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

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

MEETING REPORT

Document prepared by
the Secretariat of the CAHDI

A. INTRODUCTION

1. Opening of the meeting by the Chair

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 33rd meeting in Strasbourg on 22 and 23 March 2007. The meeting was opened by Sir Michael Wood, Chair of the CAHDI.

2. Sir Michael Wood welcomed all the participants, a list of whom is set out in **Appendix I**. He thanked the Greek delegation for all its hard work in the organisation and hosting of the 32nd meeting (Athens, 13-14 September 2006) and asked the delegation to convey the Committee's gratitude to the Greek government.

2. Adoption of the agenda and approval of the report of the 32nd meeting

3. The CAHDI adopted the report of its 32nd meeting without any modifications (document CAHDI (2006) 32 prov) and instructed the Secretariat to publish it on the CAHDI website. At the Chair's suggestion and with the CAHDI's agreement, the agenda was revised to include a request from a PhD student preparing a thesis on the "Provisional application of treaties" under Item 19 "Other business". The agenda was then adopted as it is set out in **Appendix II**.

4. Following a suggestion by the Chair, the CAHDI agreed to separate the present item into two separate agenda items with effect from the next meeting.

5. Furthermore, the Chair suggested and the CAHDI agreed that in future each delegation should bring its own documents printed from the CAHDI website to avoid the need to produce the full set of documents for every delegation in the meeting room. Moreover, it was decided that the voluminous document "State of signatures and ratifications, reservations and declarations to treaties applicable to the fight against terrorism" (CAHDI (2007) 7) should no longer be produced since the information it contains is available on the Council of Europe and United Nations websites.

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

6. Mr Roberto Lamponi, Director of Legal Co-operation, reported on developments at the Council of Europe since the CAHDI's 32nd meeting. His statement is set out in **Appendix III** to the present report. He began by informing the Committee that Mr Guy De Vel, Director General of Legal Affairs, had retired and been replaced, *ad interim*, by the Director General of Human Rights, Mr Philippe Boillat.

7. Mr Lamponi then presented an overview of the main activities and priorities of the Council of Europe. In particular, he noted that, with a view to improving the transparency and efficiency in the Organisation, the Committee of Ministers would examine the programme of activities as well as the budgetary resources that they imply. In this respect, he drew the Committee's attention to a Committee of Ministers document (CAHDI (2007) 1 & Addendum) in which the criteria for establishing, suspending or stopping a project are identified and underlined the opportunity of the moment to debate the future activities of the Committee.

8. Referring to the budget, he informed the CAHDI that in 2006 discussions had taken place within the Committee of Ministers with a view to providing the European Court of Human Rights with additional resources. This implied budgetary restrictions, the suspension of certain activities and the structural reorganisation of the Secretariat. He recalled that the entry into force of Protocol No. 14 should improve the productivity of the Court, but that this required its ratification by one final state.

9. Concerning future developments, Mr Lamponi informed the CAHDI of Montenegro's forthcoming accession to the Council of Europe. Referring to the latest developments concerning the Council of Europe Treaties Series, which are set out in document CAHDI (2007) Inf 1, he welcomed the forthcoming entry into force of the Council of Europe Convention on the Prevention of Terrorism and noted the increasing number of Council of Europe activities against terrorism. In this respect, he mentioned two events due to be held in April: the international conference "Why terrorism? Addressing the conditions conducive to the spread of terrorism" and an Ad hoc meeting of chairs of Council of Europe committees to discuss terrorism. Mr Lamponi further informed the CAHDI that following the departure of Mr De Vel, the Secretary General had appointed Rafael A. Benitez as Council of Europe's Anti-Terrorism Coordinator.

10. Mr Lamponi concluded by welcoming, on behalf of the Committee of Ministers, the results achieved at the 4th multilateral consultation on the International Criminal Court (Athens, 14-15 September 2007).

11. The Chair thanked Mr Lamponi for his extensive overview of the Council of Europe's activities and asked him to convey to Mr De Vel the CAHDI's best wishes for his retirement.

B. ONGOING ACTIVITIES OF THE CAHDI

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

12. Referring to the relevant documents (CAHDI (2007) 1 & Addendum and CM (2006) 204 rev), the Chair specified that document CAHDI (2007) 1 contains four Decisions of the Ministers, and drew the attention of the Committee in particular 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). This message underlines that all activities must be in pursuance of the Council of Europe's objectives and contribute to its priority issues. He pointed out that the roadmap for the implementation of the Action Plan does not mention the CAHDI, although the CAHDI's activities are relevant to a number of its provisions, and stressed the importance of ensuring that the CAHDI's activities are known within the CM. Document CAHDI (2007) 1 Addendum sets out criteria for launching, discontinuing and evaluating Council of Europe projects.

13. The delegation of Austria agreed with the Chair on the importance of ensuring the CAHDI's visibility and underlined the need to review the CAHDI's activities to this end. It suggested that the CAHDI revert to its discussion of the Council of Europe's roadmap under Item 15 and should analyse the rule of law within national systems at the same time.

14. The delegations of France and Hungary proposed that, in the light of new criteria established by the Committee of Ministers, the CAHDI should concentrate on essential issues and ensure that its work was more outcome-oriented.

15. The delegation of Sweden drew the CAHDI's attention to the added value of the interrelation between the Committee's work and that of the International Law Commission and the Sixth Committee of the United Nations General Assembly.

16. The delegation of Greece reported on the exchange of views between Ms Dascalopoulou-Livada, accompanied by Sir Michael Wood, then Chair and Vice-Chair of the CAHDI, and the Council of Europe Committee of Ministers in November 2006. It proposed repeating this positive practice in future. It further suggested that it would be useful

to be informed about the outcome of the Study on the efficiency and effectiveness of Committees under the Programme of Activities of the Council of Europe.

17. The delegation of the United Kingdom, supported by the delegations of the Russian Federation and Switzerland and the observer of the United States of America, proposed that the CAHDI should regularly review the cases before the European Court of Human Rights involving public international law issues (treaty law, reservations, state responsibility, jurisdiction of states, humanitarian law, derogations, etc). It was specified that such information should be provided on a voluntary basis and the States involved would decide whether the cases should be brought to the attention of the Committee.

18. The Secretariat presented a draft reply to the above-mentioned Message of the Committee of Ministers and, following a discussion, the CAHDI adopted the reply as it is set out in **Appendix IV** to the present report.

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

19. 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 (documents CAHDI (2007) 2 rev & 6).

20. The Chair suggested, and the CAHDI agreed, to improve the table in document CAHDI (2007) 6 by adding a column entitled "State does not intend to object".

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

22. With regard to the reservation made by Brunei Darussalam on 24 May 2006 to the International Convention on the Elimination of All Forms of Discrimination Against Women, New York, 18 December 1979, the delegations of Belgium, Denmark, Finland, Norway and Sweden stated that their authorities intended to object to this reservation.

23. With regard to the reservation made by the Cook Islands on 11 August 2006 to the International Convention on the Elimination of All Forms of Discrimination Against Women, New York, 18 December 1979, the French delegation stated that its authorities consider the first part of the reservation to be problematic and to require careful scrutiny. The last part of the reservation is clearly objectionable and France intends to object to it.

24. The delegation of Netherlands informed the CAHDI that its authorities also intend to object to this reservation.

25. With regard to the reservation of Bahrain of 4 December 2006 to the International Covenant on Civil and Political Rights, New York, 16 December 1966, the delegation of Germany stated that its authorities are considering whether to object to the substance of the reservation or to the reservation itself, adding that it found the first part of the reservation unclear and the second part confusing.

26. The delegations of Greece and Romania also expressed their intention to object to this reservation.

27. The delegation of Sweden expressed its intention to object to the first and third parts of the reservation.

28. The delegations of Estonia, Poland and Spain, as well as the observer of Canada, informed the CAHDI that their authorities were also considering the possibility of objecting to this reservation.

29. The delegations of the Netherlands, Portugal, the Slovak Republic and the United Kingdom stated that their authorities intend to object to this reservation because its first part was clearly problematic. They also highlighted that this was a late reservation, a fact which will be reflected in the objections of Portugal and the Slovak Republic.

30. The delegation of France expressed its intention to object to the first part of the reservation. It was still considering whether to object to the second part and noted that the third part questions key principles of criminal law.

31. The delegation of Bulgaria informed the CAHDI that it did not intend to object to the reservation at present because of the heavy internal procedure for registering objections. This procedure is currently being revised.

32. With regard to the reservation of the Maldives of 19 September 2006 to the International Covenant on Civil and Political Rights, New York, 16 December 1966, the delegations of Belgium, France, Germany, Hungary, the Netherlands, Norway, Poland, Portugal, Romania, the Slovak Republic and Sweden said that their authorities intend to object to this reservation.

33. The observer of Canada stated that it was strongly considering objecting to this reservation.

34. With regard to the reservation of Montenegro of 23 October 2006 to the Convention on the Prevention and Punishment of the Crime of Genocide, New York, 9 December 1948, France stated that its authorities do not intend to make any objection to this reservation since this reservation has been applied by the International Court of Justice.

35. With regard to the reservation of Iran (Islamic Republic of) of 20 November 2006 to the International Convention against the Taking of Hostages, New York, 17 December 1979, the delegations of Italy and Portugal declared their intention to object.

36. The delegation of France stated that neither the reservation nor the first part of its interpretative declaration raised any problems but that its authorities were continuing to scrutinise its second part.

