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

**34th meeting
Strasbourg, 10-11 September 2007**

**PRELIMINARY DRAFT RECOMMENDATION REC(2007)... OF THE COMMITTEE OF
MINISTERS TO MEMBER STATES ON THE ACCEPTANCE OF THE JURISDICTION OF
THE INTERNATIONAL COURT OF JUSTICE**

Document prepared by
the Secretariat of the CAHDI

Foreword

The Chair and Vice-Chair of CAHDI hereby circulate a revised draft Recommendation for discussion at the 34th meeting of CAHDI, with a view to its submission to the Committee of Ministers.

The revised draft takes account of the discussion at the 33rd meeting, as well as written comments received subsequently (see document CAHDI (2007) 8 rev. Add.).

The underlying aim of the draft Recommendation is 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 REC(2007)... 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 to 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, 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. *Noting* that there is no requirement to make any reservations when accepting the jurisdiction of the International Court of Justice, and that some member States of the Council of Europe have indeed made declarations accepting the Court's jurisdiction without reservation;
 11. *Stressing* that the list of Model Clauses appended to this Recommendation is in no way exclusive, and does not call into question other clauses that States may decide to include in their declarations accepting the jurisdiction of the International Court of Justice;
- * * *
12. Recommends that the Governments of member States give consideration, as they deem necessary, to the Model Clauses appended to this Recommendation when they consider accepting the jurisdiction of the International Court of Justice in accordance with Article 36, paragraph 2, of its Statute;
 13. Requests 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**

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"

or

"over all disputes, other than disputes arising prior to [DATE] or relating to facts or situations which occurred prior to that date, even if such facts or situations may continue to have effects thereafter"

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. Clause to avoid 'surprise' applications

"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."