

Strasbourg, 30/03/07

CAHDI (2007) 14

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

**33rd meeting, Strasbourg, 22-23 March 2007**

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

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 33rd meeting in Strasbourg on 22 and 23 March 2007 with Sir Michael Wood in the Chair. The list of participants is set out in Appendix I to the meeting report\* 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 developments concerning the Council of Europe Treaty Series. His statement is set out in Appendix III to the meeting report.\*
3. The CAHDI was informed about the decisions of the Committee of Ministers of relevance to its work. The CAHDI adopted a reply to the *Message of the Committee of Ministers of 27 September 2006 to committees involved in intergovernmental co-operation at the Council of Europe* (CM/Del/Dec(2006)974/1.6E), as set out in **Appendix II** to the present report. The CAHDI took note of the summary of the Joint OSCE-Council of Europe Expert Workshop on Prevention Terrorism: Fighting Incitement and Related Terrorist Activities (Vienna, 19-20 October 2006), as contained in document CM (2006) 204 rev (CM/Del/Dec(2006)981/10.7E). The CAHDI considered carefully the criteria for launching, discontinuing and evaluating Council of Europe projects, as set out in document CM(2006)101 final (CM/Del/Dec(2007)984/1.9E), which it will take fully into account when considering its future work programme. It decided to include an item on the agenda of its next meeting "Programme of activities of the CAHDI", with a view to having an in-depth discussion.
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 III** 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)765bis/2.1). The CAHDI agreed to pursue its examination of this issue at its next meeting.
5. The CAHDI considered the issue of State Practice regarding State Immunities and agreed to keep this item on the agenda. The Committee invited those delegations which had not yet done

\* Document CAHDI (2007) 15 prov.

so to submit their contributions at their earliest convenience so that they could be included in the relevant database; it also called upon delegations to update their contributions on a regular basis and to submit any relevant case-law.

6. The CAHDI pursued its discussions concerning the Office of the Legal Adviser of the Ministry for Foreign Affairs (OLA). The Committee welcomed the new contributions and invited those delegations which had not yet done so to submit their contributions at their earliest convenience so that they could be included in the relevant database; it also called upon delegations to update their contributions on a regular basis. The CAHDI welcomed the initiative of Mexico and Switzerland to give presentations during the next meeting on the role of the OLA in the national implementation of international law.

7. The CAHDI considered the request of the UN Security Council Committee established by Resolution 1267 (1999) for access to the information contained in the CAHDI database on National Implementation Measures of UN Sanctions and Respect for Human Rights and agreed to release the information to the members of the Security Council on a restricted basis. It welcomed the new contributions and invited those delegations which had not yet done so to submit their contributions at their earliest convenience and to update their contributions on a regular basis, including the relevant case-law.

8. The CAHDI considered the recording of State practice at national level and invited delegations to provide any additional information on the basis of document CAHDI (2007) 12 by **15 June 2007**. The CAHDI examined the proposal for a new activity from the *Oxford University Press* and agreed that this activity would not be feasible given States' current workload.

9. The CAHDI pursued its consideration of issues relating to the peaceful settlement of disputes, in particular a) the compulsory jurisdiction of the International Court of Justice (ICJ) and b) the overlapping jurisdiction of international tribunals.

a) It considered a preliminary draft Recommendation of the Committee of Ministers to Member States on the Acceptance of the Jurisdiction of the International Court of Justice as set out in **Appendix IV** to the present report and agreed to pursue its consideration with a view to approval at its next meeting on the basis of national contributions to be submitted by **15 June 2007**.

b) It discussed and also agreed to continue the consideration of the overlapping jurisdiction of international tribunals at its next meeting on the basis of the updated contribution from Portugal and that of United Kingdom.

10. The CAHDI pursued its consideration of the implications of the UN Convention on Jurisdictional Immunities on the European Convention on State Immunity and agreed to pursue consideration of developments in this respect in the context of the general issue of State immunities (see 5 above).

11. 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).

12. The CAHDI welcomed the conclusions adopted at the 4th multilateral consultation on the International Criminal Court which was held in Athens on 14 and 15 September 2006.