37. The delegation of the United Kingdom said that its authorities were considering objecting or making a statement to the effect that this interpretative declaration has no legal effect.

38. The delegation of Norway said that its authorities remained concerned as to whether Iran intends to introduce an exception to Article 12 of the Convention.

39. The delegation of Greece stated that since a political declaration is not objectionable, it does not intend to object to it.

40. The delegation of the Russian Federation said that its authorities considered it to be a political statement.

41. The delegations of Sweden and Germany were concerned about this reservation and are keeping it under scrutiny.

42. With regard to the reservation of Turkey of 14 September 2005 made upon signature of the International Convention for the Suppression of Acts of Nuclear Terrorism, New York, 13 April 2005, the delegations of the Netherlands and Norway were puzzled by the first sentence of the reservation which seems to exclude customary international law, although in general it does not appear to be problematic. It should be noted that Turkey is not yet a party to the Convention.

43. The delegations of Germany, Greece and Italy agreed and added that further clarification by Turkey would be welcome.

44. The delegation of Turkey underlined that it had not yet ratified the instrument and also pointed out the absence of a consensus on customary international law.

45. With regard to the reservation of Egypt of 20 September 2005 made upon signature of the International Convention for the Suppression of Acts of Nuclear Terrorism, New York, 13 April 2005, the delegation of the Russian Federation stated that its authorities would proceed in the same way as they had with a similar reservation by Egypt to the International Convention for the Suppression of Terrorist Bombings, to which it had reacted with a political statement.

46. The delegation of France expressed concern at the reservation.

47. The delegation of Greece noted that Egypt's reservation entailed an expansion of the scope of the Convention and reflected Egypt's *desiderata* for inclusion in the Convention. Greece will wait until Egypt ratifies the Convention. It added that it believed the Russian Federation's bilateral reaction would have no value unless it was translated into a public statement.

48. The delegation of Italy stated that a reservation to a multilateral treaty cannot unilaterally extend the scope of the Convention and, thus, it intends to object.

49. The delegation of Germany was considering submitting an interpretative declaration unless Egypt clearly states its views.

50. The observer of Canada also expressed concerns about this reservation and would consider objecting to it.

51. The Chair summed up the discussion by stating that the Turkish and Egyptian reservations upon signature raise a point of principle as to whether States should or should not object to reservations upon signature so as to dissuade their maintenance upon ratification. In this respect, he suggested that an exchange of views with Professor Pellet, member of the International Law Commission, might be useful.

52. The Chair also called upon delegations to submit information on their objections (and/or intentions to object) at least one month prior to the meeting and instructed the Secretariat to circulate a reminder to this effect.

53. The table listing objections (or intentions to object) to reservations and declarations to international treaties is set out in **Appendix V** to this report.

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

55. In relation to the declaration of the Russian Federation 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), the delegation of the Russian Federation noted that since this declaration was made upon signature and was subject to confirmation upon ratification, it would be premature to indicate the deadline in the European Observatory of Reservations to International Treaties.

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

56. The Chair referred to the list of problematic reservations and declarations to international treaties applicable to the fight against terrorism, compiled on the basis of contributions from delegations (document CAHDI (2006) 7). It was stressed that the Council of Europe Committee of Ministers attaches great importance to this exercise and delegations were invited to continue to submit their contributions. Delegations having already provided contributions were invited to revise them if they so wished or to submit additional information.

57. The Chair reiterated the decision taken under Item 2 to stop the production of the compilation of signatures and ratifications, reservations and declarations to treaties applicable to the fight against terrorism (document CAHDI (2007) 7) in future.

58. The CAHDI agreed to pursue its consideration of this issue at its next meeting.

6. State practice regarding State immunities

59. The Chair referred to the database on State practice regarding State Immunities (CAHDI (2007) Inf 2) and invited states to submit any contributions they might have or to update their existing contributions. He further suggested that this item should henceforth be considered jointly with Item 11 "United Nations Convention on Jurisdictional Immunities and European Convention on State Immunity".

60. The delegation of the United Kingdom drew the CAHDI's attention to document CAHDI (2007) Inf 4 containing a New Zealand judgment. The case is of relevance for the CAHDI as the issue is not raised under a specific State Immunity Act but by a reference to general international law.

61. The observer of Japan supported this discussion and informed the CAHDI that its authorities were preparing to ratify the United Nations Convention on Jurisdictional Immunities.

62. The delegation of Portugal informed the CAHDI about the updating of Portuguese jurisprudence following its ratification of the United Nations Convention. An update will be submitted to the CAHDI database in the near future.

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

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

64. The Chair called upon delegations not having done so to submit their contributions to the database on the organisation and functions of the Office of Legal Adviser (OLA) of the Ministry for Foreign Affairs (CAHDI (2007) 10), and on those that had done so to keep them up-to-date.

65. The observer from Mexico referred to its proposal to discuss the role of the OLA in the national implementation of international law (document CAHDI (2007)13). It considered that the members of the CAHDI could benefit enormously from the experience gained by legal advisers of ministries for foreign affairs by means of an exchange of views on how certain issues have been addressed by their offices. The observer from Mexico volunteered to give such a presentation at the next meeting.

66. The delegation of Switzerland supported the proposal, which is in line with the Swiss initiative on "Follow-up to the Outcome Document of the 2005 UN World Summit – Advancing the international rule of law" and also volunteered to give a presentation.

67. The CAHDI welcomed both initiatives and agreed to pursue its examination of this issue at its next meeting.

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

68. 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 (document CAHDI (2007) 5) and agreed to release the information to the members of the Security Council on a restricted basis.

69. The CAHDI also welcomed the adoption of UN Security Council resolutions 1730 (2006) and 1735 (2006), which significantly improved the procedure of the Sanctions Committee and indicated the commitment of the Security Council to ensuring transparent and efficient listing and de-listing procedures in compliance with its human rights commitments.

70. The delegation of France welcomed, in particular, the setting up of a "focal point" and thanked the other delegations for supporting this French initiative.

71. The delegation of Norway noted that combating international terrorism also promotes human rights, since acts of terrorism threaten such rights. At the same time, an effective struggle against terrorism must go hand in hand with the protection of human rights. The progress made by the UN Security Council in this regard is considerable, and efforts to this end should be welcomed. These are, however, only the first steps and there is the potential for further consideration of this question by the Security Council.

72. The delegations of Denmark and Greece echoed the statement of the delegation of Norway and underlined that the CAHDI could play an important role by reflecting on this matter.

73. The delegation of Sweden agreed and underlined that the main problem remained the absence of a "fair trial" element in the system of the UN sanctions.

74. The observer from the United States agreed with the delegation of France and stressed that the "focal point" set up by UN Security Council resolution 1730 (2006) was a compromise against the background of the valuable contribution of the sanctions system to the fight against terrorism, the financing of terrorism in particular. He further stated that it would be necessary to ensure that innocent people would not be sanctioned, adding that respect for the sanctions procedure and the effectiveness of the system depend on the legality in the application of sanctions by national legislation and jurisdiction.

75. The delegation of Switzerland stated that the efficiency of the system of sanctions is based on its legitimacy. It further informed the CAHDI that the Swiss authorities could be faced with a situation where the sanctions system might be challenged on grounds of human rights violations. Thus, any additional measures to improve the sanctions regime should be pursued.

76. The observer of Japan said that in the absence of a special law, Japan proceeded with implementation of the UN sanctions under its ordinary law. In Japan there is also an increasing likelihood that a case challenging the sanctions system on grounds of human rights violations will be brought before its domestic courts. In this respect, an exchange of views on best practices to ensure the implementation of sanctions at domestic level would be welcomed.

77. The delegation of Portugal noted its progress with the approval a new law concerning the implementation of UN sanctions.

78. The CAHDI noted the usefulness of being informed about cases in national courts on this matter and agreed to pursue its examination of this issue at its next meeting.

9. Digest of state practice on international law

a. Proposal for a new activity

79. The CAHDI's attention was drawn to the draft list of state practice publications prepared by the Chair (CAHDI (2007) 12) and delegations were invited to contribute to this list.

80. The delegation of the Russian Federation expressed his support of a useful initiative and stated that his country would study possibility to contribute to the list.

81. The CAHDI agreed to pursue its examination of this issue at its next meeting and invited delegations to provide any additional information on the basis of document CAHDI (2007) 12 by **15 June 2007**.

b. State practice in connection with digests of international law

82. The Chair referred to the proposal made by Oxford University Press (OUP) and recalled the extensive discussion on this matter at the previous meeting of the CAHDI. Most delegations mentioned practical obstacles to carrying out of this activity.

83. The delegation of Norway reiterated its position, that for countries like Norway there was the added difficulty of translation with a view to making material available to the broader international community.

84. The CAHDI instructed the Secretariat to draft a negative reply to the OUP stating that this activity would not be feasible given States' current workload.

C. GENERAL ISSUES OF 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

Compulsory jurisdiction of the International Court of Justice (ICJ).

85. The Chair drew the attention of the CAHDI to document CAHDI (2006) 4 rev concerning the situation in Council of Europe member states with regard to the ICJ's jurisdiction under selected international treaties and agreements.

86. The delegation of the Russian Federation stated that its authorities had withdrawn reservations deposited by the USSR to six anti-terrorist conventions. As a result, the Russian Federation no longer has any reservations to the compulsory jurisdiction of the ICJ on any of the anti-terrorist conventions.

