

Strasbourg, 06/02/08

CAHDI (2007) 26

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

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

MEETING REPORT

Document prepared by the Secretariat of the CAHDI

A. INTRODUCTION

1. Opening of the meeting by the Chair, Sir Michael Wood

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 34th meeting in Strasbourg on 10 and 11 September 2007. The meeting was opened by Sir Michael Wood, Chair of the CAHDI. The Chair welcomed all the participants, a list of whom is set out in **Appendix I**.

2. Adoption of the agenda

2. The agenda was adopted as it is set out in **Appendix II**. The Chair then drew delegations' attention to the CAHDI's website, underlining that all the necessary working documents were available there.

3. The Secretariat informed the CAHDI that it was increasingly making use of the webpage and urged delegations to visit the website on a regular basis, in particular to obtain last-minute documents before meetings. The website is public with the exception of a set of restricted documents which can be accessed by using the access code and password, which could be obtained from the Secretariat.

4. The Chair stressed that documents should be submitted at least one week before meetings, failing which they might not be distributed in the meeting.

3. Approval of the report of the 33rd meeting

5. The CAHDI adopted the report of its 33rd meeting without any modifications (CAHDI (2007) 15) and instructed the Secretariat to publish it on the CAHDI's webpage.

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

6. Mr Manuel Lezertua, Director of Legal Advice and Public International Law, briefed delegations about developments within the Council of Europe since the CAHDI's 33rd meeting, in particular the restructuring within the Council of Europe Secretariat which led to the creation of the new Directorate of Legal Advice and Public International Law.

7. Mr Lezertua then referred to political developments, namely the accession on 11 May 2007 of the Republic of Montenegro to the Council of Europe - which brought the number of member states to 47 - and the conclusion of a Memorandum of Understanding between the Council of Europe and the European Union on 23 May 2007. The Memorandum of Understanding was concluded with a view to extending co-operation between the two Organisations on the promotion and protection of pluralist democracy, respect of human rights, the rule of law, legal and political affairs and social and intercultural cohesion.

8. Referring to the latest developments concerning the Council of Europe Treaties Series, Mr Lezertua drew the Committee's attention to document CAHDI (2007) Inf 8 rev and mentioned in particular the ratification process of the Protocol 14 to the European Convention of Human Rights (ECHR). He also referred to recent initiatives such as the Wise Persons' Report (15 November 2006) and the related colloquy¹ organised by the San Marino Presidency of the Committee of Ministers.

9. In relation to the Council of Europe's work on combating terrorism, Mr Lezertua informed the CAHDI about the entry into force of the Council of Europe Convention on the Prevention of

¹ Colloquy "The Future of the European Court of Human Rights in the light of the Wise Persons' report" (San Marino, 22-23 March 2007).

Terrorism (1 June 2007), outlined the current activities carried out by the Council of Europe's Committee of Experts on Terrorism (CODEXTER) and gave a short report on the conference "Why terrorism? Addressing the conditions conducive to the spread of terrorism", which was held in April 2007.

10. He went on to inform the CAHDI about a report by the Venice Commission on the democratic control of security services in the member states of the Council of Europe. The report had been linked to the report drawn up by Mr Dick Marty concerning allegations of secret detentions and illegal interstate transfers of detained persons.

11. Finally, Mr Lezertua stressed the significance of the CAHDI's work and welcomed the important co-operation between the CAHDI, the Parliamentary Assembly and the Committee of Ministers.

12. The Chair thanked Mr Lezertua for his extensive overview of the Council of Europe's activities.

B. ONGOING ACTIVITIES OF THE CAHDI

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

13. The Chair invited the members of the CAHDI to refer to the relevant documents under this agenda item (documents CAHDI (2007) 16, Add & Add 2). He recalled in particular that the Committee of Ministers' request to the CAHDI for possible comments on Parliamentary Assembly Recommendation 1788 (2007) (Item 1.a of document CAHDI (2007) 16), had already been met since the deadline was 15 June.

14. The Chair drew the CAHDI's attention to Parliamentary Assembly Recommendation 1803 (2007) which had been communicated to the CAHDI for information and possible comments by 31 October 2007 (Item 1.c of document CAHDI (2007) 16). The CAHDI considered the issue and adopted the comments set out in **Appendix III** to the present report.

15. The Chair then referred to the revised "road map" for the implementation of the United Nations Global Counter-Terrorism Strategy, adopted by the Ad Hoc Meeting of relevant Council of Europe committees on terrorism (25 April 2007) and commended this document as a useful check-list for CAHDI activities. Referring to the Memorandum of Understanding between the Council of Europe and the European Union, he recalled that the relationship and connections between COJUR and CAHDI are very much in the spirit of this Memorandum of Understanding.

16. The Chair further informed the CAHDI that the Committee of Ministers' Deputies had agreed to instruct the CAHDI to examine the consequences of disconnection clauses in international law and that, for this purpose, the Rapporteur Group on Legal Co-operation (GR-J) had been invited to elaborate ad hoc terms of reference. The Secretariat was requested to distribute the ad hoc terms of reference to all CAHDI participants, once they had been adopted.

17. In the absence of terms of reference, the Chair suggested that the Secretariat should collect relevant background material prior to the next CAHDI meeting. Further to that, he indicated that the Chair and the Vice-Chair, with the assistance of the Secretariat, would prepare a first draft of the response to the Committee of Ministers which would be circulated to all participants with a view to its discussion at the next CAHDI meeting. Any informal input from participants into the preparation of the draft would be welcome.

18. The delegation of Portugal expressed its agreement with the procedure proposed by the Chair.

19. The observer of the European Community welcomed the idea that informal input could be provided by delegations before the Chair and Vice-Chair produced the first draft.

20. The CAHDI agreed to proceed in the way suggested by the Chair and to consider the issue of disconnection clauses at its next meeting in the light of the ad hoc terms of reference it would receive from the Committee of Ministers.

21. Before closing the discussions under this item, the CAHDI also took note of other decisions of the Committee of Ministers which did not require comments.

6. Programme of activities of the CAHDI for 2008-2009

22. The CAHDI discussed its programme of activities for 2008-2009 in the light of document CAHDI (2007) 1 Add containing the *Criteria for launching, discontinuing and evaluating Council of Europe projects*² established by the Committee of Ministers. It was agreed to bear the criteria in mind when considering the CAHDI's agenda in future.

7. State immunities

a. State Practice

23. The delegation of the United Kingdom informed the CAHDI about the case of *Aziz v. Aziz*,³ which had raised questions concerning the interpretation of the United Kingdom's legislation on immunities and privileges (document CAHDI (2007) Inf 15).

24. To summarise the case, the Chair explained that the judgment was about attacks on the dignity of a foreign head of state and the obligation (under Article 29 of the Vienna Convention on Diplomatic Relations (1961) which UK legislation applied to heads of State) to take appropriate steps to prevent such attacks on diplomats or (as in this case) heads of state.

25. The CAHDI took note of developments concerning the database on State practice regarding State Immunities (document CAHDI (2007) Inf 13).

26. The delegation of Portugal reported a recent judgment by the Portuguese Supreme Court concerning labour issues, in which it had referred to the principle of relative immunity, basing its ruling both on the European Convention on State Immunity and the United Nations Convention on Jurisdictional Immunities of States and their Property. Portugal would provide its contribution to this database in the near future.

27. The observer of Japan presented an unofficial summary of *Japanese Trading Company v. the Islamic Republic of Pakistan*, a case before the Supreme Court of Japan concerning State Immunity.

28. The observer of the United States of America informed the CAHDI about a case involving the City of New York against the representations of India and Mongolia in the US Supreme Court. The case concerned the refusal of these states to pay property taxes imposed by the City of New York on the portion of their missions to the United Nations that were not used for diplomacy but as housing for staff members.

b. UN Convention on Jurisdictional Immunities

29. The CAHDI took note of the state of signatures and ratifications of the UN Convention on Jurisdictional Immunities of States and their Property (hereafter the UN Convention) and the European Convention on State Immunity (document CAHDI (2007) Inf 14).

² Set out in document CM(2006)101 final, approved by the Committee of Ministers at its 984th meeting on 22 January 2007.

³ Court of Appeal (Civil Division) judgment of 11 July 2007.

