard DIVE, Chef de la Division du DIH, Ministère de la Justice

Mme Fanny FONTAINE, Attaché, Service de droit international humanitaire, Coordination de la Belgian Task Force - ICC-ICT, DG Législation, Libertés et Droits fondamentaux, Service public fédéral Justice

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

CROATIA/CROATIE: Apologised/Excusé

CYPRUS/CHYPRE:
Mrs Elena PAPAGEORGIOU, Counsel of the Republic, Law Office

CZECH REPUBLIC/REPUBLIQUE TCHEQUE:
Ms Magda KUNCLOVA, Deputy Director of the International Law Department, Ministry of Foreign Affairs

Mr Milan DUFEK, Counsellor-Minister, International Law Department, Ministry of Foreign Affairs

DENMARK/DANEMARK:
Mr Peter TAKSOE-JENSEN, Ambassador, Undersecretary for Legal Affairs, Ministry of Foreign Affairs

Mr Asif Parbst AMIN, Head of Section, International Law Department, Ministry for Foreign Affairs

ESTONIA/ESTONIE:
Mrs Kairi KÜNKA, Director, Division of International Law and Lawmaking, Ministry of Foreign Affairs

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

Mrs Marja LEHTO, Director, Ministry for Foreign Affairs

Mr Pasi MUSTONEN, Project Adviser, Ministry for Foreign Affairs

FRANCE:
Mme Edwige BELLIARD, Directrice des affaires juridiques, Ministère des Affaires Etrangères

M. Tanguy STEHELIN, Rédacteur, Sous-direction du droit international public général, Ministère des Affaires Etrangères

GEORGIA/GEORGIE: Apologised/Excusé

GERMANY/ALLEMAGNE:
Dr Georg WITSCHEL, Director General, Head of Legal Department and Legal Adviser, Federal Foreign Office

Mr Christophe EICK, Head of Department, , Federal Foreign Office

GREECE/GRECE:
Mr VALINAKIS, Deputy Minister of Foreign Affairs

Mr Charalambos ROKANAS, Secretary General, Ministry of Foreign Affairs

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

Ms Athina CHANAKI, Member of the Legal Service, Ministry of Foreign Affairs

Mr Vassilis KOULAFIS, Legal Service, Ministry of Foreign Affairs

HUNGARY/HONGRIE:
Dr Istvan HORVÁTH, Director General, Department for legal Affairs, Ministry of Foreign Affairs

ICELAND/ISLANDE:
Mr Tomas 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 traités, Ministère des Affaires Etrangères

Dr Annalisa CIAMPI, Professeur, Université de Verona

LATVIA/LETTONIE:
Ms Irina MANGULE, Director, Legal Department, Ministry of Foreign Affairs

LIECHTENSTEIN: Apologised/Excusé

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MOLDOVA:
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MONACO:
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NORWAY/NORVEGE:
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Mr Martin SØRBY, Deputy Director General, Legal Department, Ministry of Foreign Affairs

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Professor Paula ESCARAMEIA, member of the International Law Commission

ROMANIA/ROUMANIE:
Mr Cosmin DINESCU, General Director, General Directorate for Legal Affairs, Ministry of Foreign Affairs

Ms Alina OROSAN, Third secretary, Directorate General for Legal Affairs, Ministry of Foreign Affairs

RUSSIAN FEDERATION/FEDERATION DE RUSSIE:
Mr Vladimir TARABRIN, Deputy Director, Legal Department, Ministry of Foreign Affairs)

Mr Stepan KUZMENKOV, First Secretary, Legal Department, Ministry of Foreign Affairs

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Mr Milan PAUNOVIC, Chief Legal Adviser, Ministry of Foreign Affairs

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

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Mr Cinar ALDEMIR, Ambassador, Chief Legal Adviser, Ministry of Foreign Affairs

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Sir Michael WOOD **(Vice-Chair/Vice-Président)**

EUROPEAN UNION / UNION EUROPEENNE

EUROPEAN COMMISSION / COMMISSION EUROPEENNE

M. Frank HOFFMEISTER, Juriste, Service Juridique, BRUXELLES

OBSERVERS / OBSERVATEURS

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HOLY SEE/SAINT-SIEGE: Apologised/Excusé