87. The delegation of Romania informed the CAHDI that Romania had withdrawn its reservations to the Convention for the Suppression of Unlawful Seizure of Aircrafts; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation; the Single Convention on Narcotic Drugs and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. Romania is currently preparing a draft to withdraw all its reservations to the compulsory jurisdiction of the ICJ. It is also considering acceding to the Optional Protocols to the Vienna Convention on Diplomatic Relations, concerning the Compulsory Settlement of Disputes and to the Vienna Convention on Consular Relations, concerning the Compulsory Settlement of Disputes providing for acceptance of the compulsory jurisdiction of the ICJ.

88. The delegation of Germany stated that although it had not yet made a declaration under Article 36 (2), it was committed to accepting the compulsory jurisdiction of the ICJ.

89. The delegation of Turkey informed the CAHDI that it had signed the Council of Europe Convention on the Prevention of Terrorism (CETS 196).

90. The delegation of Andorra stated that it had ratified the International Covenant on Civil and Political Rights; the International Convention on the Elimination of all forms of Racial Discrimination; the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, monitored by the Committee against Torture; and the Convention on the Prevention and Punishment of the Crime of Genocide.

91. The Chair drew the CAHDI's attention to the preliminary draft Recommendation of the Committee of Ministers to Member States on the Acceptance of the Jurisdiction of the International Court of Justice as it is set out in **Appendix VI** to the present report. He recalled the Committee of Ministers' request for committees to produce concrete results and noted that the last recommendation elaborated by the CAHDI was adopted in 1999. The draft Recommendation may be useful for states considering accepting the Optional Clause and it is also in line with the objectives of the Outcome Document of the 2005 UN World Summit and the Council of Europe roadmap.

92. The delegation of Norway stressed that the rule of law is one of the core values of the Council of Europe and that its promotion at the national and international levels should be fully supported. Moreover, this work highlights a nexus with relevant UN General Assembly resolutions.

93. The delegations of Denmark, Germany and the United Kingdom supported the initiative, which fully complies with the CAHDI's task of promoting the universal jurisdiction of the ICJ.

94. The delegation of Greece welcomed the initiative but considered it important to clarify that the list of clauses in the Recommendation was not exhaustive.

95. The delegation of Portugal supported the adoption of the Recommendation but proposed that the text should recall that declarations on Article 36(2) can be made without any reservations.

96. The observer of Japan agreed with Portugal and suggested that it should be made clear that a reservation is not required in order to make a declaration and that a declaration does not exclude further reservations.

97. The delegation of the Netherlands thought that the Recommendation would further underline the importance of accepting the compulsory jurisdiction of the ICJ. However, it suggested that some terms in the Recommendation should be reconsidered.

98. The delegation of Switzerland suggested considering the adoption of the Recommendation at the next meeting of the CAHDI in the light of written comments to be submitted by delegations.

99. The CAHDI agreed to pursue its consideration of the Recommendation with a view to its approval at its next meeting. It will be considered on the basis of the revised draft to be prepared by the Chair and the Vice-Chair on the basis of national contributions to be submitted by **15 June 2007**.

Overlapping jurisdiction of international tribunals

100. The delegation of the United Kingdom presented its non-paper (document CAHDI (2007) 11) which addresses the questions identified previously in a contribution from Portugal, namely: how to cope with the emergence of different principles in the case-law of international courts and tribunals; how to find rules to solve the problem of overlapping jurisdictions; and whether such rules may contribute to the development of an international legal system.

101. The CAHDI agreed to continue its consideration of the overlapping jurisdiction of international tribunals at its next meeting on the basis of updated versions of the contributions from Portugal and the United Kingdom. Further contributions on this matter from other delegations would be welcomed.

Working capacity of the International Court of Justice

102. The Chair suggested, and the CAHDI agreed, to consider under this item the "Working capacity of the International Court of Justice".

103. The delegation of Austria referred to the on-going discussions on the setting-up of posts for assistants to every ICJ judge. It considered the current situation deplorable in the light of the ICJ's importance and underlined the need to ensure the creation of these new posts. It called upon CAHDI members to approach the persons responsible for budgetary issues in their United Nations delegations with a view to improving this situation.

104. The observer of Japan supported the statement of Austria and believed that this request was fully justified in light of the capacity of the ICJ and the situation in other international tribunals.

105. The delegation of the United Kingdom also supported the idea of providing the ICJ judges with the necessary additional support.

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

106. The Chair informed the CAHDI that at their second informal meeting, the Parties to the European Convention on State Immunity had suggested that a further informal meeting of parties to the European Convention should be convened when the entry into force of the United Nations Convention on Jurisdictional Immunities (hereinafter UN Convention) seemed imminent, in order to take stock of the position at that time. He furthermore drew delegations' attention to the state of signatures and ratifications of the UN Convention, as set out in document CAHDI (2007) Inf 5.

107. The delegation of Germany declared that its authorities were considering making a number of reservations concerning non-retroactivity and military activities, and an interpretative declaration regarding Article 3 of the Convention.

108. The delegation of Belgium stated that inter-ministerial consultations on this subject are underway. Moreover, an explanatory memorandum to the approval law was under preparation. This document established a comparison between the Council of Europe Convention, to which Belgium is a Party, and the UN Convention which Belgium supported.

109. The delegation of the Russian Federation informed the Committee that its authorities had signed the UN Convention but are still considering a number of declarations to be made upon ratification.

110. The delegation of Norway considered it important in this respect to avoid reservations and to opt for interpretative declarations.

111. The observer of Canada believed in the development of the UN Convention, which represents a considerable step forward in this area of public international law, particularly for states which do not have a State Immunity Act.

112. The observer of the United States of America informed the CAHDI that it is very supportive of the UN Convention. However an interagency consultation concluded that it could not be signed immediately due to the need to analyse the harmonisation between the UN Convention and a significant number of relevant pieces of legislation.

113. The observer of Japan stated its intention to ratify the UN Convention as soon as possible, although further discussion on this subject was required in the light of on-going changes to its jurisprudence.

114. The Chair summed up the discussion by underlining the importance of declarations and possible reservations to the UN Convention, as well as developments concerning ratifications and accessions. The CAHDI agreed to pursue its consideration of developments in this respect in the context of the general issue of State immunity.

12. Consideration of current issues of international humanitarian law (IHL)

115. The representative of the International Committee of the Red Cross (ICRC) informed the CAHDI about the forthcoming 30th International Conference of the Red Cross and Red Crescent (November 2007). Discussions on current challenges to IHL will be among the key topics of this conference and it will be a key forum for reaffirming the continuing relevance of IHL to current armed conflicts and for states to renew their commitment to respect and ensure respect for IHL.

116. The ICRC representative further reported to the CAHDI on some IHL-related initiatives that the ICRC has launched. Firstly, the ICRC, in co-operation with The Hague-based TMC Asser Institute, had initiated a process aimed at clarifying the notion of "direct participation in hostilities". Secondly, the ICRC Study on Customary International Humanitarian Law had been promoted since its publication through many regional or national launch events. The study, including the rules and the commentary, has been translated into several languages. Most recently, Russian, Arabic and French versions were launched in Moscow, Cairo and Paris respectively. As for the future, the ICRC has decided to keep the collection of practice up-to-date, taking into account comments received since the study's publication. The ICRC had entered into a partnership with the British Red Cross Society for that purpose and it is their intention to make the updated practice volume available electronically. Finally, the ICRC representative mentioned the 2nd universal meeting of national IHL Committees, organised in March 2007. The primary objective of this meeting was to address the issue of missing persons and to attempt to find lasting solutions from a domestic law point of view. The ICRC distributed a document on "Principles for Legislating the Situation of Persons Missing as a Result of Armed Conflict or Internal Violence" at the meeting. It was offered as a tool to assist States and their national authoritative bodies with the adoption of legislation that will address, prevent and resolve cases of missing persons.

117. The delegation of Switzerland welcomed the entry into force of the Third Additional Protocol to the Geneva Conventions and underlined that 9 of the 12 Parties to the Protocol are Council of Europe member States. It further presented developments concerning a Swiss initiative, organised in co-operation with the ICRC, on private military companies operating in conflict situations, in particular the results of a second meeting of governmental and other experts, which took place in Montreux on 13 and 14 November 2006. Further information on this matter can be found on the website of the Swiss Federal Department of Foreign Affairs.¹ It concluded by referring to the work of the International Humanitarian Fact-Finding Commission, set up by virtue of Article 90 of the First Additional Protocol to the Geneva Conventions of 1949.

118. The observer of the United States of America highlighted the importance of the Third Additional Protocol to the Geneva Conventions which has been ratified by his country. He added that the United States had submitted extensive comments to the ICRC on methodological concerns and specific questions in relation to the ICRC Study on Customary International Humanitarian Law, hoping that they would be published in the ICRC journal.

119. The observer of Japan informed the CAHDI that its authorities were preparing the ratification of the 3rd Additional Protocol to the Geneva Conventions.

120. The delegation of Norway recalled that in November 2006, its government had announced that it would facilitate a process aimed at concluding a new international treaty to prohibit cluster munitions which have unacceptable humanitarian consequences. A Conference on Cluster Munitions was organised in Oslo on 22 and 23 February 2007 and

¹ The document is available at <http://www.dv.admin.ch/psc>.

more than 46 states had committed themselves to concluding a new international legal instrument by 2008. Norway will promote co-operation and assistance programmes on this matter.

121. The delegation of Germany fully supported the initiative of Norway and said that its authorities had decided to reduce the use of cluster munitions with a view to banning them totally within a few years.