30. The delegation of Sweden informed the CAHDI that its authorities were preparing a special act on the implementation of the UN Convention. In this respect a special committee had been established which would deliver its conclusions by the end of the year.

31. The observer of Japan reported that it had signed this treaty on 11 January 2007 and its ratification process was underway. Information on state immunities practice and on other states' ratification process are of particular interest for Japan.

32. The observer of the United States of America informed the CAHDI that due to inconsistencies between domestic legislation and the UN Convention, the United States had not yet signed it, although it fully supported the principles of the treaty.

33. The observer of Mexico reported that the Convention was pending before the Senate for approval, which should be given in the near future.

34. The CAHDI agreed to keep this item on the agenda. Regarding developments concerning the database on State practice regarding State Immunities, the Chair suggested, and the CAHDI agreed, to stop producing a special document on this matter in future. However, delegations were encouraged to update their contributions on a regular basis and those which had not yet done so were invited to submit their contributions at their earliest convenience.

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

a. Situation in member and observer States

35. The CAHDI agreed that in future it would no longer produce a special document on this matter since all the replies are available on the CAHDI website. Delegations were invited to update their contributions on a regular basis, and those which had not yet done so were invited to submit their contributions at their earliest convenience.

b. The role of the OLA in national implementation of international law

36. The Chair drew attention to documents submitted by Switzerland (CAHDI (2007) 22), the United Kingdom (CAHDI (2006) 27) and Mexico (CAHDI (2007) 13).

37. The delegation of Switzerland presented its contribution, describing the role of the Office of the Legal Adviser (Jurisconsult) in Switzerland, both in matters of internal law and in relation to foreign policy. The delegation also offered to distribute an organisational chart of the Directorate of Public International Law to illustrate how the department is organised.

38. The observer of Mexico elaborated on the idea set out in its paper, which suggested that delegations could give presentations on a particular aspect of a legal adviser's work which could be followed by an exchange of views. It was noted that most legal advisers deal with similar challenges relating to treaties, the drafting of implementing legislation, the application of UN sanctions, and the participation of the ministry for foreign affairs in extradition procedures. The last two of these items were considered of crucial importance for Mexico.

39. The observer of Mexico presented its experience of the incorporation of obligations imposed by UN Security Council resolutions into national legislation, as well as Mexican extradition practice, which is predominantly linked to cases concerning the United States of America. It further outlined the legislative provisions for the immediate implementation of UN sanctions and those relating to extradition set out in its domestic law as well as in bilateral and multilateral treaties on extradition and in other international obligations such as the conventions against terrorism. The final decision on extradition cases lies with the Ministry for Foreign Affairs. Moreover, the Supreme Court recently ruled that extradition could not be carried out unless there were sufficient

assurances that the death penalty would not be sought. Extradition is possible where the subject of the extradition request may be sentenced to life imprisonment.

40. The Chair welcomed this presentation and observed that extradition practices vary considerably from state to state. He suggested discussing the role of the Foreign Ministry in relation to the implementation of treaties in broader terms, noting however that this would require a paper setting out exactly what should be discussed in advance.

41. The observer of Canada reported that, following the Westminster model, treaties were not self-executing according to Canadian legislation. It was decided that it might be useful to discuss this approach – which differed from the Mexican approach – and the observer of Canada undertook to present it at the next CAHDI meeting.

42. The delegation of the United Kingdom observed that the International Law Commission (ILC) was considering the obligation to extradite or prosecute (*aut dedere aut judicare*) and in this respect had asked for contributions from states. Such contributions to the ILC would be an apt basis for further discussions on this topic.

43. The Chair invited delegations to suggest specific topics that could be usefully discussed on a comparative basis by the legal advisers. It was agreed that delegations should submit a short note well in advance, in order to enable other participants to prepare for the meeting.

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

44. The Chair referred to the restricted database on National implementation measures of UN sanctions and respect for human rights and the distributed compilation of states' contributions (CODEXTER (2007) 3).

45. The delegation of Denmark volunteered to submit its contribution to the database before the next meeting.

46. The Romanian delegation informed the Committee that an office dealing with UN sanctions had been established within the Office of the Legal Adviser in the Romanian Ministry for Foreign Affairs. It stated that further information on the activities and the competences of this office would be given in written form.

47. The Italian delegation suggested discussing the possibility of making the database available to the public.

48. The delegation of Norway recalled Security Council resolution 1730 (2006) and the establishment of a focal point within the UN to receive de-listing requests. Norway had been considering whether and how to introduce information about this issue into its domestic legislation. It considered it important to inform the public about the UN developments in this respect.

49. The observer of Canada stated that Canada was reviewing its national listing regimes, and was paying particular attention to national mechanisms for de-listing individuals or entities. In this respect, the observer asked for further details on how the Al-Qaida and Taliban Sanctions Committee established pursuant to resolution 1267 (1999) has been working on the issue of updates to the sanctions lists.

50. The observer of the United Nations informed the CAHDI about the activities of the Al-Qaida and Taliban Sanctions Committee. The observer recalled that the Committee was constantly seeking updates from member states to the consolidated list of sanctioned parties, in order to render this list effective. At the same time the Committee is aware that this process is time-consuming. It would also welcome any information on cases involving sanctions under Security Council resolution 1267 (1999).

51. The delegation of Sweden welcomed the improvements introduced by Security Council resolution 1730 (2006), but noted that further improvement to the review procedure was necessary.

52. The Secretariat reported that Mr Dick Marty (Switzerland) had finalised the introductory memorandum to his report on "UN Security Council black lists" prepared for the Parliamentary Assembly Committee on Legal Affairs and Human Rights. This report would be brought to delegations' attention once it was ready.

53. The Chair proposed that the CAHDI should revert to the decision on whether or not the database should be made public at its next meeting, given that this issue required careful consideration and that court cases were pending. The Committee also invited delegations to update their contributions on a regular basis and called upon those delegations which had not yet done so to submit their contributions at their earliest convenience.

10. Digest of state practice on international law

54. Drawing the CAHDI's attention to the list of publications on state practice (CAHDI (2007) 12 rev), the Chair recalled the development of this exercise, proposed that the information should be posted on the CAHDI's webpage and suggested omitting this item from the CAHDI's next agenda.

55. The observer of the United States supported the proposal of the Chair and presented the "Digest of United States Practice in International Law", which is published by the Office of the Legal Adviser in the State Department in co-operation with Oxford University Press and is regularly updated.

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

11. Cases before the European Court of Human Rights (ECtHR) involving issues of public international law

57. The Chair recalled the CAHDI's decision to take stock of cases (both pending cases and judgments and decisions) before the ECtHR involving questions of public international law. The Chair thanked the Romanian delegation for having prepared a contribution (document CAHDI (2007) 23).

58. The delegation of Romania presented the case of *Hirschhorn v. Romania*, one of the most recent cases against Romania decided by the ECtHR, which addressed problems of diplomatic and state immunity in the context of a dispute concerning the restitution of private property abusively nationalised. It drew the CAHDI's attention to two separate opinions which aimed at clarifying the immunity regime applicable in this case. The Romanian delegation also promised to circulate, before the next CAHDI meeting, the judgment of the Romanian court on the non-implementation of the decision, which is not appropriate as such, but which reflects the practice of national courts.

59. The Norwegian delegation referred to two Grand Chamber decisions of 2 May 2007 (Agim BEHRAMI and Bekir BEHRAMI against France (Appl. No. 71412/01) and Ruzhdi SARAMATI against France, Germany and Norway (Appl. No. 78166/01). Both applications concerned events which had taken place during international peace-keeping operations in Kosovo in 2000 and 2002 respectively. The delegation outlined that, although detention orders and the supervision of demining fell under the mandate of KFOR and UNMIK, the Court had found that the jurisdiction link between the applicants and respondents, within the meaning of Article 1 of the European Convention on Human Rights (ECHR), was insufficient. Special consideration was given to Security Council resolution 1244 (1999) and the Court gave thought to the establishment of international structures within the UN mandate and the responsibility of international organisations. These cases are important elements in the increasing number of sources of international public law

and are key examples of courts' scrutiny of the relationship between the United Nations Charter and the European Convention on Human Rights.