JAPAN/JAPON:

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

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

INTERPOL: Apologised/Excusé

INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC)/COMITE INTERNATIONAL DE LA CROIX ROUGE (CICR):
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SECRETARIAT GENERAL

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CAHDI SECRETARIAT / SECRETARIAT DU CAHDI

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Mr Christos GIAKOUMOPOULOS, Director of the Directorate 1, Directorate General of Human Rights / Directeur de la Direction 1, Direction Générale des Droits de l'Homme)

INTERPRETERS/INTERPRETES:

Mme Evily AILIANOU

Mme Eva ZISSIMIDES

Mme Danny Niki TZAMTZIS

Mme Jennifer FEARNSIDE-BITSIOS

APPENDIX II

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 31st meeting
CAHDI (2006) OJ 2
CAHDI (2006) 17 prov

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CAHDI (2006) Inf 6

B. ONGOING ACTIVITIES OF THE CAHDI

4. Decisions by the Committee of Ministers concerning the CAHDI and requests for the CAHDI's opinion CAHDI (2006) 18

5. Law and practice relating to reservations and interpretative declarations concerning international treaties: European Observatory of Reservations to International Treaties:
   a. List of outstanding reservations and declarations to international Treaties
   CAHDI (2006) 19 & 26
   b. Consideration of reservations and declarations to international Treaties applicable to the fight against terrorism
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6. State practice regarding State immunities CAHDI (2006) Inf 7

7. Organisation and functions of the Office of the Legal Adviser of the Ministry for Foreign Affairs CAHDI (2006) Inf 8
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8. National implementation measures of UN sanctions and respect for Human Rights
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9. Digest of state practice on international law
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   CAHDI (2006) 15
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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 CAHDI (2006) Inf 10

11. Peaceful settlement of disputes: Compulsory jurisdiction of the International Court of Justice (ICJ) (Article 36 (2)) and overlapping jurisdiction of international tribunals CAHDI (2006) 4 rev & 5 Addendum

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 CAHDI (2006) 17 prov Annexe V

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

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

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18. Election of the Chair and Vice-Chair CAHDI (2006) 20

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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 SG/Inf (2006) 13
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APPENDIX III

STATEMENT BY MR ROBERTO LAMPONI, DIRECTOR OF LEGAL CO-OPERATION

Ladies and gentlemen,

It is an honour and a pleasure for me to be with you today, in this wonderful setting, and to have this opportunity to report on developments at the Council of Europe since your last meeting.

I would like firstly to thank the Greek authorities, represented by the Chair, Ms Dascalopoulou-Livada, for kindly offering to host this gathering and the meeting on the International Criminal Court here in Athens, the cradle of European civilisation.

Political developments at the Council of Europe have been dominated by follow-up to the **Third Summit of Heads of State and Government**, held in Warsaw on 16 and 17 May 2005 and which was reported in the Secretariat's statement last March.

As you will recall, the Summit sought to define the Council'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.

The Summit ended with the adoption of an action plan and a final declaration, the ***Warsaw Declaration***, in which Heads of State and Government of member states 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 was guided by a political philosophy of inclusion and complementarity and by a common commitment to multilateralism based on international law.

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

They accordingly 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, taking into account the importance of the human dimension of European construction.

Mr Juncker submitted his report[7] last April, in which he concluded that there was a high degree of complementarity between the Council of Europe and the European Union in terms of their spheres of activity and experience.

The key recommendations to emerge from Mr Juncker's report were as follows:

- EU member states should immediately open the door to EU accession to the European Convention on Human Rights.
- EU bodies should recognise the Council of Europe as "the Europe-wide reference source for human rights".

[7] The report is available on the following website: http://www.coe.int/T/E/Com/Files/PA-Sessions/April-2006/Rapport_Juncker_E.pdf.

- The Commission for Human Rights should become an institution to which the EU could refer all human rights problems not covered by its existing machinery.
- The two bodies should establish a joint platform for assessing legal and judicial standards and, when appropriate, adopt each other's standards.
- The EU's Neighbourhood policy should focus on Council of Europe member states and Belarus, with joint programmes planned together.
- Member states should ensure that the Council of Europe, as a major partner of the EU, has the resources it requires.

