

Strasbourg, 11/09/07

CAHDI (2007) 25 rev

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

34th meeting, Strasbourg, 10-11 September 2007

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

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 34th meeting in Strasbourg on 10 and 11 September 2007 with Sir Michael Wood in the Chair. The list of participants is set out in Appendix I to the meeting report.¹
2. The CAHDI adopted the agenda as set out in **Appendix I** to the present report. The CAHDI also adopted the report of its 33rd meeting (Strasbourg, 23-24 March 2007) and authorised the Secretariat to publish it on the CAHDI's website.
3. The Director of Legal Advice and Public International Law (Jurisconsult), Mr Manuel Lezertua, informed the CAHDI about developments concerning the Council of Europe since its last meeting, in particular those concerning the Council of Europe Treaty Series.
4. The CAHDI considered the decisions of the Committee of Ministers relevant to its work and requests for the CAHDI's opinion. The CAHDI recalled its comments on Parliamentary Assembly Recommendation 1788 (2007) – The United State of America and International law,² and adopted comments on Parliamentary Recommendation 1803 (2007) – Prosecution of offences falling within the jurisdiction of the International Criminal Tribunal for the Former Yugoslavia (ICTY) as set out in **Appendix II** to the present report.

The CAHDI took note of the Committee of Ministers' request asking the CAHDI to examine the consequences of the so-called "disconnection clause" in international law (CM/Del/Dec(2007)10.1E/11 July 2007). The CAHDI decided to consider this matter at its next meeting in the light of the ad hoc terms of reference it will receive from the Committee of Ministers.

The CAHDI also took note of the *Message of the Committee of Ministers to committees involved in intergovernmental co-operation at the Council of Europe – Contributions from committees in the legal field on the implementation of the Warsaw Action Plan*, prepared by the Chair of the GR-J after the Group's meeting of 5 April 2007.

5. The CAHDI discussed its programme of activities for 2008-2009 in the light of the *Criteria for launching, discontinuing and evaluating Council of Europe projects* as set out in document CM(2006)101 final, approved by the Committee of Ministers at its 984th meeting on 22 January 2007.

6. The CAHDI considered developments concerning its databases on State Practice regarding State Immunities, the Office of the Legal Adviser of the Ministry for Foreign Affairs, and the

¹ Document CAHDI (2007) 26.

² Comments of 11 June 2007 approved by written procedure.

Implications of UN Sanctions and respect for human rights. The Committee took note of the new contributions to these databases and invited those delegations which had not yet done so to submit their contributions at their earliest convenience. It also called upon delegations to update their contributions on a regular basis.

7. The CAHDI considered digests of State practice on international law and agreed to publish a list of such digests on the CAHDI website and to keep it up-to-date on the basis of contributions from delegations.

8. The CAHDI took note of cases brought before the European Court of Human Rights (ECHR) involving issues of public international law in the light of presentations from a number of delegations. It invited delegations to keep the Committee informed about relevant pending cases.

9. The CAHDI pursued its consideration of issues relating to the peaceful settlement of disputes. It held an exchange of views with Professor Koskenniemi on the overlapping jurisdiction of international tribunals, and with Mr Couvreur, Registrar of the International Court of Justice (ICJ), on budgetary and other matters relating to the ICJ.

The CAHDI considered a preliminary draft recommendation of the Committee of Ministers to member states on Acceptance of the Jurisdiction of the International Court of Justice and decided to resume consideration at its next meeting.

The CAHDI then considered the issue of lists of arbitrators and conciliators nominated by states and took note of a preliminary draft recommendation of the Committee of Ministers to member states. The CAHDI agreed to resume consideration of this matter at its next meeting and invited delegations to submit any comments they might have on document CAHDI (2007) 20 by **15 December 2007**.

10. In the framework of its activity as the European Observatory of Reservations to International Treaties, the CAHDI considered a list of outstanding declarations and reservations to international treaties and the follow-up given by certain delegations. A table summarising the position of delegations with respect to certain reservations is set out in **Appendix III** to the present report.

Furthermore, the CAHDI recalled the list of possibly problematic reservations to international treaties applicable to the fight against terrorism, which it had drawn up in pursuance of 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.

11. The CAHDI considered the work of the International Law Commission (ILC) in 2007 and held an exchange of views with Professor Pellet, member of the ILC.