60. The United Kingdom delegation suggested that it would be helpful to have preliminary information on any cases still pending before the ECtHR, so that the United Kingdom and other delegations could consider whether or not to intervene. Any informal notification from other delegations on cases raising matters of general importance would be welcome. The delegation requested support from the CAHDI's Secretariat in this regard.

61. The German delegation stated that it would also be grateful for any information on cases still pending. The delegation drew the CAHDI's attention to a judgment of 12 July 2007 in the case of *Jorgic v. Germany* (Appl. No. 74613/01) on the principle of universal jurisdiction. The German authorities had assumed jurisdiction over the applicant on the basis of the German Penal Code, despite the fact that he was a foreign citizen and the crime (genocide) had been committed abroad against foreign nationals. The ECtHR found that the German authorities' decision did not contravene any principles of international law and accordingly dismissed the applicant's allegations.

62. The delegation of Austria supported the suggestion by the United Kingdom and agreed that it would be useful for the Secretariat to prepare documents on pending cases, as well as on recent judgments and decisions, touching upon questions and principles of public international law. A short note would suffice to better prepare for the meetings.

63. The delegation of France underlined the importance of the decisions in the cases of *Agim BEHRAMI* and *Bekir BEHRAMI* against France (Appl. No. 71412/01) and *Ruzhdi SARAMATI* against France, Germany and Norway (Appl. No. 78166/01). It was reasonable to consider that there was no effective control within the meaning of the ECHR and therefore the Court was not competent in this particular case. It highlighted the excellent co-operation between the Norwegian and the French governments in preparing the response.

64. Referring to the proposal by the United Kingdom and Austria, the Secretariat explained that it had not undertaken the drafting of such a document as the original idea had been that the delegations of states concerned by cases before the ECtHR should bring them to the attention of the CAHDI. It went on to notify the CAHDI that a document had been drafted by the Court's Research Division on cases involving principles of European Union law and that, with the CAHDI's agreement, the Secretariat would approach the Court's Research Division to request the possibility of it drafting a paper concerning cases involving questions of public international law. It invited delegations to give clear indications as to whether it should cover only outstanding cases and at which stage (i.e. the communication or the decision on admissibility) it should be considered relevant for inclusion in the paper.

65. The Chair requested that the Secretariat and the Court's Research Division should consider at which stage it would be reasonable to select a case for the Committee's interest. He envisaged a system whereby the Court would automatically notify the Secretariat by e-mail of forthcoming cases involving issues of public international law.

66. Mr Lezertua, Director of Legal Advice and Public International Law, informed the committee that although it would be difficult for the Secretariat to filter out all the cases, it had already established informal contacts with the Research Division and should be able to provide a relatively complete account of cases.

67. The delegation of Denmark thanked its counterparts from France, Norway and Romania for keeping delegations informed about these developments. It supported the idea of being informed about current cases to give delegations the option of participating in pending cases in which a national interest is at stake. It also suggested that a clear distinction should be made under this item between pending and decided cases.

68. The French delegation stressed that it was not for the Secretariat to present pending cases, but for the member states concerned to inform the other delegations about recent developments.

69. The delegation of Greece agreed with France's intervention and pointed out that, however attractive it might seem, it would be too burdensome for the Secretariat to carry out research into all the pending cases; therefore it would be preferable for delegations to inform each other about pending cases.

70. The delegation of Norway reported that similar tasks at the national level required a lot of fact-finding. It informed the Committee that the decision itself was often taken on a very scant basis, and warned of other pitfalls. In view of the caseload of the ECtHR, the Norwegian delegation cautioned against having research done by the Secretariat.

71. The Russian delegation also expressed a note of caution and considered that the responsibility to provide information should remain in the hands of the interested states.

72. In conclusion, the Chair underlined that states' contributions would be the primary sources on which the CAHDI would rely and that short papers or oral presentations would be appreciated. In this respect, he noted a general agreement on the need for a distinction under this item between pending and decided cases. The Chair further suggested that the Secretariat should present at the next meeting a proposal on possibilities for the follow-up of this item. In the meanwhile, the Chair encouraged all the members of the Committee to report on any judgments or decisions or relevant ongoing events.

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.

73. The Chair drew the CAHDI's attention to the draft Recommendation of the Committee of Ministers to Member States on the Acceptance of the Jurisdiction of the International Court of Justice (ICJ) (CAHDI (2007) 8 rev) which had been prepared by the Chair and Vice-Chair on the basis of previous discussions and of written comments from several delegations (document CAHDI (2007) 8 rev Add). He suggested postponing further action on this document to the next meeting, stating that this would allow delegations more time to provide input and comments. Moreover, he noted that the case of *Nicaragua v. Columbia*, which is pending before the ICJ, directly raised the issue of whether and when a reservation under the optional clause could be withdrawn or amended with immediate effect.

74. The delegation of Greece informed the CAHDI about its written observations on the preamble of the text and agreed with the suggestion of the Chair.

75. The Romanian delegation reported that Romania had withdrawn all its reservations to the jurisdiction of the ICJ. Romania had also recently accomplished the necessary procedures to adhere to the Optional Protocols to the Vienna Convention on Diplomatic and Consular Relations concerning Settlement of Disputes.

76. The observer of Japan mentioned the recent declaration by Japan accepting the compulsory jurisdiction of the ICJ, modifying its acceptance to avoid surprise applications.

77. The Chair encouraged delegations to keep the Secretariat informed about developments relating to the acceptance of the jurisdiction of the ICJ. The CAHDI agreed to resume its consideration of the preliminary draft recommendation at its next meeting.

b. Overlapping jurisdiction of international tribunals: Exchange of views with Professor Koskenniemi

78. The Chair welcomed Professor Koskenniemi and congratulated him on his excellent study on the fragmentation of international law, which was on its way to becoming a classic of international law. He further expressed the Committee's gratitude for his having accepted its invitation to hold an exchange of views on this agenda item, which might be called the procedural aspect of fragmentation.

79. Professor Koskenniemi argued that the question of fragmentation was open to analysis from two starting points: either by analysing substantive law (looking at how treaties or customary law fragment into special regimes –the approach adopted by the ILC), or by looking at the proliferation of international courts and tribunals, which form part of the institutional problem. The question is what will happen in practice if international courts and tribunals and other authorities give inconsistent views.

80. The two approaches tend to throw a different light on the topic itself: the fragmentation approach is more system-oriented, more continental; the other tends to be more practical and perhaps more common law-style.

81. Background papers produced by the delegations of Portugal and the United Kingdom distinguish three main issues: the development of different principles by courts; the development of common principles in view of this divergence; and the question of whether this situation is covered by a system of international law.

82. Regarding the first point, Professor Koskenniemi pointed out that the question of the development of different principles by courts could be expanded into the development of different approaches and practices by international organisations, foreign ministries, and governmental departments. He called on governments to implement coherent approaches within their ministries in order to prevent the government from sending different experts voicing contradictory statements to different organisations or committees.

83. Professor Koskenniemi distinguished between three possible kinds of overlap: overlaps in which courts and administrative bodies give different views on the content of a single piece of the law (for example, a particular customary rule); overlaps in which courts and administrators apply different pieces of the law (for example, two different treaties) so as to arrive at different outcomes in the same case; and the fragmentation of facts (e.g. conflicting views on whether a certain entity represents a state or if genocide had taken place) which is a separate issue. International treaties do not just overlap, there is also the risk that the rights established in them are being undermined. This is especially so if treaty conflicts are dealt with by ad hoc adjustments by reference to whatever the conflict-solver believes to be best overall result. He underlined that although there was no need for further empirical studies on competing jurisdiction, there was however a need for a political assessment of which laws and courts should be given precedence over other laws, courts and tribunals.

84. Regarding the second point, the development of common principles dealing with overlaps, Professor Koskenniemi stated that there are two types of techniques: treaty techniques and customary techniques. With regard to the former, new treaties usually give indications regarding their relations with other (i.e. prior) treaties. He notes that in many cases, e.g. in the 1992 Convention on Biodiversity, the coordinating provisions are formulated in such general terms that it is hard to say whether they actually establish any preference between conflicting provisions. Instead, they leave conflict solution to be decided on an ad hoc basis. With regard to the latter, there were customary principles which had been developed by domestic and international courts. In this regard, Professor Koskenniemi identified several different techniques, namely *lex specialis* (which can be divided into *lex specialis*, where a special law overrides the general law, and the application of the general law in particular circumstances), *lis pendens*, *res judicata*, jurisdictional limitation and extension by applicable law. He further mentioned that *lex posterior* does not exist

as such in international law. In any case, all these provisions may be used in different and even conflicting ways so that their usefulness is somewhat counterbalanced by their indeterminacy.