In order to pursue these objectives, a memorandum of understanding is to be concluded shortly between the Council of Europe and the EU to define relations between the two organisations.

In the Warsaw Declaration, Heads of State and Government also undertook to foster co-operation between the Council of Europe and the United Nations and to achieve the Millennium Development Goals in Europe.

The texts adopted at the Third Summit also deal with the European Convention on Human Rights and the best ways of ensuring its long-term effectiveness.

A Group of Wise Persons was accordingly set up to consider the issue of the long-term effectiveness of the ECHR control mechanism, including the effects of Protocol 14. The Group has submitted further proposals which go beyond the measures already taken "while preserving the basic philosophy underlying the ECHR". Significant headway has been made along those lines and a progress report was presented at the last session of the Council of Europe's Committee of Ministers at ministerial level in May.

In addition, Protocol 14 to the **European Convention on Human Rights**,[8] amending the control system of the Convention with a view to reducing the backlog of cases, has been ratified by 42 states to date, and will hopefully be able to come into force by the end of the year.

On the subject of political developments, I should also mention the referendum held in Montenegro on 21 May, and the declaration of independence made by the Republic of Montenegro on 3 June 2006.

The Committee of Ministers noted with satisfaction Montenegro's request to join the Council of Europe and has forwarded it – in keeping with the usual procedures – to the Parliamentary Assembly for opinion. It also welcomed the intention expressed by the authorities of the Republic of Montenegro to honour and implement the commitments and obligations contracted by the State Union of Serbia and Montenegro as a member state of the Council of Europe and has stated that it is determined to pursue closer co-operation with the Republic of Montenegro to this end.

* * *

[8] The Council of Europe conventions are available on the following website: conventions.coe.int, with the chart of signatures and ratifications.

Ladies and gentlemen,

Both the Warsaw Declaration and the Action Plan give considerable emphasis to legal activities, to which we will now turn our attention.

* * *

With regard to the European Treaties Series, I will merely point out that there have been some significant **developments** since your last meeting. These developments are reported in document CAHDI (2006) Inf 6, which is in the meeting file.

* * *

At this point, it may be worth highlighting a few recent developments in areas such as terrorism, the fight against corruption, bioethics, nationality, family law, counterfeit medicines and constitutional law.

Over the past year, much of our efforts have gone into **combating terrorism**.[9]

As you are no doubt aware, since November 2001, we have sought to make a practical contribution in this area, drawing on the added value that the Council of Europe can offer. The aim is to strengthen judicial action against terrorism and terrorist financing while safeguarding fundamental values.

We will continue our work in this area in order to ensure effective implementation of the provisions adopted, and to enhance the capacity of states to take effective action against terrorism, while still respecting human rights.

As regards the first part, it will be recalled that the new **Council of Europe Convention on the prevention of terrorism** is designed to fill some of the gaps in international legislation and action against terrorism by various means. Firstly, certain acts that may lead to the commission of acts of terrorism, including public provocation, recruitment and training, have been established as criminal offences. Secondly, co-operation on prevention is to be stepped up both domestically, in the context of national policy-making, and internationally.

The adoption of this convention in May 2005 was followed in September of the same year by the UN Security Council's adoption of Recommendation 1624, which is based on the convention.

To this may be added the 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 the field, in particular the FATF recommendations on combating the financing of terrorism. In this area, we also have an excellent tool at our disposal in the form of the MONEYVAL committee, which assesses, at regional level and according to FATF methods, the action taken by its member states to counter money laundering and terrorist financing.

To date, the Council of Europe Convention on the Prevention of Terrorism has been signed by 35 states and will come into force when it has been ratified by 6. On 19 May 2006, Russia became the first Party to the Convention. It was followed by Bulgaria on 31 July 2006. At a recent meeting of our Committee of Experts on Terrorism, CODEXTER, we learnt that 11 states would be in a position to ratify the convention by the end of the year, which would enable it to come into force and would mean a major step forward thanks to the supervisory machinery that comes with the convention.

[9] Information and documents on these activities are available on the following website: www.coe.int/gmt.

As for the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, this has been signed by 22 countries and will come into force when it has been ratified by 6. Several states have said they intend to ratify it soon.