12. The CAHDI considered current issues of international humanitarian law and the International Criminal Court (ICC), and took stock of recent developments.

13. The CAHDI further considered developments concerning the functioning of the international tribunals established by UN Security Council resolutions 827 (1993) and 955 (1994) and decided to pursue consideration of these matters, including also the Special Tribunal for Lebanon.

14. The CAHDI considered the Outcome Document of the 2005 UN World Summit and took note of the proposals by delegations aimed at advancing the international rule of law. The CAHDI decided to pursue its discussions on this matter at its next meeting.

15. The CAHDI considered legal activities against terrorism, in particular the work undertaken in the Council of Europe and the United Nations and welcomed the entry into force of the Council of Europe Convention on the Prevention of Terrorism on 1 June 2007 (CETS No. 196).

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 re-elected Sir Michael Wood (United Kingdom) and Mr Rolf Einar Fife (Norway) respectively as Chair and Vice-Chair for one year.

18. The CAHDI decided to hold its next (35th) meeting in Strasbourg on 6-7 March 2008 and adopted the preliminary draft agenda as set out in **Appendix IV** to the present report. The CAHDI thanked the British authorities for their kind invitation to hold its 36th meeting in London on 17 and 18 September 2008. The CAHDI took note of the possible organisation under the Swedish Chairmanship of the Committee of Ministers of an international Conference on International Courts and Tribunals immediately after the CAHDI meeting in London, 18-19 September 2008.

APPENDIX I

AGENDA

A. INTRODUCTION

1. Opening of the meeting by the Chair, Sir Michael Wood
2. Adoption of the agenda CAHDI (2007) OJ 2
3. Approval of the report of the 33rd meeting CAHDI (2007) 15 prov
4. Statement by the Director of Legal Advice and Public International Law, Mr Manuel Lezertua CAHDI (2007) Inf 8 rev

B. ONGOING ACTIVITIES OF THE CAHDI

5. Decisions by the Committee of Ministers concerning the CAHDI and requests for the CAHDI's opinion CAHDI (2007) 16, Add & Add 2
6. Programme of activities of the CAHDI for 2008-2009 CAHDI (2007) 1 Add
7. State immunities:
 - a. State practice CAHDI (2007) Inf 13 & Inf 15
 - b. UN Convention on Jurisdictional Immunities CAHDI (2007) Inf 14
8. Organisation and functions of the Office of the Legal Adviser of the Ministry for Foreign Affairs:
 - a. Situation in member and observer States CAHDI (2007) 10 rev & Add
 - b. The role of the OLA in national implementation of international law CAHDI (2006) 27, CAHDI (2007) 13 & 22
9. National implementation measures of UN sanctions and respect for Human Rights CAHDI (2007) 3
10. Digest of state practice on international law CAHDI (2007) 12 rev
11. Cases before the ECHR involving issues of public international law CAHDI (2007) 23
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 ICJ CAHDI (2007) 8 rev + Add & 17
 - b. Overlapping jurisdiction of international tribunals: Exchange of views with Professor Koskenniemi CAHDI (2007) 11
 - c. Lists of arbitrators and conciliators nominated by States CAHDI (2007) 20
 - d. Exchange of views with Mr Couvreur, Registrar of the ICJ, on budgetary and other matters relating to the ICJ CAHDI (2007) 21
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 CAHDI (2007) 18 & Add

- b. Consideration of reservations and declarations to international Treaties applicable to the fight against terrorism **CAHDI (2006) 7**

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 **CAHDI (2007) Inf 9**
 - b. Guidelines on reservations to 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 **CAHDI (2006) 11**
- 19. Fight against terrorism - Information about work undertaken in the Council of Europe and other international bodies **CAHDI (2007) Inf 10 rev & Inf 12**

D. OTHER

- 20. Election of the Chair and Vice-Chair **CAHDI (2007) 19**
- 21. Date, place and agenda of the 35th meeting of the CAHDI
- 22. Other business:
 - Status of ratification of Protocol 14 to the ECHR **CAHDI (2007) Inf 11**

APPENDIX II

COMMENTS OF THE COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI) REGARDING PARLIAMENTARY ASSEMBLY RECOMMENDATION 1803 (2007) – *PROSECUTION OF OFFENCES FALLING WITHIN THE JURISDICTION OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ICTY)*