122. The CAHDI agreed to pursue its consideration of this matter at its next meeting.

13. Developments concerning the International Criminal Court (ICC)

123. The Chair referred to the Conclusions of the Fourth Consultation on the Implications for Council of Europe Member States of the Ratification of the Rome Statute of the International Criminal Court and opened the floor for discussion.

124. The observer of Japan stated that his authorities have a long-standing tradition of supporting the ICC and actively participated in the elaboration of its Statute. He further informed the CAHDI that a draft law on co-operation with the ICC had been submitted to the National Diet (Parliament) and that Japan expects to become a party to the ICC by October 2007. The delegation believed that this would encourage accession by other states, particularly in Asia.

125. The delegation of Norway welcomed the conclusions adopted at the Fourth Consultation and encouraged states which had not yet done so to ratify the Statute of the ICC. It further emphasized the importance of the Agreement on the Privileges and Immunities of the International Criminal Court, necessary to ensure its proper functioning. Referring to a discussion on implementing legislation, it stressed that the complementarity of the Statute and other pertinent rules relating to the ICC allow for a certain degree of diversity in national legislation and for domestic traditions to be applied while fulfilling the obligations contained in the Statute. This delegation stressed the importance of preserving the integrity of the Statute.

126. The delegation of the Czech Republic said that a number of attempts to ratify the Rome Statute had been made in the past and that at present the Czech Foreign Ministry is reviewing ways to proceed with its ratification. One option which is currently being considered, is to ratify this treaty according to Article 10a paragraph 1 of the Czech Constitution. The advantage of this option is that the Rome Statute would apply to the rest of the constitutional order as *lex specialis*, therefore no further constitutional amendments would be necessary and the problem of possible conflicts between the Czech constitutional order and the Rome Statute, such as over immunities, would be solved. However, if the Rome Statute is qualified as a treaty under Article 10a of the Constitution, i.e. as a treaty on the transfer of powers, its ratification would have to be approved by a three-fifth majority of all the Deputies and Senators, which would be difficult to obtain. In the meantime, representatives of the Czech Republic participate regularly in the sessions of the Special Working Group for the Definition of the Crime of Aggression and, as an observer, in the sessions of the Assembly of States Parties to the Rome Statute.

127. The observer of the United States of America said that his authorities closely follow developments concerning the ICC. Although the United States of America does not intend to become a Party to the ICC Statute, its government shares its common goals and respects the decision of other states to become parties to the Statute.

128. The CAHDI agreed to keep this item on the agenda.

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

129. The delegations of Germany and Norway referred to the on-going discussions on pension schemes and the entitlements of the judges in these Tribunals. Both delegations underlined the necessity to ensure a fair balance between the conditions granted to those judges and those granted to the judges of other international courts.

130. The CAHDI agreed to keep this item on its agenda.

15. Follow-up to the Outcome Document of the UN World Summit – Advancing the international rule of law

131. The Chair recalled the previous discussions of the CAHDI under this item on the basis of document CAHDI (2006) 11 submitted by the delegation of Switzerland.

132. The delegation of Switzerland took the floor and presented developments in the *Liechtenstein and Mexico initiative* in the Sixth Committee of the United Nations General Assembly. It stated that there was a high risk that the reasons for this initiative would be incorrectly perceived and that certain groups of states, particularly those from developing states, might consider it as an eventual means of exerting pressure. The delegation believed that the initiative was misunderstood and that clarifications would be necessary in the contributions to be submitted to the UN Secretary-General. In particular, additional effort should be made in order to highlight this initiative as having a common interest for all and to underline its grounding in geographic and thematic partnership and co-operation.

133. The delegation of Austria considered the document submitted by the Swiss delegation to be a good example of concrete action in relation to the Rule of Law. It agreed that the perception of the Liechtenstein/Mexico initiative was less positive among developing states than in developed states.

134. The observer from Mexico was convinced that this issue should be the subject of further discussions in order to avoid any misunderstandings about the implications of the Rule of Law concept.

135. The delegation of Germany said that it would remain committed to the initiative and underlined that the contribution of the Swiss paper to the structuring of the discussion could only be praised. In its opinion, the Council of Europe's member States should convey a positive message to the UN. The delegation further referred to the establishment of a small Rule of Law Assistance Unit within the UN Secretariat and regretted its limited facilities. It called upon other states to support the functioning of this Unit.

136. The delegation of Greece, supported by the delegation of France, proposed to narrow down the subject of discussion so as to discuss concrete issues and allow the CAHDI to identify medium term targets on the basis of the Swiss paper and the work done by Liechtenstein and Mexico.

137. The delegation of the United Kingdom agreed with the German statement and encouraged CAHDI delegations to impress on their governments the importance of the development of the Rule of Law Assistance Unit.

138. The observer of the United States supported both the initiative at the UN level and the advancing of the international rule of law. He fully endorsed the Greek proposal to narrow down the CAHDI's discussion to specific issues.

139. The CAHDI agreed to pursue its consideration on this matter.

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

140. The Chair invited Mr Benitez, in his capacity of Council of Europe's Anti-Terrorism Co-ordinator, to report about this item.

141. Mr Benitez underlined that the Council of Europe's action in this area is built on upholding human rights and the rule of law, the core values of the Organisation. He further drew the CAHDI's attention to a leaflet on the Council of Europe activities on the fight against terrorism and to the draft programme of the forthcoming international conference "Why terrorism? Addressing the conditions conducive to the spread of terrorism". The event, which would be open to all member and observer states, NGOs and academia, would build on the UN Global Counter-Terrorism Strategy, in particular Section 1 of the Plan of Action on 'Measures to address the conditions conducive to the spread of terrorism', and Article 3 of the Council of Europe Convention on the Prevention of Terrorism.

142. Mr Benitez informed the CAHDI of the forthcoming entry into force of the Council of Europe Convention on the Prevention of Terrorism, would enter into force (1 June 2007). The Convention, which counted 39 signatures and six ratifications, was the first of the three conventions adopted at the Warsaw Summit to enter into force.

143. He recalled that the Convention had been singled out by the UN as a *best practice* and by the UN Special Rapporteur on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Martin Sheinin, as "a sound response which would respect human rights". This stand was further reiterated in the Report of the Counter-Terrorism Committee to the Security Council on the implementation of resolution 1624(2005).

144. Moreover, on 5 December 2006, the OSCE Ministerial Council adopted a Decision calling on participating States to consider becoming party to and implementing their obligations under the existing international and regional legal instruments, including the Council of Europe's Conventions on Cybercrime (2001) and on the Prevention of Terrorism (2005). He added that a similar endorsement from the European Union institutions would be welcomed.

145. The Convention was also singled out at the Annual High-Level meeting between the Council of Europe, OSCE, UN and partner organisations in the "Tripartite" format (14 February 2007), which was dedicated to the implementation of the UN Global Counter-Terrorism Strategy and to the contribution of regional organisations in this respect. With regard to the Council of Europe's contribution, Mr Benitez informed the CAHDI that the Secretary General would convene an Ad hoc meeting of chairs of relevant Council of Europe committees to discuss terrorism on 25 April 2007. This event would provide an opportunity for gap-analysis and the identification of capabilities in the light of the UN Strategy, and for the establishment of a "router" on the Council of Europe's involvement.

146. Finally, Mr Benitez gave a brief outline of the CODEXTER's on-going activities, referring in particular to the monitoring of signatures and ratifications of the counter-terrorism treaties with a view to promoting their early entry into force, and to its work on identifying gaps in international law and action against terrorism.

147. The delegation of Germany informed the CAHDI about the work undertaken in the framework of the German EU Presidency. It referred in particular to the development and the

promotion of technical assistance projects with third countries with a view to assisting in the implementation of the UN Strategy.

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

148. The Chair welcomed Mr Tjaco van den Hout, Secretary-General of the Permanent Court of Arbitration (PCA). Mr Tjaco van den Hout gave a presentation on the role and activities of the Permanent Court of Arbitration on dispute resolution. His presentation is set out in **Appendix VII**.

149. At the outset, the Secretary-General of the PCA stated that arbitration has more in common with judicial settlement than with any other dispute resolution mechanism mentioned under the UN Charter. He continued to inform the CAHDI that the PCA had developed into a modern, multi-faceted arbitral institution that is now perfectly situated at the juncture between public and private international law to meet the rapidly evolving dispute resolution needs of the international community. It provides a wide range of services for the resolution of disputes (arbitration, fact finding, conciliation) involving various combinations of states, state entities, intergovernmental organizations, and private parties.

150. Mr Tjaco van den Hout referred to two main ways in which states may decide to submit a dispute to arbitration: a) provisions in treaties providing for arbitration to settle any disputes arising from those treaties or coming within their scope, or b) agreements between states to settle any disputes by means of arbitration.

151. PCA case-law reflects the depth of its involvement in international dispute resolution, encompassing territorial, treaty, and human rights disputes between states, as well as commercial and investment disputes, including disputes arising under bilateral and multilateral investment treaties. In particular, he referred to the UN Convention on the Law of the Sea which provides for arbitration as the default dispute settlement mechanism.

152. Mr Tjaco van den Hout outlined the advantages of arbitration over other methods of dispute resolution: involvement of parties in the tribunals' composition; efficiency and speed; flexibility; and confidentiality. He added that the PCA can serve as a channel of communication between the tribunal and the parties with a view to assisting with the constitution of an arbitral tribunal if the parties cannot agree on an arbitrator. He furthermore underlined the extensive expertise of the PCA in the drafting of detailed procedural rules.