It will further be recalled that both of these conventions are open, subject to certain conditions, to non-Council of Europe member states.

The signature and ratification process is also continuing as regards the Council of Europe's other international instruments against terrorism. For example, six states are planning to ratify the Protocol amending the European Convention on the suppression of terrorism which has so far been signed by 44 states and ratified by 22.

At the 116th Session of the Committee of Ministers in May 2006, Ministers emphasised the need to pursue the important work of the Council of Europe in the antiterrorism field and called for the earliest possible entry into force of the new conventions.

As regards the second part, CODEXTER is continuing to develop *country profiles on the legislative and institutional capacity of states in their fight against terrorism.* Some twenty profiles have already been developed and the exercise has been a great success, with the profiles proving popular with both governments and academic institutions. Note, too, that the UN Security Council's Counter-Terrorism Committee (CTC) and its Executive Directorate use the profiles when monitoring implementation of Security Council Resolution 1373.

This co-operation between the Council of Europe and the UN, including notably the CTC, on implementation of Security Council Resolutions 1373 and 1624 extends to the operational sphere, with Council of Europe experts participating in the CTC's evaluation visits to UN member states which are also members of the Council of Europe.

At the same time, CODEXTER is continuing to identify gaps in international law and action against terrorism, with particular attention being given to the issue of internet use for terrorist purposes and cyberterrorism.

The range of Council of Europe legal instruments was extended last June with a new Committee of Ministers Recommendation to member states on assistance to crime victims. This comes on top of the three 2005 recommendations on special investigation techniques, the protection of witnesses and collaborators of justice and identity and travel documents.

Worth noting in this context is the forthcoming publication on support and assistance for victims, which will contain a series of legal instruments produced and updated by the Council of Europe to help states meet victims' needs.

Some mention should also be made of recent developments following the allegations made in 2005 by the Washington Post and Human Rights Watch about the existence of secret CIA detention centres in Council of Europe member states. An inquiry was launched on 1 November 2005 by the Parliamentary Assembly and the Council of Europe's Secretary General has taken action under Article 52 of the European Convention on Human Rights. The initial outcome of these efforts was the publication of a report by the Secretary General, based on the official replies received from the 46 member states. This report was included in your last meeting file and at today's meeting, you will have an opportunity to examine the additional report which came out in June 2006.

As you will recall, close study of the official replies revealed that the existing procedures to monitor who and what was transiting through European airports and airspace did not provide adequate safeguards against abuse. Indeed, no Council of Europe member state appeared to have established any kind of procedure in order to assess whether civil aircraft were being

used for purposes that would be incompatible with internationally recognised human rights standards.

The Secretary General also said that the existing rules on state immunity created considerable obstacles for effective law enforcement in relation to the activities of foreign agents, that immunity could not mean impunity, and that exceptions to state immunity already recognised in the case of torture should be extended to other serious violations of human rights, such as enforced disappearances.

In September 2006, the Secretary General will submit proposals to the Committee of Ministers for concrete measures to remedy these shortcomings, in three areas: the introduction of machinery to monitor foreign intelligence agencies operating in Europe, regulations on international air traffic and exceptions to state immunity, an area that is of particular interest to us.

* * *

Moving on to the **fight against corruption**, it will be recalled that in GRECO,[10] the Group of States against Corruption, the Council of Europe has an integrated and fully operational monitoring system, which could serve as an example for worldwide action.

Various bodies are currently considering the idea of monitoring the UN Convention against corruption. It this idea is taken up, it will be necessary to decide how to co-ordinate this monitoring with other monitoring processes and systems to ensure that there is no duplication of effort or overlapping of activities and that the various processes are mutually supportive. This is particularly important since, as a rule, monitoring places a heavy burden on the countries concerned. Indeed, there are signs that countries are becoming weary of monitoring.

GRECO, meanwhile, is continuing to evaluate the situation in its 41 member states (two of which, the United States and Montenegro, are not members of the Council of Europe) using tried and tested methods. It is just about to complete its second evaluation round which concerns the proceeds of corruption, corruption in public authorities and the use of legal persons as shell companies to shield corruption offences. Russia has just announced that it is to join GRECO.