1. On 9 July 2007, the Ministers' Deputies communicated Assembly Recommendation 1803 (2007) to the Committee of Legal Advisers on Public International Law (CAHDI) for information and possible comments by 31 October 2007.³
2. The CAHDI considered the above-mentioned Recommendation and adopted the following comments at its 34th meeting (Strasbourg, 10-11 September 2007).
3. From the outset the CAHDI concentrated on those aspects which it thought fell within its scope of competence and did not address the others, particularly those relating to criminal law, which fall within the competence of other committees, in particular the European Committee on Crime Problems (CDPC).
4. In Recommendation 1803 (2007), the Assembly recommended that the Committee of Ministers:
 - (a) invite a number of Council of Europe member states to sign and/or ratify a series of Council of Europe treaties relating to international criminal justice (namely ETS Nos. 24, 70, 73, 82, 99, 116, 167 and 182) aimed at promoting international co-operation, the fight against impunity and the protection of victims; and
 - (b) encourage member states which had not yet done to consider signing agreements with the United Nations concerning the execution of sentences handed down by the International Criminal Tribunal for the former Yugoslavia (hereafter the ICTY).
5. Regarding the recommendation in paragraph 4(a) above, the CAHDI wishes to recall the Action Plan of the Third Summit of the Council of Europe (Warsaw, May 2005), which calls for full use to be made of the Council of Europe's standard-setting potential and for the promotion of the implementation and further development of the Organisation's legal instruments and mechanisms of legal co-operation, and Resolution No. 5 on the functioning of the Council of Europe conventions on judicial co-operation in criminal matters, adopted at the 26th Conference of the European Ministers of Justice (Helsinki, April 2005).
6. The CAHDI further wishes to stress the importance of the above-mentioned conventions and acknowledge the work of the CDPC relating to their efficient functioning and operation. In particular, the CAHDI notes the entry into force on 27 June 2003 of the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes (ETS No. 082) and the fact that to date it has been ratified by only three states and signed by a further two.
7. The CAHDI also contributes to the efficient functioning and operation of conventions by periodically considering outstanding reservations to international treaties, including those mentioned above, in the context of its operation as European Observatory of Reservations to International Treaties.

³ CM/Del/Dec(2007)1001/3.1b 9 July 2007. The Committee of Ministers decided to bring the Recommendation to the attention of their governments and to communicate it to the CAHDI, to the CDPC and to the Steering Committee on Human Rights (CDDH) for information and possible comments by 31 October 2007. In the light of the comments to be received, the Rapporteur Group on Legal Co-operation (GR-J) of the Committee of Ministers will prepare a draft reply to the Parliamentary Assembly.

8. Regarding the recommendation in paragraph 4(b) above, the CAHDI regularly reviews developments regarding the international criminal tribunals, including the ICTY and the ICTR, with a view to promote their work. This should be seen against the background of the CAHDI's work in support of international criminal justice, bearing in mind the relevant texts of the Parliamentary Assembly⁴ and the decisions of the Committee of Ministers in relation to them.

9. Since 2000, at the initiative of the CAHDI and the CDPC, the Council of Europe has also organised four consultation meetings open to member and observer states, to foster exchanges of views on the implications for Council of Europe member states of ratification of the Statute of the International Criminal Court (ICC). Although the consultations focused on the ICC, they also covered aspects relating to co-operation with the ICTY. The Conclusions adopted at these consultations were brought to the attention of the Committee of Ministers, which communicated them to the Parliamentary Assembly.

10. In these conclusions, participants have consistently noted the particular importance for the work of the ICC of appropriate state support with regard to enforcement of sentences in accordance with Part 10 of the Rome Statute. The same should be held true in relation to the ICTY.

11. The CAHDI notes that ten states have concluded agreements on the enforcement of sentences of the ICTY all of which are members of the Council of Europe.⁵ The CAHDI notes that the conclusion of such agreements is voluntary and would contribute to the pursuance of the objectives underlying the setting-up of the ICTY, and recalls the position of the Secretary General of the United Nations that "given the nature of the crimes in question and the international character of the Tribunal, the enforcement of sentences should take place outside the territory of the former Yugoslavia. States should be encouraged to declare their readiness to carry out the enforcement of prison sentences in accordance with their domestic laws and procedures, under the supervision of the International Tribunal."⁶

⁴ Cf. Parliamentary Assembly:

Parliamentary Assembly Recommendation Rec 1189 (1992) on the establishment of an international court to judge war crimes; Parliamentary Assembly Recommendation Rec 1408 (1999) International Criminal Court; Parliamentary Assembly Recommendation Rec 1581 (2002) Risks for the integrity of the Statute of the International Criminal Court; Parliamentary Assembly Resolution Res 1300 (2002) Risks for the integrity of the Statute of the International Criminal Court; Parliamentary Assembly Resolution Res 1336 (2003) on Threats to the International Criminal Court.