153. With regard to investment treaties, in particular the increasing number of bilateral treaties, the Secretary-General of the PCA underlined that arbitration was generally selected as the means for resolving disputes arising under these treaties, a reference to the PCA frequently being set out in the provisions on arbitration procedures.

154. The multilateral instruments which set up the principles of international trade, also refer to the PCA in their dispute resolution provisions. For instance, the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules, adopted in 1976, entrust the Secretary-General of the PCA with the role of designating an "appointing authority" upon the request of a party to the arbitration proceedings. This role has taken on increasing significance in recent years as the acceptance and use of the UNCITRAL Rules has increased. In addition to designating appointing authorities, the Secretary-General of the PCA may also act as the appointing authority under the UNCITRAL Arbitration Rules when the parties so agree.

155. The Secretary-General of PCA concluded by referring to a 20% increase in the membership of the PCA in the last six years. He emphasized that the PCA responds to the

evident need for a registry capable of administering disputes of the scale and complexity that arise between states, international organisations and other international actors in an increasingly complex and globalised world. He underlined that while disputes had become more numerous and complex, the international community would turn to those dispute mechanisms, which could be used in a flexible manner.

156. The Chair thanked Mr Tjaco van den Hout for his presentation and opened the floor for discussion.

157. In response to a question from the delegation of Germany on the costs of arbitration, the Secretary-General of the PCA replied that parties in PCA-administered proceedings pay the expenses that arise in their case, including registry fees, fees for interpretation, and the costs of expert evidence and any other assistance provided to the tribunal. Moreover, the PCA does not fix arbitrator fee amounts and does not have a schedule of arbitrators' fees. These fees are determined by agreement with the parties.

158. In response to a question from the delegation of Ireland on whether the decision of the European Court of Justice in the MOX Plant Case (Ireland v. United Kingdom) would affect proceedings before the PCA, the Secretary-General underlined firstly that a situation in which there might be two conflicting decisions on the same issue would not be in accord with the dictates of mutual respect and comity that should exist between judicial institutions deciding on rights and obligations between states. As for recent developments, after the relevant decision of the European Court of Justice, the arbitral proceedings have remained suspended with the Parties submitting periodic reports to the Tribunal. On 22 January the Tribunal had decided to suspend until further notice the requirement to submit periodic reports. However, the Tribunal remains seized of the dispute and it reserves the subsequent procedure for further decision.

159. The delegation of Greece asked whether the option of not making public the decisions of PCA tribunals, or those involving state disputes, might somehow be hindering the visibility of the PCA arbitration and the wider extension of its case-law. Mr Tjaco van den Hout replied that the arbitral institutions are sensitive to the various positions that have been expressed to them and that while there are certainly advantages to publicity and visibility, the PCA has to find a balance with meeting the explicit wishes of the parties to its arbitration proceedings.

160. In response to a question from the delegation of the United Kingdom on the appointment of arbitrators, the Secretary-General specified that the parties may consult the list of Members of the Court (PCA) who are nominated by states parties to the 1899/1907 Conventions and are available to act as arbitrators in PCA-administered proceedings. However, the Secretary-General and the parties in PCA proceedings are not obliged to select arbitrators from this list and are free to exercise their discretion in selecting the individual best suited to the case at hand.

161. The Chair thanked Mr Tjaco van den Hout for his thought-provoking presentation and for having replied to the questions put to him by the CAHDI.

D. OTHER

18. Date, place and agenda of the 34th meeting of the CAHDI

162. The CAHDI decided to hold its next meeting in Strasbourg on 10 and 11 September 2007. The CAHDI adopted the draft agenda as set out in **Appendix VIII** to the present report.

19. Other business

163. Regarding the state of ratifications of Protocol 14 to the European Convention on Human Rights, the delegation of the Russian Federation reported that the draft law on the ratification of Protocol 14 had been submitted by the Russian President to the State Duma of the Federal Assembly (Parliament) of the Russian Federation. The State Duma did not adopt the draft law. A possibility to put the draft law once again on an agenda of the State Duma is being discussed by executive branch and legislators.

164. The delegation of Germany underlined the need to be in dialogue with members of the Russian Parliament with a view to helping to overcome the difficult obstacles to the ratification by the Russian Federation of Protocol 14.

165. The CAHDI agreed to keep this item on the agenda and strongly encouraged all efforts aimed at ensuring the Protocol's entry into force.

166. Regarding the participation of a representative of the CAHDI in the Steering Committee for Human Rights (CDDH), the CAHDI took note of document CAHDI (2007) Inf 3 and appointed Mr Carl Henrik EHRENKRONA (Sweden) as its representative to this committee.

167. The CAHDI further considered a letter from a PhD student preparing a thesis on the "Provisional application of treaties" and requesting authorisation to approach CAHDI members for additional information on this matter. The Secretariat was instructed to advise the student to approach the foreign ministries on an individual basis and to request their assistance.

168. The Committee adopted the abridged report of the meeting as it appears in **Appendix IX** 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 Elisabeth CARPA RÖJERMAN, Directrice du Département d’Affaires juridiques et Consulaires, Ministère des Affaires Etrangères, de la Culture et de la Coopération

ARMENIA/ARMENIE: -

AUSTRIA/AUTRICHE:

Mr Ferdinand TRAUTTMANSDORFF, Ambassador, Legal Adviser, Federal Ministry of Foreign Affairs

AZERBAIJAN/AZERBAIDJAN:

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BELGIUM/BELGIQUE:

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

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:

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

DENMARK/DANEMARK:

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

ESTONIA/ESTONIE:

Mrs Aino LEPIK von WIREN, Under-Secretary of Legal and Consular Affairs, Ministry of Foreign Affairs

Mrs Kristi LAND, Counsellor of the Under-Secretary of Legal and Consular Affairs, Ministry of Foreign Affairs

FINLAND/FINLANDE:

Mrs Irma ERTMAN, Ambassador, Director General for Legal Affairs, Ministry for Foreign Affairs

Mr Juha RAINNE, Legal Officer, Unit for Public International Law, Legal Department, Ministry for Foreign Affairs

FRANCE:

Mme Edwige BELLARD, Directrice des affaires juridiques, Ministère des Affaires Etrangères

M. Antoine OLLIVIER, Rédacteur, Sous-direction du droit international public général, Direction des Affaires Juridiques, Ministère des Affaires Etrangères

GEORGIA/GEORGIE:

Mr Irakli GIVIASHVILI, Director of the International Law Department, Ministry of Foreign Affairs

GERMANY/ALLEMAGNE:

Dr Georg WITSCHERL, Director General, Head of Legal Department and Legal Adviser, Federal Foreign Office

Mr Akexander WALLAU, Desk Officer, Public International Law Division, Federal Foreign Office

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Mr Michael STELLAKATOS-LOVERDOS, Member of the 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 O'BRIEN, Legal Adviser, Department of Foreign Affairs

Mr Ronan GARYAN, Deputy Permanent Representative of Ireland to the Council of Europe, Strasbourg

ITALY/ITALIE:

M. Ivo Maria BRAGUGLIA, Chef du département législatif, Ministère des Affaires Etrangères

Professeuse Annalisa CIAMPI, , Université de Verona

LATVIA/LETTONIE:

Ms Irina MANGULE, Director of the Legal Department, Ministry of Foreign Affairs

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Mme Anne KAYSER, Ministère des Affaires Etrangères et de l'Immigration

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Mrs Liesbeth LIJNZAAD, Head of the International Law Division, Ministry of Foreign Affairs

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Mr Rolf Einar FIFE, Director General, Department for Legal Affairs, Ministry of Foreign Affairs

Mr Kjersti Nordskog NES, Higher Executive Officer, Ministry of Foreign Affairs

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Mr Luis SERRADAS TAVARES, Director, Ministry of Foreign Affairs, Department of Legal Affairs

Mrs Patricia GALVAO TELES, Consultant, Ministry of Foreign Affairs, Department of Legal Affairs

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

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Mr Vladimir TARABRIN, Deputy Director, Legal Department, Ministry of Foreign Affairs

SERBIA / SERBIE

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

Mr Davor TRKULJA, Counsellor, Ministry of Foreign Affairs

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Mr Milan KOLLÁR, Director, International Law Department, Ministry of Foreign Affairs

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Mrs Mateja STRUMELJ, International Law Department, Ministry of Foreign Affairs

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

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"THE FORMER REPUBLIC YUGOSLAV OF MACEDONIA"/"L'EX-REPUBLIQUE YUGOSLAVE DE MACEDOINE":

Ms Elizabeta GJORGJIEVA, Director, International Law Directorate, Ministry of Foreign Affairs

TURKEY/TURQUIE:

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Ms Melike BOSUTER, Legal Adviser, Legal Department, Ministry of Foreign Affairs

UKRAINE: -

UNITED KINGDOM/ROYAUME-UNI:

Mr Daniel BETHLEHEM, Legal Adviser, Foreign and Commonwealth Office

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

Mr Jonathan DRAKEFORD, Legal Researcher, Foreign and Commonwealth Office

Mr Chester BROWN, Assistant Legal Adviser, Foreign and Commonwealth Office

EUROPEAN UNION / UNION EUROPEENNE

EUROPEAN COMMISSION / COMMISSION EUROPEENNE

Mme E. CUJO, membre du Service juridique, Equipe Relex

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Mr Jenő CZUCZAI, principal jurist, Legal Service