13. The CAHDI held an exchange of views with the Secretary General of the Permanent Court of Arbitration, Mr Tjaco van den Hout. His statement is set out in Appendix VI to the meeting report.\*

14. The CAHDI pursued consideration of the outcome document of the 2005 UN World Summit and welcomed the paper submitted by the Swiss delegation on "Advancing the international rule of law" and agreed to pursue discussions on this matter.
15. The Anti-Terrorism Coordinator of the Council of Europe, Rafael A. Benitez, informed the CAHDI about developments concerning the Council of Europe's work against terrorism. The CAHDI welcomed the forthcoming entry into force of the Council of Europe Convention on the Prevention of Terrorism and the organisation by the Council of Europe of an international conference "WHY TERRORISM? Addressing the Conditions Conducive to the Spread of Terrorism", which will be held in Strasbourg on 25 and 26 April 2007.
16. The CAHDI took note of the state of ratifications of Protocol 14 to the ECHR and strongly encouraged all efforts aimed at ensuring its early entry into force.
17. The CAHDI appointed Mr Carl Henrik EHRENKRONA (Sweden) as its representative to the Steering Committee for Human Rights (CDDH).
18. The CAHDI decided to hold its next meeting in Strasbourg on 10 and 11 September 2007 and adopted the draft agenda as set out in **Appendix V** to the present report.

## **APPENDIX I**

### **AGENDA FOR THE 33<sup>rd</sup> MEETING**

#### **A. INTRODUCTION**

1. Opening of the meeting by the Chair, Sir Michael Wood
2. Adoption of the agenda and approval of the report of the 32<sup>nd</sup> meeting
3. Statement by the Director of Legal Co-operation, Mr Roberto Lamponi

#### **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)
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
17. Exchange of views with the Secretary-General of the Permanent Court of Arbitration, Mr Tjaco van den Hout

**D. OTHER**

18. Date, place and agenda of the 34th meeting of the CAHDI
19. Other business:
  - Status of ratification of Protocol 14 to the ECHR
  - Participation of a representative of the CAHDI in the Steering Committee for Human Rights (CDDH)

## APPENDIX II

### REPLY OF THE CAHDI TO THE MESSAGE OF THE COMMITTEE OF MINISTERS OF 27 SEPTEMBER 2006 TO COMMITTEES INVOLVED IN INTERGOVERNMENTAL CO- OPERATION AT THE COUNCIL OF EUROPE

At its 33rd meeting (22-23 March 2007), the CAHDI took note of the Message of the Committee of Ministers to committees involved in intergovernmental co-operation at the Council of Europe and conducted a critical evaluation of the work carried out in recent years both in terms of its relevance to the Organisation's fundamental values and its added value.

At the outset, it should be noted that all of the CAHDI's activities in pursuance of project 2004/DG1/178 - *Public international law*, fall within the Plan of Action, in particular Section I - Promoting common fundamental values: human rights, rule of law and democracy and Section II - Strengthening the security of European citizens. The CAHDI is also involved to some extent in relation to sections III – Building a more humane and inclusive Europe and IV – Fostering co-operation with other international and European organisations and institutions.

#### **Section I.1. – Ensuring the continued effectiveness of the European Convention on Human Rights**

The CAHDI considers questions of general public international law which arise in cases pending before the ECHR which are brought to the attention of the Committee by the States concerned.

Moreover, in the context of its operation as *European Observatory of Reservations to International Treaties*, the CAHDI considers reservations to human rights treaties including those to Council of Europe treaties with a view contributing to the effectiveness of such treaties.

The CAHDI has also followed developments concerning the ECHR in particular those relating to Protocol 14.

#### **Section I.3. - Strengthening democracy, good governance and the rule of law in member states**

The post-Warsaw Summit work of the CAHDI has focused on the definition of the legal framework of a democratic state permitting the development of legal and judicial systems and of law enforcement systems respectful of the rule of law and human rights.

In this period, the Committee of Legal Advisers on Public International Law (CAHDI) has considered, *inter alia* :

- *current issues in the area of international humanitarian law*: the CAHDI discussed the ICRC study on customary international humanitarian law as well as the issues of the protection of cultural property in the event of armed conflict and the relationship between human rights law and international law, including international humanitarian law;
- *the outcome document of the 2005 UN World Summit*: the CAHDI is considering ways and means to contribute to the advancing of the international rule of law;
- *digests of state practice on international law*: the CAHDI referred to the Council of Europe standards on publication of digests of state practice and to the model plan for the classification of documents concerning state practice in the field of international public law;
- *the peaceful settlement of disputes*: the CAHDI is considered ways and means to promote peaceful settlement of disputes and promoting the acceptance of the jurisdiction of the International Court of Justice under its Statute as well as other agreements including the European Convention

on the Peaceful Settlement of Disputes; the CAHDI is also discussing the overlapping jurisdiction of international courts and tribunals;