85. Professor Koskenniemi concluded by examining the scope of the international legal system in relation to the third point. The ILC Report on Fragmentation highlights the importance of legal regimes - whether an institution or a treaty belongs to a certain regime is highly significant for that body or treaty. It is relatively easy to try to resolve overlaps within a regime, because there is a common ethos within the regime. But where there is a conflict across regimes, between a treaty in a trade regime and another in a human rights regime, for example, it is no longer possible to rely on the existence of a shared consensus or ethos to settle that conflict. In such situations it becomes important to construct decision-making bodies and institutions which are independent of such regimes and therefore in a position to resolve problems which cut across them in an impartial way.

86. The Chair thanked Professor Koskenniemi and opened the floor for discussion. The delegation of France recalled that the clause of the Biodiversity Convention quoted by Professor Koskenniemi was the result of a reciprocal concern and noted that such clauses still had the merit of allowing for interpretation which is compatible with diverging interests.

87. The representative of the European Community referred to a WTO dispute, *Aerospace v. United States*, in which the United States had argued that jurisdiction was limited to covered agreements. The European Community replied that it was not possible to deduce the applicable law from a clause on jurisdiction. In this regard it had referred to the principle of systemic integration, citing the fragmentation report as a further supporting element. The case was still pending before the WTO panel.

88. The delegation of Norway stated that finding ways to integrate and harmonize contradictory rules and regulations was an essential element of judicial interpretation and law-making. In international law, the obstacles to that are even more acute than in national law. It referred to the discussion on whether there should be specialised lawyers in all divisions of the Ministry for Foreign Affairs, and considered that there should be a central body, whose core competence and expertise would be focused on the Vienna Convention on the Law of Treaties. It concluded that the current report was not only academically interesting, but also highly practical and institutionally relevant.

89. The delegation of Portugal stated that it had recently changed its declaration accepting the compulsory jurisdiction of the ICJ and was about to change the relevant clause in relation to the Convention on the Law of the Sea. It informed the CAHDI that it was facing difficulties in drafting the second clause so as to avoid overlapping jurisdiction. In the event that Portugal was not able to draft the second clause, the delegation wondered what would happen if it was convicted by the ICJ and a state asked Portugal to proceed with another action on the same subject matter.

90. The delegation of Greece noted that the debate had extended beyond the usual question of overlapping jurisdiction, to include the question of overlapping regimes. The whole spectrum of international law was affected, which would therefore be very complex. It suggested that the problem of fragmentation could be avoided if there was a single international legal system. However, this would require the judges of different entities bringing their views into line with the position of a single review body, which in consequence would reduce their independence.

91. Referring to proceedings between Ireland and the UK before four different international tribunals, the delegation of the United Kingdom asked Professor Koskenniemi two questions. Firstly, in the absence of a hierarchy of international tribunals, it wondered whether international courts and tribunals might not attempt to regulate competing or parallel proceedings by exercising certain powers over procedural issues that are routinely exercised by national courts (such as the power to suspend proceedings, or the power to dismiss proceedings *in limine* for lack of competence, or on the grounds that the claim was an abuse of process)? Secondly, in view of the ILC having chosen an approach which considered the substantive rules of international law on

'fragmentation' and competing norms, rather than analysing the case law of international courts and tribunals on this issue, the delegation was interested to know what discussions had taken place within the ILC on this matter.

92. Referring to the ICTY's Genocide judgment, the Finnish delegation wanted to know if it would be beneficial to require consistent decisions by the different courts and if they would not run the risk of overlooking important aspects of fact or law.

93. The Italian delegation underlined the importance of looking at the development of common principles of courts, as a separate issue from developments in relation to other actors.

94. Professor Koskenniemi agreed with the French delegation, stating that political compromises could not be avoided and that compromises such as the one reached in the Biodiversity Convention were appropriate in the absence of consensus. In response to the European Community's comment, he informed the Committee that there were numerous cases where external treaties have been taken into account in the field as well – either with or without express reference to article 31 (3) (c) of the Vienna Convention. In relation to the comments by the Norwegian delegation, Professor Koskenniemi stated that he did not support the idea of legal advisers' offices being separated into different fields. A single office of the legal adviser that services the different departments is best guaranteed for uniform application of the law. Replying to the Greek delegation, he urged caution over ideas such as the creation of a "Supreme Court of the World", expressing particular reservations about using the advisory function of the ICJ had advisory powers over the other tribunals.

95. In relation to the United Kingdom's questions, Professor Koskenniemi stated that there had not been any tendency in favour of choosing another approach. It had been accepted from the outset that the ILC was an actor in this institutional field as well, and the question would have inevitably arisen as to from where it received the authority to be an institutional supervisor. In response to the Finnish delegation's remarks, he stated that the Genocide case was 90% successful: the only problem lay in the fact that it left open the possibility for there to be contradictory conclusions from the ICTY and the ICJ regarding the identification of genocide in practice.

96. Professor Koskenniemi replied to the Italian delegation that common principles emerged in jurisprudence, many being familiar principles of domestic laws; however the situation was different at international level. There would be supervisions undermining the courts' independence. To sum up, Professor Koskenniemi underlined that he was not among those who thought that overlaps and fragmentation presented an insurmountable problem, providing there were judges with sufficient experience and expertise to resolve such questions. Therefore it was essential to ensure that the staff of the offices of legal advisers within ministries for foreign affairs received both a top level legal education and an ethos that would be geared to thinking in terms of the international legal system as a whole and not only the values embedded in some specialised part of it.

97. In this connection, the delegation of Poland informed the CAHDI about the impending informal meeting of Legal Advisers of Ministries for Foreign Affairs in the framework of the UN Sixth Committee (29-30 October 2007). The agenda would cover a variety of topics, including the overlapping jurisdiction of international courts and tribunals, diplomatic protection from a human rights perspective and the long term work programme of the ILC.

98. The Chair thanked Professor Koskenniemi for participating in the exchange of views and closed the discussion.

c. Lists of arbitrators and conciliators nominated by States

99. The Chair referred to the contribution he had prepared with the Vice-Chair (document CAHDI (2007) 20) which dealt with lists of potential arbitrators under treaties and set the lists out in its appendix. He invited delegations to keep the lists of arbitrators up to date.

100. The observer of the United States informed the CAHDI that ten days after the meeting a hearing would take place in the Senate's Foreign Affairs Committee on accession to the United Nations Convention on the Law of the Sea (UNCLOS), which could ultimately lead to the United States appointing arbitrators in relation to that treaty, if the treaty is approved by the senate and ratified.

101. The delegation of the United Kingdom thanked the Chair and the Vice-Chair for preparing the paper and remarked that it would investigate the lapse in its nomination of conciliators under the Vienna Treaty in due course.

102. The delegation of the Netherlands suggested including in the list of arbitrators in Appendix I a reference to the Antarctic Treaty and the OECD Nuclear Energy Agency. It stated that this exercise would be useful within the Committee, but that it did not consider it necessary to produce a recommendation of the Committee of Ministers on this matter.

103. In this respect, the delegation of Ireland also specified that the Intergovernmental Organisation for International Carriage by Rail and the International Communication and Satellite Organisation provide for an arbitral tribunal.

104. The Austrian delegation - supported by the delegation of Greece - suggested adding to Appendix I a reference to the OSCE Convention on Conciliation and Arbitration within the OSCE. The delegation of Austria added that it would ensure that Austria does not appear in the list of States Parties to UNCLOS which have not nominated arbitrators.

105. The delegation of Sweden referred to document CAHDI (2007) 20 and welcomed the discussion on the draft recommendation of the Committee of Ministers on this matter.

106. The Chair stated that Appendix I was not a comprehensive list and that he would appreciate any submissions in order to complete it as much as possible. Other appendices could also be drawn up.