OBSERVERS / OBSERVATEURS

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

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

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

INTERPOL: Apologised/Excusé

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

Dr Knut DÖRMANN, Deputy Head of the Legal Division

**NORTH ATLANTIC TREATY ORGANISATION (NATO) / ORGANISATION DU TRAITE DE
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M. Baldwin DE VIDTS, Conseiller juridique, Service juridique

SPECIAL GUESTS/INVITES SPECIAUX

Mr Tjaco VAN DEN HOUT, Secretary General of the Permanent Court of Arbitration

SECRETARIAT GENERAL

M. Roberto LAMPONI, Director of Legal Co-operation / Directeur de la Coopération Juridique

M. Giovanni PALMIERI, Head of the Department of Public and Private Law / Chef du Service du droit public et privé

CAHDI SECRETARIAT / SECRETARIAT DU CAHDI

Mr Rafael A. BENITEZ, **Secretary of the CAHDI / Secrétaire du CAHDI**

Mme Albina OVCEARENCO, Administrative assistant/Assistante administrative, Public and Private Law Department/Service du droit public et privé

Mme Francine NAAS, Assistant/Assistante, Public and Private Law Department / Service du Droit public et privé

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INTERPRETERS/INTERPRETES:

M. Didier JUNGLING

Mme Christine TRAPP

M. Christopher TYCZKA

APPENDIX II

AGENDA

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 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 III

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

I should like briefly to give you some information about recent developments at the Council of Europe, starting with a change in the Secretariat. The Director General, Mr Guy de Vel, retired last December and has for the time being been replaced on an interim basis by the Director General of Human Rights, Mr Philippe Boillat. Mr Boillat would have liked to have been here today, but has to attend a meeting in San Marino on the report of the Group of Wise Persons, in the context of San Marino's term in the Chair of the Committee of Ministers.

Overview of the Council of Europe's major activities and priorities

- Final Declaration and **Action Plan adopted at the Warsaw Summit**, striving for **transparency and effectiveness in the work of the Council of Europe**
- The Council of Europe budget discussions very much dominated the year 2006. Because of the backlog at the European Court of Human Rights, the Committee of Ministers decided to make some budget savings in the intergovernmental sector, also entailing staff reductions, so that financial and human resources could be transferred to the Registry of the Court.
- Preparation of the **Council of Europe budget for 2008** has already begun, at an earlier stage than in previous years. It follows the same general lines followed for the 2006 and 2007 financial years.
- **Protocol No. 14**: the state of ratification of Protocol No. 14 to the European Convention is on the CAHDI's agenda. One ratification (that of Russia) is currently needed for the Protocol to come into force. The entry into force of Protocol No. 14 should enable the Court to increase its productivity by at least 25%. The reform is centred on three main aims: the prevention of violations at national level and the improvement of domestic remedies; optimisation of the efficiency with which applications are filtered and processed; and, lastly, improvement and acceleration of the enforcement of Court decisions.
- **Situation of Montenegro**: the application for accession from the Republic of Montenegro is currently under examination by the PACE, and accession is scheduled for June 2007 - 47 member states.
- Where the **European Treaty Series** is concerned, I shall just say that some significant developments have been recorded since your previous meeting. These developments are described in document CAHDI (2007) Inf 1, which is in the folders for your meeting.

Terrorism

- In the past year, a considerable part of our efforts has been devoted to the **fight against terrorism**. Developments will be examined in detail under agenda item 16. Certain significant events should nevertheless be emphasised:
- On 21 February 2007, Romania became the 6th Party to the Council of Europe Convention. Thus the ratification threshold for entry into force has been reached, and the Convention will come into force on 1 June 2007.

- On 25 and 26 April 2007, the Council of Europe is to hold an International Conference on "Why Terrorism? Addressing the Conditions Conducive to the Spread of Terrorism". The conference will be held at the initiative of CODEXTER, on the basis of the UN's Global Counter-Terrorism Strategy, which involves a relevant plan of action, as well as of Article 3 of the Convention on the Prevention of Terrorism.
- The conference begins in the afternoon of 25 April. On the morning of the same day, a special meeting convened by the SG with the Chairs of some 15 relevant Council of Europe committees, including your own, will be held to discuss the Council of Europe's efforts to combat and prevent terrorism.
- Also noteworthy is the adoption last January of a new Recommendation to member States regarding co-operation against terrorism between the Council of Europe and its member states, and the International Criminal Police Organisation (ICPO - Interpol).
- Finally, before closing this chapter, it is my pleasure to tell you that your Secretary, Rafael Benitez, has been appointed by the Secretary General to act as the Council of Europe's Anti-Terrorism Co-ordinator, a role coupled with that of Head of the DG's Counter-Terrorism Task Force.

Other developments in the legal sphere

- **Improving the functioning of justice is one of the priorities of the DG's action**
 - The CEPEJ is preparing to start a new cycle of judicial system evaluation, at the same time as working on the quality of justice, on the length of judicial proceedings, and on mediation.
 - The 5th European Day of Civil Justice, a joint initiative of the Council of Europe - in the context of the CEPEJ - and the European Commission, will also, on 25 October, mark the opening in Lanzarote, Spain, of the Conference of European Ministers of Justice. These events together will make European citizens more aware of the implications of a justice system intended to preserve their rights, on the basis of the Council of Europe's norms and standards.
- **In the criminal law sphere**
 - **The protection of children from sexual exploitation** - A new Convention is being drawn up relating to the rules of substantive criminal law and the adaptation of criminal proceedings in the light of children's rights and interests. This Convention gives a legal definition of the conduct that comprises sexual abuse of children, and deals comprehensively with the protection of children against sexual abuse and the consolidation of existing norms in this field.
 - Work is under way on the drafting of an instrument on **the counterfeiting of medicines and pharmaceutical crime**; this follows on from the international conference on this subject held in Moscow on 23 and 24 October 2006.
 - **Where the functioning of European Conventions on co-operation in the criminal sphere is concerned**, work is in progress to update certain Conventions, particularly the Convention on the Transfer of Sentenced Persons.
- **In the civil and private law sphere**, the European Committee on Legal Co-Operation (CDCJ), at its latest meeting, a month ago, approved four draft instruments, namely:

- draft European Convention on the adoption of children (revised);
- draft Recommendation on good administration, and its Code of good administration;
- draft Recommendation on the legal status of non-governmental organisations in Europe;
- draft Recommendation on legal solutions to debt problems.

● **In the constitutional law sphere**, the **Venice Commission**, at its latest meeting, in December 2006, held an exchange of views with the Speaker of the Parliament of Montenegro about the new Constitution of Montenegro. It also approved studies relating to non-citizens and the rights of minorities and relating to remedies in the event of excessive duration of proceedings, as well as opinions on draft amendments to Armenia's Law on the Ombudsman, on draft amendments to Georgia's Constitution and Electoral Code and on Ukraine's law on its Cabinet of Ministers.

CAHDI

- We are delighted with the work of your committee.
- The **databases** covering states' practice in relation to states' **immunities**, the organisation and functions of the **Office of the Legal Adviser** of Ministries of Foreign Affairs, and the enforcement of **UN sanctions** and respect for human rights are full of information and are the subjects of keen interest within the diplomatic and scientific community. It is not by chance that you have received a request for access to this information from one of the Security Council's sanctions committees.
- Your role as **European Observatory of Reservations to International Treaties** deserves particular attention. Over the years, this activity has developed and been consolidated through the extension of its field of application to reservations to the international treaties against terrorism, whether or not these are open to objection. Furthermore, continuation of dialogue with the states making reservations is of the utmost importance, and this has already been reflected in the work of the special rapporteur of the UN International Law Commission. The dialogue between CAHDI and CODEXTER in this field is also of vital importance.
- Your informal consultations relating to the European Convention on State Immunity and the effects of the UN Convention on Jurisdictional Immunities of States and the European Convention are another example of the proactive role played by CAHDI, and the committee's concern to respond speedily to the changing international context.
- The 4th multilateral consultation on the ICC held at your initiative on the occasion of your latest meeting was a great success and was welcomed by the Committee of Ministers.
- Your current work on the jurisdiction of the ICJ fits in with the logic of your wish to contribute to the consolidation and gradual development of international law, the role of which is now more vital than ever to the peace and stability of the international community.

APPENDIX IV

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 1.4 - 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.

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.

APPENDIX V

OBJECTIONS TO RESERVATIONS AND DECLARATIONS TO INTERNATIONAL TREATIES

Legend / Légende:

- State has objected / L'Etat a fait objection
- State intends to object / L'Etat envisage de faire objection
- State does not intend to object / L'Etat n'envisage pas de faire objection

- A. Convention on the Elimination of all Forms of Discrimination against Women / *Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes*, New York, 18 December/décembre 1979
- B. International Covenant on Civil and Political Rights / *Pacte International relatif aux droits civils et politiques*, New York, 15 December/décembre 1966
- C. Convention on the Prevention and Punishment of the Crime of Genocide / *Convention pour la prévention et la répression du crime du génocide*, New York, 9 December/décembre 1948
- D. International Convention against the Taking of Hostages / *Convention Internationale contre la prise d'otages*, New York, 17 December/décembre 1979
- E. International Convention for the Suppression of Acts of Nuclear Terrorism / *Convention internationale pour la répression des actes de terrorisme nucléaire*, New York, 13 April/avril 2005

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 / Pays- Bas	○	○	○	○	○				
Norway / Norvège	●			○	○				
Poland / Pologne	○				○				

Portugal	●		○	○		○		
Romania / Roumanie	●		○	○				
Russian Federation / Fédération de Russie								○*
San Marino / Saint- Marin								
Serbia / Serbie								
Slovakia / Slovaquie	○		○	○				
Slovenia / Slovénie								
Spain / Espagne	○							
Sweden / Suède	●		○	○				
Switzerland / Suisse								
"the former Yugoslav Republic of Macedonia" / "l'ex- République 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								

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

APPENDIX VI

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 prejudice 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 VII

STATEMENT BY Mr TJACO T. VAN DEN HOUT¹

Resolution of International Disputes: The Role of the Permanent Court of Arbitration

With what seems to be an unabated growth in the number of inter-State disputes, it is critical for Governments in today's world to have quick access to reliable, efficient and, above all, effective methods of dispute resolution. Foreign Ministry Legal Advisors more than many others appreciate that fact. More than one hundred years ago, the delegates at the 1899 Hague Peace Conference that established the Permanent Court of Arbitration, knew a world considerably less complex but no less dangerous than today's, and world leaders attending that conference and its successor in 1907 were determined to find a way to consolidate a system for inter-state dispute resolution.