The third evaluation round will begin in early 2007 and will focus on transparency in the funding of political parties and the offences provided for by the Council of Europe's Criminal Law Convention on Corruption and its Additional Protocol.

* * *

In the field of bioethics,[11] it is important to mention the **Additional Protocol to the Convention on Human Rights and Biomedicine concerning the transplantation of organs and tissues,** which came into force on 1 May 2006. This Protocol to the Convention is still the only international treaty on the subject.

The Council of Europe is also continuing to look at the ethical and legal issues raised by genetic applications. The Working Group tasked with preparing the draft Protocol on human genetics is addressing the issue of individual genetic tests, screening programmes, gene therapy and genetics research. The part of the Protocol relating to non-medical applications of genetics will deal in particular with the use of genetic tests in employment and insurance.

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[10] Information and documents on these activities are available on the following website: www.greco.coe.int.
[11] Information and documents on these activities are available on the following website: www.coe.int/bioethics

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

The Council of Europe Convention on the avoidance of statelessness in relation to State succession – which is No. 200 in the European Treaty Series – was opened for signature on 19 May last and signed the same day by Ukraine. It needs to be ratified by 3 states before it can come into force.

This convention, drafted in response to a Recommendation from the Committee of Ministers to member states in 1999 on the prevention and reduction of statelessness, 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 of the work carried out by the International Law Commission, in particular the draft articles on nationality of natural persons in relation to the succession of States.

* * *

A key activity in the field of **family law** is the revision of the European Convention on the adoption of children. This revision is being carried out by the Working Group on adoption and the revised Convention is due to be adopted in 2007.

* * *

On the subject of counterfeit medicines and pharmaceutical crimes, we should point out that the Council of Europe has launched a programme to combat this problem, which started with a seminar in September 2005.

A feasibility study on a Council of Europe legal instrument is under way and will be completed by 2007. In addition, an international conference, jointly organised by the Council of Europe and the Russian Federation, is to be held in October 2006.

* * *

With regard to our activities in the field of **constitutional and electoral law,** our Venice Commission,[12] with whose excellent work you are already familiar, recently adopted several important opinions on constitutional reforms in Armenia and Ukraine, on draft amendments to the electoral codes of Armenia and Georgia, and on the draft law on churches and religious organisations in the Republic of Serbia.

It also adopted a report on the participation of political parties in elections and a declaration on women's participation in elections.

The Commission is also active outside Europe, one example being its co-operation with South Africa.

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. Two agreements to this effect were signed with UNMIK in the summer of 2004. Last June, the Committee of Ministers adopted the first resolution on the implementation of

[12] Information and documents on these activities are available on the following website: www.coe.int/venice

the Framework Convention in Kosovo while in July, NATO granted the European Committee for the Prevention of Torture access to NATO-run detention centres in Kosovo.

* * *

That brings me to the activities of your Committee which, I am pleased to say, have been of a high calibre.

A new publication entitled *State Practice Regarding State Immunities*[13] has aroused keen interest in the diplomatic and scientific community.

New databases concerning state practice on state immunities and the organisation and functions of the Office of Legal Adviser within foreign affairs ministries are packed with information that is now available to the public. As regards the study of UN-imposed sanctions, I am hopeful that this activity will be boosted by the publication of Professor Cameron's and Professor Fassbender's reports and I would ask those delegations which have not yet submitted contributions for the database to do so at the earliest opportunity.

Much of your work is connected with your role as European Observatory of Reservations to International Treaties. Over the years, this activity has grown and been strengthened by the extension of its scope to include outstanding and non-outstanding reservations to international anti-terrorism treaties. We welcome this development and are in favour of further dialogue between reserving states, whether or not they belong to the Council of Europe, and the CAHDI. Dialogue between the CAHDI and CODEXTER in this area is also vitally important.

Lastly, I hope that the 4th multilateral consultation on the implications of ratification of the Rome Statute of the International Criminal Court for Council of Europe member states will give a further boost to the development of an international justice system and contribute to the optimal functioning of the ICC.

I would also like to inform you of the other upcoming events in autumn 2006, in particular the **high-level conferences**:

The 27th Conference of European Ministers of Justice will take place in Yerevan (Armenia) on 12 and 13 October 2006. The theme of the conference is: "Victims: place, rights and assistance".