- *developments concerning the International Criminal Court*: the CAHDI co-organised the 4th multilateral consultation on the ICC on 14 and 15 September 2006 and periodically reviews developments concerning the ICC;

- *the implementation and functioning of the ad hoc criminal tribunals established by United Nations Security Council Resolutions 827 (1993) and 955 (1994)*: the CAHDI considers periodically developments concerning these tribunals;

- *the work of the International Law Commission (ILC) and of the Sixth (Legal) Committee of the UN General Assembly*: the CAHDI follows closely the work of the ILC and the Sixth Committee of the UN GA and holds exchanges of views with members of the ILC with a view to facilitating the progressive development and codification of international law and to foster co-operation in this respect.

Following the finalisation of its Pilot Project on State Immunities, the CAHDI published the book "State Practice regarding State Immunities" and set up a database on national developments.

The CAHDI also set up a database on the organisation and functions of the Office of the Legal Adviser in the Ministry for Foreign Affairs.

Finally, the CAHDI keeps under review Council of Europe instruments in the field of international law, in particular European Conventions.

#### ***Section I.4 - Ensuring compliance of the commitments made by member states and promoting political dialogue***

The CAHDI continues to facilitate mutual understanding and common positions on international law issues.

The CAHDI considered the implications of the UN Convention on Jurisdictional Immunities on the European Convention on State Immunity - an informal working party was established to bring the Parties together to make further proposals.

Furthermore, at the request of the Committee of Ministers, the CAHDI also adopted an Opinion on Parliamentary Assembly Recommendation 1690 (2005) – The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference.

In this context it is worth noting the CAHDI's support for the regular organisation by the Council of Europe of specific multilateral meetings on the International Criminal Court (ICC). The preparation and the outcome of the 4th consultation meeting (Athens, 14 and 15 September 2006) were followed closely by the CAHDI.

Furthermore in 2005 and 2006, the CAHDI held exchanges of views with special guests, such as Mr Badinter, President of the International Court of Conciliation and Arbitration within the OSCE and also Mr Ferrari Bravo, a member of the Court's Bureau, Mr Rosas, judge of the Court of Justice of the European Communities, Mr Scheinin, the UN Special rapporteur on Terrorism and Human Rights, as well as the President and Prosecutor of the International Criminal Court (ICC), Mr Kirsch and Mr Moreno Ocampo.

#### ***Section II.1 – Combating terrorism***

In the context of its operation as a *European Observatory of Reservations to international treaties*, the CAHDI monitors reservations to international anti-terrorism treaties and regularly updates a list

of problematic reservations to such treaties. Furthermore, reserving states have been approached about withdrawing their reservations.

The Committee has also deployed significant efforts aimed at improving the implementation of UN sanctions and the respect of human rights, including the setting up of a database on the national situation regarding this issue. The CAHDI's work in this respect has been instrumental to the adoption by the UN Security Council of resolutions 1730(2006) and 1735(2006), which have brought about improvements in the UN sanctions system from a human rights perspective.

### ***Section III.6. – Fostering intercultural dialogue***

The CAHDI fosters inter-cultural dialogue in the field on international law since international law is generally regarded as an “international language” and represents an important element for international relations and the stability of the international community as a whole.

### ***Section IV.1 – Relations with the European Union***

There is a close co-operation between the EU work (COJUR) and the Council of Europe work (CAHDI). In the field of public international law, which is mutually reinforcing and beneficial.

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In light of the above, the CAHDI considers that its activities are relevant to the Council of Europe's fundamental values and provide significant added value, both intrinsically and in relation to the work of other international organisations and other committees of the Council of Europe.