Currently, a wide range of mechanisms is available to States for the peaceful settlement of disputes. I need only to refer to Article 33, paragraph 1, of the United Nations Charter, and I quote: "[t]he parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice."

Although "arbitration" is positioned between "conciliation" and "judicial settlement", you know that arbitration has more in common with judicial settlement than with any of the *other* dispute resolution mechanisms mentioned in that Article of the United Nations Charter.

The characteristic common to "arbitration" and "judicial settlement" is that decisions of both international arbitral tribunals and international courts are final and binding on the parties to a dispute.

The PCA is able to administer various types of dispute resolution procedures – not only arbitration, but also conciliation and fact-finding – in which the parties to the dispute may be any combination of States, international organizations, and private entities. In the last five years, the PCA has administered arbitrations covering a broad spectrum of this mandate and, at the end of 2005, had an all-time high of nineteen pending cases.

There are two main ways, as you know, that States may decide to submit disputes to arbitration: first, States may accede to treaties providing for arbitration as the means to settle *future* disputes arising out of that treaty or coming within its scope; second, States may agree at any time to submit an *existing* dispute to arbitration.

Let us first turn to the involvement of the PCA in the former of the two and focus on one important treaty in particular: the United Nations Convention on the Law of the Sea² (the "Convention"). The Convention was concluded to provide a regulatory framework for use of the world's seas and oceans, to ensure the conservation and equitable usage of resources and the marine environment, and to ensure the protection and conservation of the living resources of the sea. The Convention addresses matters such as sovereignty and rights of usage in maritime zones, navigational rights, and protection and preservation of the marine environment. Provisions laid down rules for the binding settlement of disputes arising out of the interpretation or the application of the Convention. One hundred and thirty States have

¹ Secretary-General of the Permanent Court of Arbitration. This address was delivered to the Council of Europe's Committee of Legal Advisers on Public International Law (CAHDI) on March 22, 2007, in Strasbourg, France.

² United Nations Convention on the Law of the Sea of December 10, 1982, 1833 UNTS p.3.

ratified this Convention from among the one hundred and fifty-nine original signatories, and a further seventeen have acceded to it.

When acceding to the Convention, a State may make a declaration³ choosing one of the following means for “settlement of disputes concerning the interpretation and application of [the] Convention”:

- the International Tribunal for the Law of the Sea in Hamburg, Germany;
- the International Court of Justice in The Hague;
- *ad hoc* arbitration (in accordance with Annex VII of the Convention);
- a “special arbitral tribunal” constituted for certain categories of disputes (established under Annex VIII of the Convention).

If disputing States have declared preferences for different dispute resolution methods, the default dispute settlement mechanism is *arbitration* under Annex VII to the Convention, unless the States otherwise agree. States that do not declare any preference are deemed to have accepted arbitration under Annex VII in any event.

A number of recent disputes between parties to the Convention have been successfully resolved by its arbitration procedures. These arbitrations have dealt with a broad range of issues, including the exploitation of living and non-living natural resources, pollution of the marine environment, and the delimitation of boundaries between maritime zones recognized under the Convention.

Arbitration has a number of general and traditionally cited advantages over other methods of dispute resolution that make it an attractive default mechanism under the Convention.

1) Party involvement in the tribunal’s composition. Arbitration is a process in which each party to a dispute may appoint an arbitrator with the knowledge and experience that the party considers appropriate to the case. Direct involvement in the composition of the body that will decide the case is an attractive, confidence-building aspect of arbitration for most States who may even appoint one of their own nationals.⁴

2) Efficiency. In arbitration, the procedural timetable is agreed between the arbitral tribunal and parties to suit the considerations of all involved. The procedural rules that are applicable will be those agreed upon by the parties. Arbitration is generally regarded as cost-effective thanks to the relative speed of its process. Arguably, where the PCA serves as the registry to an arbitral tribunal, the tribunal’s administrative burden is reduced and therefore its efficiency enhanced, allowing it to complete its work more quickly and thereby cutting costs. In discharging these functions, the PCA is able to draw on a breadth of accumulated experience among its legal staff in facilitating arbitration proceedings. This is of value as a resource to arbitrators as well as to parties to disputes and serves to maintain integrity in the arbitration process.

3) Flexibility. The flexibility of its procedures is a particularly attractive feature of arbitration. For example, arbitral hearings and meetings can be conducted in the location most convenient to parties, rather than at a fixed and pre-determined location. Parties can also select the language most appropriate for the proceedings. The facilities of the PCA in the Peace Palace in The Hague are ideal for hosting arbitral proceedings; however, in the last two years, the PCA has also served as registry for arbitrations conducted elsewhere, in countries such as India, Malaysia, Poland, the United States, Switzerland, and the United Kingdom.□□

³ *Id.*, Article 287 (1).

⁴ *Id.*, Annex VII.

- 4) Confidentiality. To the extent that the parties have agreed, all or parts of the arbitral proceedings may be kept confidential.

In addition to procedural advantages, there are further benefits for parties who choose to conduct their arbitration under the auspices of the PCA. The PCA is, as you well know, not a court composed of judges holding a fixed term of office and with jurisdiction on a standing basis, but rather a permanent framework for arbitral tribunals.⁵ The administration of an arbitration by the PCA relieves the tribunal and the parties of many managerial and logistical tasks, such as the identification of experts to assist the tribunal with technical matters, and the preparation of maps of maritime or land boundaries and other technical matters. Further, the PCA serves as a channel of communication between the tribunal and the parties. To assist with the constitution of an arbitral tribunal where the parties cannot agree on an arbitrator, the PCA maintains a list of experts, many of whom are law-of-the-sea experts, who are nominated by its member States. As such, the PCA acts as a standing institution that provides a forum for dispute resolution on a consensual basis.

The PCA has now served as registry for four arbitral tribunals constituted under Annex VII of the Convention, two of which were recently concluded: *Barbados v. Trinidad & Tobago*,⁶ the very first Annex VII maritime delimitation, and *Malaysia v. Singapore*,⁷ a dispute concerning land reclamation, which was concluded by an award on agreed terms reflecting a settlement negotiated between the parties.

The PCA has also been called upon by States to assist in drafting detailed procedural rules regarding matters such as evidence and confidentiality, the hearing of witnesses, the allocation and sharing of costs, and the publication of the award.⁸ As a result, the PCA has developed a body of expertise and relevant procedural precedent that will prove invaluable in future disputes submitted to arbitration under the Convention.

The PCA is also being referred to more and more in treaties relating to international investment. Increasingly, States have been entering into bilateral investment treaties: that is, agreements between States that provide certain guarantees to nationals of one State who invest in the other State as to the fair treatment and protection of their investments. Arbitration is generally selected as the means for resolving disputes that arise under these treaties and, frequently, some assistance from the PCA is written into the arbitration procedure. For example, France and India have signed a bilateral investment treaty in which they agree to submit any dispute arising under the treaty between investors and a contracting party to the treaty to a three-member arbitral tribunal. The treaty also expressly states that, if the appointment of an arbitrator is not made within the time limit provided, either party may request the Secretary-General of the PCA to make the appointment.⁹ Similar provisions are also made in that treaty for disputes arising between the two Contracting Parties to the treaty.¹⁰

⁵ Claude-Albert Colliard, *Institutions des relations internationales*, para. 334 (Paris, Dalloz, 8ème éd, 1985).

⁶ *Barbados/Trinidad and Tobago* (Award of April 11, 2006), 45 ILM 798 (2006), also available at <http://www.pca-cpa.org>.

⁷ *Malaysia/Singapore* (Award on Agreed Terms of September 1, 2005), available at <http://www.pca-cpa.org>.

⁸ *Ireland v. United Kingdom* ("MOX Plant Case") (Rules of Procedure of October 25, 2001), available at <http://www.pca-cpa.org>.

⁹ Article 9(3), *Accord sur l'encouragement et la protection réciproques des investissements*, 2 September 1997, Fr.-India, J.O., 6 May 1999, p. 6791, 2000 Recueil des traités, No. 47.

¹⁰ *Id.*, Article 10.