107. The Chair informed the CAHDI that the Committee of Ministers welcomed initiatives from committees proposing recommendations for it to adopt. 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**.

d. Exchange of views with Mr Couvreur, Registrar of the ICJ, on budgetary and other matters relating to the ICJ

108. The Chair welcomed Mr Couvreur, Registrar of the International Court of Justice (ICJ) and gave him the floor.

109. Mr Couvreur thanked the CAHDI for inviting him and opened his presentation by explaining that the ICJ currently faced two major problems on the administrative and budgetary level, namely judges' salaries (including pensions) on the one hand, and budgetary provisions to establish posts for legal assistants to judges on the other hand.

110. In relation to the first point, Mr Couvreur gave a detailed historical overview of the evolution of the judges salary scheme and informed the Committee that their current salaries were below those of other courts, both at international level (e.g. the European Court of Justice) and national level (e.g. the Supreme Courts of the United States of America or Japan or the House of Lords in the United Kingdom). He underlined that Article 32 para. 5 of the Court's Statute provides for judges' salaries and indemnities, as well as for daily allowances for ad hoc judges (both subject to determination by the General Assembly), "not to be diminished during their mandate". Mr Couvreur highlighted that the current assessment of salaries is complicated by the ongoing deflation of the US Dollar, the currency in which their salaries are paid.

111. As the UN Secretary-General had proposed in his report of 2 November 2006 (A/61/554), the salaries of ICJ Judges should be harmonised with those of the Judges of the criminal tribunals and the wages of the highest UN officials, before being adapted to the consumer price index of the state where they are serving as judges; this would lead to a minor increase in their current income. Unfortunately the Secretary-General's proposal had been rejected by both the Advisory Committee on Administrative and Budgetary Questions (ACABQ) and the General Assembly.

112. As a result of the current situation, there had not only been an actual decrease in the judges' salaries but, due to the freezing of the salaries of judges still serving their term, for the first time in the history of the ICJ and its predecessors, there had also been a breach of the principle of the equality of judges, a widely respected principle in international law. In this respect, Mr Couvreur pointed out that according to Article 9 of the Court's Statute "the main forms of civilization and of the principal legal systems of the world" should be represented in complete equality. Therefore a regulation which entailed that one part of the judiciary was put at a disadvantage *vis-à-vis* their counterparts would not only contrast with the above-mentioned provisions in Article 9 of the Statute but would moreover be in breach of Article 3 (concerning the appointment of judges). The same applied to the ad hoc judges, where the new legislation led to a complex situation, for example the two ad hoc judges in the *Nicaragua v. Columbia* case were entitled to different salaries.

113. Mr Couvreur continued to enunciate some other unsolved problems, which are linked to General Assembly Resolution 61/262 (A/RES/61/262 of 4 April 2007), such as the reduction of the judges' pension (50% of their actual salary), the question of whether members who have been re-elected would fall under the new scheme for their second mandate, and the fact that the freezing of salaries was in contrast to previous regulations.

114. As the General Assembly had recently reaffirmed in an attempt to make the judges' remuneration system more transparent, the working conditions and remuneration of the ICJ judges had to be different from those of the Secretariat's staff members (A/RES/61/262). Therefore the ICJ suggested two methods for achieving this aim.

115. The first proposal was that judges' salaries should be paid in Euros, a transparent and stable solution which would avoid the complex calculations currently necessary to define their salaries. As an alternative, it was suggested that their salaries could be raised within the boundaries of the current regulations.

116. As his second point, Mr Couvreur presented the budget of the ICJ, which in the financial year 2006-2007 had reached 36 785 000 US dollars. Despite its ever-increasing workload, the ICJ was trying to keep its budgetary requirements to the strict minimum. Nevertheless it was necessary to establish some new posts, such as a temporary position for the general service. It also seemed crucial for every judge to receive the direct and personal assistance of a young lawyer, which would require the creation of nine posts at P2 level. This would enable them to process more efficiently the increasingly complex cases requiring specialised research.

117. The Chair expressed the Committee's gratitude to Mr Couvreur for his interesting presentation and remarked that the procedure leading to the aforesaid resolution 61/262 had been carried out in haste. He hoped that in future there would be proper consultation. He recalled that the legal advisers had discussed this issue in their countries to explain the concerns of the ICJ.

118. The delegation of the United Kingdom inquired whether, through the initiative of the Registry or the Judges, Mr Couvreur was able to identify any developments on these issues in other regions. Moreover it expressed the hope that in the future the ICJ would be more properly informed by the Secretariat about developments in New York which concern it.

119. The delegation of France stated that it was very well aware of the ICJ's needs and echoed the remarks by the United Kingdom delegation that there seems to be a lack of information on this matter.

120. The observer of Japan expressed its hope that a solution could be worked out with the ICJ. There should be more coordination in addressing this issue.

121. The delegation of Austria stated that it fully understood the ICJ's need for assistants to the judges and that more effort was necessary.

122. The observer of the United States reported that its government had been in support of providing assistants to the judges. It regretted that there had not been a wider consultation with states on the issue of salaries. It underlined, however, that the ICJ's budget could not grow indefinitely.

123. The Swedish delegation regretted the lack of resources and supported the Court's request. Although the delegation considered the issue of salaries problematic, it underlined that it was important to ensure that the ICJ functions effectively in the future.

124. The delegation of Poland reaffirmed its support for all the steps taken by the ICJ to increase its efficiency. It informed the CAHDI that its request for financial support was under review.

125. The Finnish delegation agreed with the other delegations' views on the weak financial situation, which it considered to be due to a lack of coordination; it promised to pass on these views to the budgetary committee in New York.

126. The delegations of Greece and Norway assured Mr Couvreur that they would make every effort to remedy the situation.

127. The Chair thanked Mr Couvreur for his explanations and wished him every success with his efforts to regularise the situation at the ICJ.

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

128. The Chair referred to the relevant documents (part I of document CAHDI (2007) 18 and the chart in CAHDI (2007) 18 Add) and invited delegations to express their positions on the reservations and declarations to non-Council of Europe treaties.

129. The delegation of the United Kingdom informed the CAHDI that it had made an objection to the reservation by the Maldives to the International Covenant on Civil and Political Rights (ICCPR).

130. The delegation of Estonia reported that it had recently notified the United Nations of its objections to the reservations by the Maldives and Bahrain to the ICCPR.

131. Referring to Bahrain's reservation, the Swedish delegation underlined the problematic nature of late reservations and informed the Committee of its intention to object to this reservation.

132. The delegation of Poland stated its intention to object to the reservation by Bahrain to the ICCPR, although it does not intend to object to the Maldives' reservation to this treaty, nor to Montenegro's reservation to the Convention on the Prevention and Punishment of the Crime of Genocide. No decisions had yet been taken in relation to the reservations of Iran and El Salvador to the other instruments mentioned in document CAHDI (2007) 18, but it might object to the reservations of El Salvador if it confirmed them upon ratification.

133. The delegation of Norway noted that the reference to Islamic Shariah in Bahrain's first reservation renders the content of the reservation vague and unclear. Norway expressed its intention to object to the reservations of Bahrain.

134. The delegation of Portugal informed the CAHDI that Portugal had instructed its Permanent Mission in New York to object to the reservations made by the Maldives and Bahrain. In the case of the latter, the late deposit of the reservation had been as much a deciding factor as its content.

135. The delegation of Romania echoed the position of Portugal and stated that Romania had already deposited objections to the reservations by Bahrain and the Maldives.

136. The delegation of Russia believed that the depositary had been right to circulate these late reservations, since this was the long-established practice. In its opinion, it would be inappropriate for the depositary to judge whether reservations were late or not in specific cases, as in this case the depositary was only operating as a mailbox. The decision to refuse to accept late reservations could only be taken with the agreement of all the parties to the treaty concerned.

137. The delegation of Finland informed the CAHDI that it had already made an objection to the reservation of the Maldives and expressed its intention to object to the reservation of Bahrain on the grounds of its having been deposited too late. Finland did not think that there were legal grounds for objecting to Iran's reservation to the International Convention against the Taking of Hostages.

138. The French delegation informed the CAHDI of its intention to object to the reservations of Bahrain and the Maldives; it did not, however, intend to object to the reservation of Montenegro to the Convention on the Prevention and Punishment of the Crime of Genocide. As to the role of the depositary, it should be neutral and therefore must communicate reservations, even if they were late.