States / États	Convention	A		B		C	D	E	
		1	2	3	4	5	6	7	8
	Reservation/ Réserve	Brunei Darussalam	Cook Isl./ I. Cook	Bahrain	Maldives	Montenegro	Iran	Turkey/ Turquie	Egypt/ Egypte
	Deadline/ Délai	15/06/07	27/08/07	27/12/07	18/09/07	29/10/07	27/11/07	31/10/05	03/11/05
Albania / Albanie									
Andorra / Andorre									
Armenia / Arménie									
Austria / Autriche		●							
Azerbaijan / Azerbaïdjan									
Belgium / Belgique		○			○				
Bosnia and Herzegovina / Bosnie-Herzégovine									
Bulgaria / Bulgarie									
Croatia / Croatie									
Cyprus / Chypre									
Czech Republic / République tchèque		○							
Denmark / Danemark		●		○	○				
Estonia / Estonie		●							
Finland / Finlande		●		○	○				
France		○	○	○	○	■			
Georgia / Géorgie									
Germany / Allemagne		●		○	○				
Greece / Grèce		○		○			■		
Hungary / Hongrie		○			○				
Iceland / Islande									
Ireland / Irlande		●							
Italy / Italie							○		○
Latvia / Lettonie		●						●	●
Liechtenstein									
Lithuania / Lituanie									
Luxembourg									
Malta / Malte									
Moldova									
Monaco									

Netherlands / <i>Pays-Bas</i>	○	○	○	○				
Norway / <i>Norvège</i>	●		○	○				
Poland / <i>Pologne</i>	○			○				
Portugal	●		○	○		○		
Romania / <i>Roumanie</i>	●		○	○				
Russian Federation / <i>Fédération de Russie</i>								○*
San Marino / <i>Saint-Marin</i>								
Serbia / <i>Serbie</i>								
Slovakia / <i>Slovaquie</i>	○		○	○				
Slovenia / <i>Slovénie</i>								
Spain / <i>Espagne</i>	○							
Sweden / <i>Suède</i>	●		○	○				
Switzerland / <i>Suisse</i>								
"the former Yugoslav Republic of Macedonia" / <i>"l'ex-République yougoslave de Macédoine"</i>								
Turkey / <i>Turquie</i>								
Ukraine								
United Kingdom / <i>Royaume-Uni</i>	○							
Canada	○							
Holy See / <i>Saint-Siège</i>								
Israel								
Japan / <i>Japon</i>								
Mexico / <i>Mexique</i>								
United States of America / <i>Etats-Unis d'Amérique</i>								

\* Consideration of political statement / *Considération d'une déclaration de nature politique*

## APPENDIX IV

### PRELIMINARY DRAFT RECOMMENDATION OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE ACCEPTANCE OF THE JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE

#### Foreword

With reference to document CAHDI (2007) 4, the Chair and Vice-Chair of CAHDI hereby circulate a preliminary draft of a Recommendation for possible submission to the Committee of Ministers.

This draft is in no way intended to prejudge the discussion at the meeting of CAHDI on 22-23 March 2007. Rather, the intention is to assist the discussion, and to indicate a possible framework for the outcome of CAHDI's work on the subject.

In the view of the Chair and Vice-Chair, the underlying aim to assist States that may be considering accepting the Optional Clause, or amending their acceptance of the Optional Clause, by offering possible drafting suggestions which States may wish to include in their Declarations of Acceptance of the Optional Clause.

#### **Preliminary Draft Recommendation of the Committee of Ministers to Member States on the Acceptance of the Jurisdiction of the International Court of Justice**

1. The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe;
2. *Considering* that the aim of the Council of Europe is to achieve a greater unity between its members;
3. *Having regard* to the work of the Committee of Legal Advisers on Public International Law (CAHDI);
4. *Bearing in mind* the European Convention for the Peaceful Settlement of Disputes (ETS 23);
5. *Having regard* to the Charter of the United Nations and in particular to Articles 2, 7, 36 and 92-96, and to the Statute of the International Court of Justice;
6. *Considering* that the International Court of Justice is the principal judicial organ of the United Nations ;
7. *Bearing in mind* United Nations General Assembly resolution 3232 (XXIX) of 12 November 1974 and resolution 44 /23 of 17 November 1989;
8. *Recalling* the United Nations Decade of International Law, which had as one of its main purposes the promotion of means and methods for the peaceful settlement of disputes between states, including resort to and full respect for the International Court of Justice ;
9. *Bearing in mind* the 2005 World Summit Outcome Document, adopted by General Assembly Resolution 60/1 of 16 September 2005, in which the General Assembly called upon States which had not yet done so to consider accepting the jurisdiction of the International Court of Justice in accordance with its Statute, as well as resolution 61/39 of 4 December 2006, in which the General Assembly repeated its call;

10. *Considering* the increasing development and codification of international law in conventions open to universal participation and the consequent need for their uniform interpretation and application;