Committee of Ministers:

Declaration of the Committee of Ministers on the International Criminal Court – forthcoming entry into force of the Rome Statute; Committee of Ministers Reply to PA Rec 1581 (2002) Risks for the integrity of the Statute of the International Criminal Court and Committee of Ministers Reply to PA Rec 1408 (1999) International Criminal Court.

⁵ These are : Italy, 6 February 1997; Finland, 7 May 1997; Norway, 24 April 1998; Sweden, 23 February 1999; Austria, 23 July 1999; France, 25 February 2000; Spain, 28 March 2000; Germany, 17 October 2000; Denmark, 19 June 2002; and United Kingdom, 11 March 2004. The text of the agreements is available at <http://www.un.org/icty/legaldocs/index.htm>.

⁶ See report of the Secretary-General pursuant to paragraph 2 of Security Council Resolution 808 (1993), 3 May 1993, document S/25704.

APPENDIX III

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

PART/PARTIE I

- A. International Covenant on Civil and Political Rights / *Pacte International relatif aux droits civils et politiques*, New York, 15 December/décembre 1966
- B. 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
- C. International Convention against the Taking of Hostages / *Convention Internationale contre la prise d'otages*, New York, 17 December/décembre 1979
- D. 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
- E. Convention on the rights of persons with disabilities / *Convention relative aux droits des personnes handicapées*, New York, 13 December / décembre 2006
- F. Optional Protocol to the Convention on the rights of persons with disabilities / *Protocole facultatif se rapportant à la Convention relative aux droits des personnes handicapées*, New York, 13 December / décembre 2006

States / Etats	Convention	A		B	C	D		E	F
		1	2	3	4	5	6	7	8
	Reservation/ Réserve	Bahrain	Maldives	Montenegro	Iran	Turkey/ Turquie	Egypt/ Egypte	El Salvador	El Salvador
	Deadline/ Délai	27/12/07	18/09/07	29/10/07	27/11/07	31/10/05	03/11/05	18/04/07	18/04/07
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									
Montenegro									
Netherlands / Pays-	○	○							

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

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

(**) If confirmed upon ratification / *Si confirmé lors de la ratification*

(***) Considers it a late reservation and therefore not in force / *Considère ceci comme une réserve tardive et donc pas en vigueur*

APPENDIX IV

DRAFT AGENDA OF THE 35TH MEETING OF THE CAHDI

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 34th meeting
4. Statement by the Director of Legal Advice and Public International Law, Mr Manuel Lezertua

B. ONGOING ACTIVITIES OF THE CAHDI

5. Decisions by the Committee of Ministers concerning the CAHDI and requests for the CAHDI's opinion
- consequences of the so-called "disconnection clause" in international law
6. Programme of activities of the CAHDI for 2008-2009
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. Situation in member and observer States
 - b. The role of the OLA in national implementation of international law
9. National implementation measures of UN sanctions and respect for Human Rights
10. Cases before the ECHR involving issues of public international law
11. 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 ICJ
 - b. Overlapping jurisdiction of international tribunals
 - c. Lists of arbitrators and conciliators nominated by States: Preliminary draft Recommendation of the Committee of Ministers to Member States on the nomination of international arbitrators and conciliators
12. 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

13. Consideration of current issues of international humanitarian law
14. Developments concerning the International Criminal Court (ICC)
15. Implementation and functioning of the Tribunals established by United Nations Security Council Resolutions 827 (1993), 955 (1994) and the Special Tribunal for Lebanon
16. Follow-up to the outcome document of the 2005 UN World Summit – Advancing the international rule of law
17. Fight against terrorism - Information about work undertaken in the Council of Europe and other international bodies

D. OTHER

18. Preparation of the 36th meeting of the CAHDI (London, 17-18 September 2008) and information concerning the possible International Conference on International Courts and Tribunals (London, 18-19 September 2008)
19. Other business:
 - Status of ratification of Protocol 14 to the ECHR