139. The observer of Canada stated its intention to file objections to the reservations of Bahrain and the Maldives. He also recalled that Canada had made objections with respect to the reservations of Brunei Darussalam to the Convention on the Elimination of All Forms of Discrimination against Women.

140. The Czech Republic expressed its intention to object to the reservations of the Maldives and Bahrain concerning the ICCPR; in the case of the latter not only because it was too late, but also due to its substance.

141. Spain expressed its intention to object to the reservation of the Maldives. The Spanish authorities were also considering an objection to Iran's reservation to the International Convention against the Taking of Hostages, but a final decision had not yet been taken.

142. Regarding reservations and declarations to Council of Europe treaties (part II of document CAHDI (2007) 18), the Chair underlined that all the reservations were permitted by the treaties themselves. The CAHDI noted that the relevant part of the chart in document CAHDI (2007) 18 Add did not contain any information on this matter.

143. The Chair suggested, and CAHDI agreed, that in the future the document would not include those reservations and declarations expressly permitted by a treaty. The table listing the objections of states to reservations and declarations to international treaties and/or their intentions to object is set out in **Appendix IV** to the present report.

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

144. The Chair 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 Chair urged delegations to consider updating the document and the CAHDI agreed to pursue its examination of this issue at its next meeting.

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

145. The Chair welcomed Professor Pellet, a member of the ILC since 1990, and gave him the floor.

146. Professor Pellet reported on the ILC's 59th session (7-8 June and 9 July-1 August 2007). At the outset he commented that the fact that the whole Commission is re-elected every five years constituted an abnormality which needed to be changed. Professor Pellet suggested prolonging their term of office to six years and proposed a partial renewal, which would allow for a more efficient workflow and greater continuity.

147. He informed the CAHDI that the ILC had worked on a number of issues in its 59th session. In relation to "Shared Natural Resources", the ILC had considered the fourth report by the Special Rapporteur, Mr Yamada, which focused on the relationship between the work on transboundary aquifers and any future work on oil and gas. The report recommended that the ILC should proceed with the second reading of the draft articles on the law of transboundary aquifers independently of any future consideration of oil and gas. The ILC also established a Working Group on Shared Natural Resources which addressed (a) the substance of the draft articles on the law of transboundary aquifers adopted on first reading; (b) the final form that the draft articles should take; and (c) issues involved in the consideration of oil and gas, and in particular prepared a questionnaire on state practice concerning oil and gas for circulation to Governments.

148. In connection with the "Expulsion of Aliens", the ILC considered the second and third reports of the Special Rapporteur, Mr Kamto, dealing, respectively, with the scope of the topic and definitions (two draft articles), and with certain general provisions limiting the right of a state to expel an alien (five draft articles). Following its debate on the two reports, the ILC decided to refer the seven draft articles to the Drafting Committee.

149. Professor Pellet further mentioned the discussion of the second report on the obligation to extradite or prosecute ("*aut dedere aut judicare*") presented by the Special Rapporteur, Professor Galicki. In the opinion of Professor Pellet, the ILC had not made sufficient progress with this issue yet.

150. In relation to the effects of armed conflicts on treaties, Professor Pellet informed the Committee that the Special Rapporteur, Mr Brownlie, had presented his third report on the matter. He recalled that the third report had taken into account the useful memorandum prepared by the Secretariat, entitled "The effect of armed conflict on treaties: an examination of practice and doctrine" (A/CN.4/550 and Corr.1 and 2) and that its commentary relied upon cross-references to the commentaries in the first report.

151. A Working Group under the presidency of Mr Caflisch had been established in order to provide further guidance regarding several issues which had been identified during the Commission's consideration of the Special Rapporteur's third report. The main proposals by the Working Group were, firstly, to leave the consideration of treaties involving international intergovernmental organisations in abeyance until a later stage of the Commission's work on the topic as a whole, and secondly, to include in the definition of armed conflict the notions of internal armed conflicts and occupation in the course of an armed conflict. It also made recommendations regarding the termination or suspension of treaties in the event of an armed conflict. The ILC

subsequently adopted the report of the Working Group and decided to refer draft articles 1 to 3, 5, 5 bis, 7, 10 and 11 as proposed by the Special Rapporteur and draft article 4 as proposed by the Working Group to the Drafting Committee, together with the recommendations and suggestions of the Working Group.

152. Professor Pellet stated that the issue most frequently discussed by the ILC had been the fifth report on the responsibility of international organisations, presented by Mr Gaja, which focused on the content of the responsibility of international organisations. Following its debate on the report, the ILC referred fifteen draft articles to the Drafting Committee which subsequently adopted them, together with commentaries, dealing with the content of the responsibility of international organisations.

153. In this respect, the ILC had also asked for comments and observations from governments and international organisations on a number of issues, in particular in relation to the obligation on members of a responsible international organisation to take all the appropriate measures, in accordance with the organisation's rules, in order to provide the organisation with the means to effectively fulfil its obligation to make reparation. Professor Pellet added that the ILC would also welcome views from governments and international organisations on two issues which were due to be examined in the next report. Firstly, the entitlement of international organisations to make a claim of cessation and reparation in the case of a breach by an international organisation of an obligation owed to the international community. Secondly, the addition of further restrictions to those already contained in the articles on the responsibility of states for internationally wrongful acts, where an injured international organisation intends to resort to countermeasures.

154. The ILC had also decided to include in its current programme of work two new topics, namely "Protection of persons in the event of disasters" and "Immunity of State officials from foreign criminal jurisdiction". It had decided to appoint Mr Valencia-Ospina as Special Rapporteur on the former and Mr Kolodkin as Special Rapporteur on the latter. The Commission had also established a Working Group under the chairmanship of Mr McRae to examine the possibility of considering the "Most-Favoured-Nation clause".

155. Finally, Professor Pellet informed the CAHDI that the ILC had continued its traditional exchanges of information with the International Court of Justice, the Inter-American Juridical Committee, the Asian-African Legal Consultative Organization, and with the Council of Europe's European Committee on Legal Co-operation (CDCJ) and the CAHDI itself. It had also organised a meeting with United Nations and other experts in the field of human rights, which had focused on reservations to human rights treaties and held an informal meeting with the International Committee of the Red Cross on matters of mutual interest. The ILC had also discussed the preparatory work for the ILC's 60th anniversary.

156. The Chair thanked Professor Pellet for his presentation and opened the floor for discussion.

157. The delegation of the Russian Federation stressed that the ILC did not receive sufficient contributions from its member states and called upon delegations to respond to the questions put to them by the ILC.

158. The United Kingdom delegation welcomed the new items on the agenda of the ILC. Referring to the report by Mr Gaja on the responsibility of international organisations, it asked Professor Pellet to elaborate on the working methods of the ILC and how it took into account states' comments on the responsibility of international organisations. In this respect, it recalled the position of the Sixth Committee which suggested reshaping the working methods of the ILC.

159. The Greek delegation observed that the ILC had been very productive this year and welcomed in particular the progress made on the issue of the effects of armed conflicts on treaties as well as the new item on the immunity of state officials from foreign criminal jurisdiction. However it expressed concerns about the discussion on shared natural resources. Since the discussion and codification of the topic were not yet well advanced even at the domestic level, states were reticent

about making hasty advances in the discussions on this matter at the international level. It added that there would be even more hesitations in relation to the issue of oil and gas.

160. The delegation of Portugal stated that Portugal follows closely the progress made on the issue of reservations to treaties. It further echoed the intervention of the delegation of the United Kingdom on the working methods of the ILC. Elaborating on the responsibility of international organisations, it added that, in the opinion of many states, the draft articles followed the draft articles on state responsibility too closely. It noted the complexity of the issue and in this respect raised the possibility of states acting on behalf of international organisations.

161. The observer of the United States deplored the idea of radical changes being made to the composition of the ILC. However, he welcomed the discussions on the expulsion of aliens and appreciated in particular the efforts of the Special Rapporteur to narrow the categories concerned and to distinguish between lawful and unlawful presence on a state's territory.