Justice and interior ministers will meet in Moscow in November 2006 to discuss ways of improving European co-operation in criminal matters.

The joint OSCE/Council of Europe seminar on the prevention of terrorism will take place in Vienna on 19 and 20 October 2006. Participants will look at preventing public provocation, recruitment for terrorism and use of the internet to disseminate messages, with the intention of inciting the commission of a terrorist offence.

* * *

To conclude, ladies and gentlemen, we will continue our hard work aimed at building a Europe without dividing lines, based on the common values enshrined in the Council of Europe Statute: democracy, human rights and the rule of law.

Thank you for your attention.

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[13] Gerhard Hafner, Marcelo G. Kohen and Susan Breau, *State Practice Regarding State Immunities/La Pratique des Etats concernant les Immunités des Etats,* ISBN-10**:** 90 04 15073 0 ISBN-13 : 978 9004150 73 7, xxviii, 1043 pp. – One copy per delegation will be distributed at the meeting.

APPENDIX IV

OBJECTIONS TO RESERVATIONS AND DECLARATIONS TO INTERNATIONAL TREATIES/ SITUATION CONCERNING THE MEMBER AND OBSERVER STATES OF THE COUNCIL OF EUROPE

State/ *État*	**Reservations to the Convention on the Elimination of All Forms of Discrimination against Women / *Réserves à la Convention sur l'Elimination de toutes les formes de Discrimination à l'égard des Femmes***		**Reservations to the International Convention on the Suppression of Acts of Nuclear Terrorism / *Réserves à la Convention internationale sur la 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	O	O		
Azerbaijan / Azerbaidjan				
Belgium / Belgique	O	O		
Bosnia and Herzegovina / Bosnie-Herzégovine				
Bulgaria / Bulgarie				
Croatia / Croatie				
Cyprus / Chypre				
Czech Republic / République tchèque	O	O		
Denmark / Danemark	O	O		
Estonia / Estonie				
Finland / Finlande	O	O		
France	O	O		
Georgia / Géorgie				
Germany / Allemagne	●	O	O	
Greece / Grèce	O	O		
Hungary / Hongrie	O	O		
Iceland / Islande				
Ireland / Irlande	O	O		
Italy / Italie			●	
Latvia / Lettonie				
Liechtenstein				
Lithuania / Lituanie				
Luxembourg				
Malta / Malte				
Moldova				
Monaco				
Netherlands / Pays-Bas	●	O		
Norway / Norvège	O	O		
Poland / Pologne	O	O		
Portugal	O	O		
Romania / Roumanie				
Russian Federation / Fédération de Russie			O*	

San Marino / Saint-Marin				
Serbia / Serbie				
Slovakia / Slovaquie				
Slovenia / Slovénie				
Spain / Espagne	⭘	⭘		
Sweden / Suède	⭘	⭘		
Switzerland / Suisse				
"The former Yugoslav Republic of Macedonia"/"l'ex-Republique yougoslave de Macédoine"				
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*
- * Consideration of political statement / *Considération d'une déclaration de nature politique*

APPENDIX V

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 VI

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)[14]
The Organisation for Economic Co-operation and Development
The United Nations and its specialised agencies[15]
European Organisation for Nuclear Research (CERN)[16]
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
Israel[17]
New Zealand
International Committee of Red Cross (ICRC)[18]

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.

[14] See CM/Del/Dec/Act(93)488/29 and CM/Del/Concl(92)480/3.
[15] For specific items at the request of the Committee.
[16] For specific items at the CERN's request and subject to the Chair's approval.
[17] 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.
[18] 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 VII

PRELIMINARY DRAFT AGENDA OF THE 33rd MEETING OF THE CAHDI

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

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

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. Peaceful settlement of disputes: Compulsory jurisdiction of the International Court of Justice (ICJ) (Article 36 (2)) and overlapping jurisdiction of international tribunals

11. 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

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

APPENDIX VIII

LIST OF ITEMS DISCUSSED AND DECISIONS TAKEN AT THE 32nd MEETING OF THE CAHDI

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 Lehto (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 Einar 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.