\* \* \*

11. Recommends that the governments of member States give consideration to the Model Clauses appended to this Recommendation when considering the possibility of accepting the jurisdiction of the International Court of Justice in accordance with Article 36, paragraph 2, of the Statute of the Court;

12. Ask the Secretary General to forward this Recommendation to the Secretary General of the United Nations.

#### Appendix to Recommendation ....

### **MODEL CLAUSES FOR POSSIBLE INCLUSION IN DECLARATIONS OF ACCEPTANCE OF THE COMPULSORY JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE UNDER ARTICLE 36, PARAGRAPH 2, OF THE STATUTE**

Note: The Declaration normally takes the form of a communication (e.g. a letter) addressed to the Secretary-General of the United Nations and signed by an authorized person, such as the Foreign Minister or Permanent Representative to the United Nations

#### **1. Basic language accepting the Court's jurisdiction**

"I hereby declare that [NAME OF STATE] recognizes [OR accepts] as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice, in conformity with paragraph 2 of Article 36 of the Statute of the Court"

#### **2. Additional clauses which may be included in a Declaration accepting the Court's jurisdiction**

##### **A. Termination clause**

"until [TIME-LIMIT] notice may be given to the Secretary-General of the United Nations withdrawing the declaration" OR "until such time as notice may be given to the Secretary-General of the United Nations withdrawing the declaration"

##### **B. Clause excluding stale disputes**

"over all disputes arising after [DATE], with regard to situations or facts subsequent to the same date"

##### **C. Settlement by other method**

"other than any dispute in respect of which the parties have agreed or shall agree to have recourse to some other method of peaceful settlement"

##### **D. Anti-ambush clause**

"other than where the acceptance of the Court's compulsory jurisdiction on behalf of any other party to the dispute was deposited less than [TIME-PERIOD] prior to the filing of the application"

bringing the dispute before the Court”

**E. Variation clause**

“The Government of [NAME OF STATE] also reserves the right [upon giving [TIME-PERIOD] notice/at any time], by means of a notification addressed to the Secretary-General of the United Nations, [and with effect from the moment of such notification,] either to add to, amend or withdraw any of the foregoing reservations or any other reservations that may hereafter be added.”

## **APPENDIX V**

### **PRELIMINARY DRAFT AGENDA FOR THE 34<sup>th</sup> MEETING**

#### **A. INTRODUCTION**

1. Opening of the meeting by the Chair, Sir Michael Wood
2. Adoption of the agenda
3. Approval of the report of the 33<sup>rd</sup> meeting
4. Statement by the Director General of Legal Affairs

#### **B. ONGOING ACTIVITIES OF THE CAHDI**

5. Decisions by the Committee of Ministers concerning the CAHDI and requests for the CAHDI's opinion
6. Programme of activities of the CAHDI
7. State immunities
  - a. State practice
  - b. UN Convention on Jurisdictional Immunities
8. Organisation and functions of the Office of the Legal Adviser of the Ministry for Foreign Affairs
  - a. The role of the OLA in national implementation of international law
9. National implementation measures of UN sanctions and respect for Human Rights
10. Digest of state practice on international law
11. Cases before the ECHR involving issues of public international law
12. Peaceful settlement of disputes:
  - a. Compulsory jurisdiction of the International Court of Justice (ICJ) (Article 36 (2)): preliminary draft Recommendation of the Committee of Ministers to Member States on the Acceptance of the Jurisdiction of the International Court of Justice
  - b. Overlapping jurisdiction of international tribunals: Exchange of views with Professor Koskenniemi
  - c. Nomination of arbitrators under particular treaties
13. 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

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

14. The work of the International Law Commission (ILC) and of the Sixth Committee:
  - a. The work of the 2007 ILC session
  - b. Guidelines on reservations to international treaties: exchange of views with Professor Pellet, member of the ILC
  - c. Other issues
15. Consideration of current issues of international humanitarian law
16. Developments concerning the International Criminal Court (ICC)
17. Implementation and functioning of the Tribunals established by United Nations Security Council Resolutions 827 (1993) and 955 (1994)
18. Follow-up to the outcome document of the 2005 UN World Summit – Advancing the international rule of law
19. Fight against terrorism - Information about work undertaken in the Council of Europe and other international bodies

**D. OTHER**

20. Date, place and agenda of the 35th meeting of the CAHDI
21. Other business:
  - Status of ratification of Protocol 14 to the ECHR