162. The delegation of Norway also deplored radical changes to the composition of the ILC and echoed the position of the Greek delegation on the issue of shared natural resources and the position of Portugal on the responsibility of international organisations. It further outlined Norway's position on the consideration of "armed conflict" in more general terms in the framework of the discussion of the effects of armed conflicts on treaties.

163. Mrs Lijnzaad, member of the delegation of the Netherlands, informed the CAHDI about her participation, as the representative of the CAHDI, in the meeting of the ILC with United Nations and other experts in the field of human rights. Together with Mr Berger from the Registry of the Court, she had presented the role of the European Court of Human Rights in respect of reservations and the work of the European Observatory on Reservations to International Treaties.

164. In response to the comments from delegations, Professor Pellet began by underlining that his observations were his personal observations, even if he tried to reflect the majority position. As to the question of whether the issue of shared natural resources was ready to be regulated at the international level, he recalled the ILC's criteria for the selection of topics and distinguished between issues which are ready for codification and those which are not and are still to be discussed such as shared natural resources. In his opinion it was not ready to be treated as an issue which could be codified.

165. In relation to the methods of the ILC, he underlined that there were structural problems. For example sometimes it would take a year for a report to be prepared, in which case member states would only receive it once it had already been adopted. In such cases, the problem was that sometimes the period during which states could submit their comments was not clear. However, he stressed that in general, states have the opportunity to present their views at the second reading.

166. Mr Pellet also understood delegations' concerns about the issue of the responsibility of international organisations and underlined again that this had been a major issue during the discussions of the 59th session and that these discussions would be continued by the ILC.

b. Guidelines on reservations to treaties: exchange of views with Professor Pellet, member of the ILC

167. Professor Pellet proceeded with a presentation on the 11th and 12th reports on reservations to treaties, on which he was the Special Rapporteur. He stated at the outset that, with the exception of a possible annex to reconsider the definition of the object and purpose of the treaty in the light of the discussion of the 10th report at the 57th ILC session, the 11th report was entirely devoted to procedural questions, in order to complete the examination of the third part of the "Provisional plan of the study" which he had presented in his second report and which had been adopted by the Commission in 1996.

168. The report began with an examination of questions relating to the formulation of objections, which had already been dealt with to some extent in the 8th and 9th reports on reservations to treaties. The formulation of acceptances and reactions to interpretative declarations were then examined.

169. For technical reasons the 12th report was being issued as a separate document, although it in fact constituted the second part of the eleventh report and was devoted to the issue of the procedure for the acceptance of reservations. As a result, 35 draft guidelines on the above issues had been referred to the Drafting Committee.

170. Professor Pellet underlined in particular the adoption by the ILC of nine draft guidelines dealing with the determination of the object and purpose of the treaty as well as the question of the incompatibility of a reservation with the object and purpose of the treaty, together with commentaries. Given the divergence of opinions, the consensus on draft guidelines 3.1.5 and 3.1.6 was welcomed in particular.

171. The question of vague or general reservations was also addressed. Professor Pellet underlined that reservations making references to Shariah are covered by the reference to vague or general reservations. In fact, the problem of references to Shariah in reservations lies in the fact that it is impossible to define the scope of such references in exact terms and difficult to assess them.

172. Regarding reservations to a provision reflecting a customary norm, the Drafting Committee had wished to accentuate the independent existence of a customary norm irrespective of its codification or embodiment in a treaty provision, without taking a position either on its form or its substance. Professor Pellet also observed that in addition to providing for the proposition that there was no obstacle to formulating a reservation to a treaty provision that reflects a customary norm, the Drafting Committee thought it useful to add a positive element, namely that the customary character of a treaty provision was a factor that is pertinent in the assessment of the validity of the reservation.

173. As for the discussion on reservations contrary to the rule of *jus cogens*, Professor Pellet recalled that there had been doctrinal difficulties on the subject, and that the debate in plenary had been inconclusive. The first issue was whether it was necessary to have a different guideline on *jus cogens* in the light of preceding draft guideline 3.1.8 which deals with customary norms and provides a solution which logically, but not necessarily ideologically, is equally applicable to *jus cogens*. The view had been expressed that such a guideline was not only necessary because of the distinct characteristics of *jus cogens* norms but also in the light of the recent judgment of the International Court of Justice in the Case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro).

174. These aspects were compounded by another issue which was not addressed by the guideline as formulated, namely cases where a treaty itself does not concern a *jus cogens* norm but a reservation made to that treaty does. It was stressed that making a reservation did not necessarily mean a breach of an obligation and an alteration of an obligation should not affect a peremptory norm. Subsequently, the Drafting Committee had decided to address the matter from the perspective of the reservation itself, namely that the reservation cannot, by its legal effects, affect a treaty in a way contrary to *jus cogens*. A simplified version of the reservation's definition was also discussed.

175. He further elaborated on reservations to general human rights treaties and stated that the draft guideline dealt with reservations to general human rights treaties (such as the two International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights) and not to treaties regarding specific human rights (such as the Convention against Torture). The point had been raised that in the case of certain treaties constituting "borderline" cases it would be difficult to make this distinction. Professor Pellet recalled, however, that the guideline is meant to

be applied in relation to general human rights treaties only and an analysis of this distinction would appear in the commentary. He added that there was a wide range of practice in this area and that the guideline had been drafted in such a flexible way as to allow sufficient leeway for interpretation.

176. In this respect, Professor Pellet recalled an interesting discussion with the representatives of various human rights bodies on the validity of reservations to general human rights treaties and informed the CAHDI that a shift could currently be observed from a dogmatic to a pragmatic approach.

177. Professor Pellet concluded by stating that the project would either be finalised on second reading or would be taken over by another Special Rapporteur.

178. The French delegation, supported by Norway, enquired whether it would not be preferable to refrain from making a distinction based on the *jus cogens* nature of a rule. The reference to the object and purpose of the treaty should enable each state to determine whether or not a reservation is compatible with the treaty.

179. The delegation of Portugal requested a clarification of whether the depositary could take a stand on late reservations and thus not accept them or whether this was only the prerogative of states.

180. Referring to reservations to a provision reflecting a customary norm, the delegation of the Netherlands enquired what would happen if a state missed the opportunity to make a reservation during the formation of customary law. It wondered whether the respective state would have a second chance to do so during the depositing of reservations.

181. The delegation of Turkey recalled that at the last meeting of the CAHDI there had been a suggestion to ask Professor Pellet whether it would be appropriate to object to reservations made upon signature.

182. In relation to the question raised by the Netherlands, Professor Pellet explained that guideline 3.1.8. clearly stated that a reservation could be made to a customary rule, but also underlined that this issue would be further examined.

183. In response to the comments by the delegations of France and Norway, Professor Pellet said that in his opinion as long as the questions arose on the effect of reservations to a provision reflecting a customary norm, it was indispensable to question the effects of the reservation on the norm containing a *jus cogens* rule.

184. With regard to late reservations, Professor Pellet referred to the guidelines and said that late reservations were not problematic as such, but that their deposit and late reactions thereto were. A state could always try to submit a reservation *ex post*; the depositary had no right whatsoever except to consult the other States Parties and only if they accepted it unanimously, the reservation was valid.

185. As for question from the delegation of Turkey, Professor Pellet stated that it was very important to object or make such views known to the states concerned as a part of the necessary dialogue and in order to try to encourage states not to confirm such reservations upon ratification if the reservations are objectionable. The Chair called on delegations to take this into account when adopting their policy on reservations made upon signature.

186. He thanked Professor Pellet for his presentation and the interesting discussion. The CAHDI agreed to follow up the work of the ILC and of the Sixth Committee.

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

187. The representative of the International Committee of the Red Cross (ICRC) informed the CAHDI about the impending 30th International Conference of the Red Cross and the Red Crescent "Together for Humanity", to be held in November 2007. Partnerships to address humanitarian challenges would be the main objective of the event and participants would be invited to debate the humanitarian consequences of four challenges of common concern: environmental degradation, including climate change; international migration; violence in urban settings; and emergent and recurrent diseases and other public health challenges. Participants would also consider a draft resolution on the reaffirmation and implementation of IHL "Preserving Human Life and Dignity in Armed Conflict". The ICRC would submit two reports: a study on customary IHL and a report on IHL and the challenges of contemporary armed conflicts. The representative of the ICRC strongly encouraged any participants planning to attend the Conference to make individual or collective pledges.