The PCA is also referred to in the dispute settlement provisions of multilateral instruments such as the Energy Charter Treaty (the “ECT”).¹¹ This treaty sets out principles for international trade, transit and investment in energy sources, such as oil and gas, and has been signed by fifty-one States. It provides that disputes between Contracting Parties to the ECT may be referred to a three-member arbitral tribunal. The treaty also provides that the Secretary-General of the PCA may be requested to appoint an arbitrator to break a deadlock caused by failure by a respondent to appoint an arbitrator, or failure by the parties to agree on a third arbitrator. The treaty goes on to state that, unless otherwise agreed by the parties, the tribunal shall sit in The Hague, and use the premises and facilities of the PCA.¹²

As outlined above, the PCA also deals with arbitrations between States that do not arise under a previously signed treaty or agreement. Instead, an agreement to arbitrate is reached after the dispute has arisen. Parties may, therefore, enter into agreements providing for arbitration at the PCA at any time.

This took place in a recent arbitration between Belgium and the Netherlands,¹³ concerning an historical railway, known as the “Iron Rhine”, built in 1879, that runs from Belgium to Germany, via Dutch territory. The Iron Rhine railway traces its legal origins to a right of transit across Dutch territory that was conferred on Belgium and later elaborated through several treaties concluded in the nineteenth century. The railway was used intermittently for over one hundred years, but had fallen into disuse by the late 1980s. During the years the railway was not in use, the Netherlands created several nature reserves on the path of the old railway. In 1998, Belgium sought to reactivate the railway on the basis of its treaty rights. However, the Dutch were anxious to regulate any reactivation of the railway to ensure that the Dutch nature reserves would not be damaged.

The disagreement between Belgium and the Netherlands turned on two main points: first, the extent to which Belgium’s right to reactivate the railway in Dutch territory was constrained by Dutch environmental law; and, second, how the costs of any reactivation in Dutch territory were to be shared between the two States. The Netherlands submitted, among other things, that it had the right to impose the building of underground and over-ground tunnels along Dutch parts of the railway, at Belgium’s expense.

The Tribunal of five arbitrators (including one Dutch and one Belgian arbitrator) determined that Belgium’s reactivation plans were restricted by Dutch environmental law, but that such restrictions could not be so burdensome as to deny Belgium’s right of transit nor render it unreasonably difficult. Accordingly, the Netherlands was entitled to impose a requirement to build underground and over-ground tunnels on sections of its territory, but the costs of this were to be shared between the two States.

The issues in dispute in this case were decided in large part by the identification of Belgium’s rights under the nineteenth century treaties, while upholding rights of the Netherlands that would not conflict with the treaty rights of Belgium. The Tribunal’s decision is an important example of the achievement of a balance between the rights of one State over the territory of another by virtue of a treaty, and the residual sovereignty of the other State. This arbitration was commenced in July 2003. In less than two years, the case was concluded with a unanimous final award rendered in May 2005.

¹¹ Energy Charter Treaty of December 17, 1994, 34 ILM 360 (1995).

¹² *Id.*, Part V, Article 27(3).

¹³ Belgium/Netherlands (Iron Rhine Arbitration) (Award of May 24, 2005), forthcoming in 2007 PCA Award Series, also available at <http://www.pca-cpa.org>.

Let us turn to another completed PCA case, which dealt primarily with territorial sovereignty and maritime delimitation: the Eritrea-Yemen arbitration.¹⁴ This case involved a dispute between the two States with respect to sovereignty over a number of islands in the Red Sea and associated natural resources. The conflict came to a head in 1995 when Eritrean naval patrols discovered a small Yemeni military presence on one of the islands. The two States' dispute over the islands erupted in hostilities in December of that year and reached a stalemate, with Eritrean forces occupying one island and Yemeni forces occupying another.

An agreement to arbitrate the dispute was concluded between the two States in 1996, and the PCA was invited by the arbitral tribunal to act as its registry. At the request of the two States, this arbitration was divided into two phases: the first-phase award concerning territorial sovereignty was rendered in October 1998, and the second-phase award concerning maritime delimitation was rendered just over a year later in December 1999.

In the first phase, Eritrea contended that, upon gaining independence in 1993, it inherited title to the islands from Ethiopia, which had in turn inherited title from Italy on independence. Yemen argued that it had held title to the islands during the Middle Ages, before the Ottoman Empire controlled the area, and that, after the collapse of the Ottoman Empire at the end of the First World War, title to the islands reverted back to Yemen. Both parties supplied the Tribunal with extensive evidence supporting their claims to sovereignty. In this regard, the parties relied on, among other things, displays of governmental authority over the islands, recognition by other States of their purported title and a large number of maps, historical and modern, attributing the islands to either one State or the other.

The Tribunal found much of the parties' evidence to be inconclusive. The Tribunal ruled that Eritrea had sovereignty over two sets of islands that were within twelve miles of its coast, and that Yemen had sovereignty over a number of other islands over which it had frequently displayed authority in the years leading up to the arbitration.

In the second phase of the proceedings, each side proposed different median lines as the appropriate maritime boundary between the two States. The Tribunal rejected the boundaries proposed by each party and determined, for the most part, that the appropriate maritime boundary was the equidistance line between the mainland coasts of the two States.

Two of the most complex and interesting cases that have been brought to the PCA in recent years arise from the war fought between Eritrea and Ethiopia relating to their shared border that lasted from May 1998 to June 2000. This conflict resulted in extensive loss of life and the displacement of more than one million people. Pursuant to a peace agreement reached in December 2000 in Algiers, the countries' boundary dispute was submitted to one arbitral tribunal, the Eritrea-Ethiopia Boundary Commission,¹⁵ and claims for violations of international law during the war were submitted to a second arbitral tribunal, the Eritrea-Ethiopia Claims Commission.¹⁶ The PCA serves as registry and provides administrative support for both Commissions.

The Boundary Commission issued its Decision concerning delimitation of the border in April 2001, and proceeded to the next phase of its mandate under the Algiers Agreement – demarcation of the border. However, after initial acceptance of the Delimitation Decision as final and binding by both Parties, and involvement of both Parties in the demarcation

¹⁴ Eritrea/Yemen (Arbitration Awards of 1998 and 1999), PCA Award Series, Vol.1 (T.M.C. Asser Press, 2005).

¹⁵ Eritrea-Ethiopia Boundary Commission, Observations, 42 ILM 1010 (2003) and Delimitation Decision, 41 ILM 1057 (2002), full set of Decisions to date *available at* <http://www.pca-cpa.org>.

¹⁶ Eritrea-Ethiopia Claims Commission, Partial Awards, 45 ILM 396 (2006), 45 ILM 430 (2006), 45 ILM 621 (2006), 45 ILM 633 (2006), 44 ILM 601 (2005), 44 ILM 630 (2005), 43 ILM 1249 (2004), 43 ILM 1275 (2004), 42 ILM 1056 (2003), 42 ILM 1083 (2003), full set of Awards to date *available at* <http://www.pca-cpa.org>.

process, Ethiopia began insisting on changes that the Commission viewed as amounting to an attempt to re-open the substance of the Decision.¹⁷

After several years of attempts by the Commission to complete demarcation, and against the background of several Security Council resolutions calling on both Parties to cooperate with the Commission, the Commission met in November 2006 at the PCA in order to “consider how best to advance the demarcation”.¹⁸ On 27 November 2006, the Commission issued a “Statement” setting out “... its approach to demarcation in light of the obstacles the Parties had placed in its way”.¹⁹ The Commission identified “the location of points for the emplacement of pillars as a physical manifestation of the boundary on the ground” by means of precise coordinates.²⁰ The Parties were given twelve months to reach agreement on the emplacement of pillars, and if, by the end of twelve months, they have not, or have not made sufficient progress and enabled the Commission to resume its activity, the Commission determined that “...the boundary will automatically stand as demarcated by the boundary points listed in the Annex [to the Statement] and that the mandate of the Commission can then be regarded as fulfilled”.²¹

The Claims Commission has, to date, issued a total of fifteen awards on the liability of each State for, among other things, the mistreatment of prisoners of war, the destruction and looting of property, and the injury and deaths of civilians during the armed conflict. At the time of writing, the Commission is seized with the damages phase of its work.

Although the PCA has provided a standing venue for arbitration since the 1899, there have been two distinct eras in which it has taken a key role in the resolution of international disputes. In the earlier part of the twentieth century, and in particular following signature of the 1907 Convention, the PCA met an evident requirement for a readily available mechanism by which States could resolve disputes between them. In providing a standing forum for the resolution of disputes on a consensual basis, it reflected a transition from the purely *ad hoc* arbitrations of the nineteenth century.

The PCA currently has a docket of fifteen pending cases and, since the year 2000, its membership has increased to one hundred and six States, an increase of approximately twenty percent in just the last six years. This reflects an evident need for such a standing forum and for a registry capable of administering disputes of the scale and complexity that arise between States, international organizations, and other international actors in an increasingly complex, globalized world.

At a time when disputes have become both more numerous and more complex, the international community will be drawn to those dispute resolution mechanisms that can be used in a flexible manner. For flexibility, as you will agree, is key in today’s ever-changing operating environment.

¹⁷ cf. Eritrea-Ethiopia Boundary Commission, Observations, 42 ILM 1010 (2003).

¹⁸ See 22nd Report of the Boundary Commission, Annex II, UN Doc. S/2007/33, 22 January 2007, and at www.pca-cpa.org

¹⁹ See UN Doc. S/2006/996, December 15, 2006, and www.pca-cpa.org.

²⁰ *Ibid.*

²¹ Eritrea-Ethiopia Boundary Commission Statement of 27 November 2007, at para. 22.

APPENDIX VIII

PRELIMINARY DRAFT AGENDA FOR THE 34TH 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 33rd 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

APPENDIX IX

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 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.