188. The delegation of Switzerland mentioned firstly a Swiss initiative, organised in co-operation with the ICRC, on private military and security companies. Four consultations of experts would take place with the aim of producing, by the end of 2008, a document covering two issues: a list of pertinent legal obligations of states and company personnel with regard to the operation of private military and security companies in conflict situations, in particular under IHL and human rights; and good state practices in this respect. A workshop on this matter would be conducted during the 30th International Conference of the Red Cross and the Red Crescent with a view to the promotion of the initiative. Secondly, the CAHDI was informed about the organisation of a workshop on "Humanitarian access in times of armed conflict" and a workshop on "Computer Network Attacks", both to be organised in the first half of 2008. Finally, the delegation recalled the publication, in July 2007, of two appendices to the Report on the foreign policy of Switzerland, namely on the role of Switzerland as the depositary of the Geneva Conventions and on asymmetric warfare and IHL, and the possibilities for development in that field.

16. Developments concerning the International Criminal Court (ICC)

189. The Norwegian delegation reported on the preparation of the review conference of the ICC Statute, scheduled for early 2010. The duration was tentatively set at five to ten working days and there were three potential venues: New York (United States of America), The Hague (Netherlands) or Kampala (Uganda). As for the scope and subject-matter, there might be discussions on Article 124 of the Statute (deferred acceptance of jurisdiction of certain crimes for a period of up to seven years), the definition of the crime of aggression, and a possible review of the list of crimes within the court's jurisdiction; suggestions for further topics of discussion would be welcomed. Appropriate rules of procedure for the review conference were being prepared and would be finalised in the near future.

190. The observer of Mexico reported about a joint initiative undertaken by Canada, Mexico, the International Coalition for the Criminal Court and the Universidad Libera Americana. A regional meeting to prepare for the first review conference of the ICC Statute had been held in Mexico City from 20 to 21 August 2007 with the participation of fourteen selected countries from North America, Central America and the Caribbean region. The purpose was to exchange positions on and take stock of the work of the ICC and examine the state of preparation of the review conference. It had not been the intention to adopt a regional position as such.

191. The observer of Japan informed the CAHDI that Japan had deposited its instrument of accession with the UN Secretary General on 17 July 2007, becoming a fully fledged Party to the Statute as of 1 October 2007. Regarding budgetary issues, Japan would provide assessed contributions up to the "ceiling". The observer called upon delegations to support Japan's candidate, Ms Fumiko Saiga, Ambassador in Charge of Human Rights and member of the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), in the election of ICC judges.

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

192. The delegation of the Netherlands informed the CAHDI that its authorities would consider the establishment of the Special Tribunal for Lebanon in The Netherlands to be a positive development. Negotiations on the logistical, financial and legal aspects of its establishment are underway. The delegation further announced that it would take from twelve to eighteen months for the hosting agreement to pass through the parliamentary procedures and a location had not yet been found; there was however the prospect of a bilateral agreement between the Netherlands and the United Nations; and costs would be shared by Lebanon and the international community. The hosting agreement, which would determine, *inter alia*, where the sentences will be executed, should be ratified before the end of this year.

193. The observer of the United States welcomed the Netherlands' initiative to host the tribunal and expressed its authorities' willingness to support this tribunal as it had the other tribunals. He further recalled the general difficulty faced by the international tribunals in trying to find states that would be willing to accept the increasing number of convicted persons.

194. At the Chair's suggestion, the CAHDI decided to include the Special Tribunal for Lebanon in its item on the Tribunals established by United Nations Security Council resolutions 827 (1993) and 955 (1994) in future.

18. Follow-up to the outcome document of the 2005 UN World Summit – Advancing the international rule of law

195. The Swiss delegation introduced document CAHDI (2006) 11 and invited delegations to provide any comments or remarks.

196. The delegation of the United Kingdom recalled the establishment of the Rule of Law Coordination and Resource Group supported by a small substantive Rule of Law Assistance Unit within the United Nations Secretariat. The established unit needs a firmer financial footing and the delegation called upon its EU colleagues to support this initiative in the Sixth Committee.

197. The delegation of Portugal, which was holding the EU presidency, supported the suggestion by the United Kingdom.

198. The delegation of Sweden welcomed the paper as a good concrete basis for future work.

199. The delegation of Finland informed the Committee about a conference on peace and justice which had been organised in Nuremberg in June 2007 by the Governments of Finland, Germany and Jordan. This event was part of the follow-up process and aimed at the formulation of practical proposals on how to face the challenges and coordinate the different considerations of peace and justice in post-conflict situations. Information about the conference would be circulated.

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

200. Mr Benitez, Head of the CAHDI Secretariat and the Council of Europe's Anti-Terrorism Coordinator, informed the CAHDI that in April 2007, the first Ad hoc meeting of chairs of Council of Europe committees on terrorism had been convened with the aim of taking stock of the Council of Europe's current work against terrorism and discussing follow-up, with a particular focus on building synergies and identifying ways and means of increasing co-operation between relevant committees.

201. This meeting provided the opportunity for gap-analysis and the identification of fields of competence in the light of the UN Global Counter-Terrorism Strategy, and for the establishment of a "road map" on the Council of Europe's involvement in the implementation of the Strategy. The

CAHDI would be expected to provide information at regular intervals on how it is contributing to the implementation of the road map and the UN Global Counter-Terrorism Strategy as part of the overall Council of Europe contribution. It was underlined that it was not meant to be the starting point for launching new activities, but rather an instrument for mainstreaming the Council of Europe's strategy.

202. Mr Benitez further recalled that, at the initiative of the Committee of Experts on Terrorism (CODEXTER), the Council of Europe had organised an International Conference entitled "Why Terrorism? Addressing the conditions conducive to the spread of terrorism" (Strasbourg, 25-26 April 2007). Some 200 participants attended the Conference, which was a discussion-orientated forum for exchanging information, experience and ideas with a view to understanding the conditions conducive to the spread of terrorism and finding ways and means to prevent individuals from turning to terrorism. The Conference built on Chapter 1 of the Plan of Action of the UN Global Counter-Terrorism Strategy and Article 3 of the Council of Europe Convention on the Prevention of Terrorism dealing with National Prevention Policies. It resulted in conclusions which could be translated into concrete actions and which were transmitted to the Committee of Ministers.

203. He also informed the CAHDI that the Council of Europe Convention on the Prevention of Terrorism had reached the ratification threshold and entered into force on 1 June 2007. Its entry into force was welcomed by other international organisations, namely the United Nations, the OSCE and the European Union.

204. The Anti-Terrorism Co-ordinator encouraged states to adhere to the other Council of Europe counter-terrorism treaties which had not yet entered into force, namely the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism and the Protocol amending the Convention on the Suppression of Terrorism.

205. In her capacity as Chair of the CODEXTER, Ms Lehto (Finland) supplemented the Anti-Terrorism Coordinator's presentation by informing the CAHDI about the CODEXTER's co-operation with other international organisations. Representatives of the United Nations, the European Union, the OSCE, the ICRC and Interpol all participated in the work of the CODEXTER. As an example, she recalled the adoption of Recommendation Rec(2007)1 of the Committee of Ministers to member states regarding co-operation against terrorism between the Council of Europe and its member states, and the International Criminal Police Organization (ICPO–Interpol). She also outlined the on-going activities of the CODEXTER: the preparation of country profiles on counter-terrorism capacity; exchanges of information and best practice on compensation and insurance schemes for the victims of terrorism; cyberterrorism; and false identity information, residence issues and nationality procedures in the context of the fight against terrorism.

D. OTHER

20. Election of the Chair and Vice-Chair

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

21-22. Date, place and agenda of the 35th meeting of the CAHDI and other business

207. Regarding the state of ratification of Protocol 14 to the European Convention on Human Rights, the Chair recalled the discussions at the last meeting.

208. The delegation of the Russian Federation reported that it had conveyed the CAHDI's message to its authorities, but there had been no further developments since its statement in the previous meeting.

209. The CAHDI strongly encouraged all efforts aimed at ensuring the rapid entry into force of the Protocol.

210. The CAHDI decided to hold its next (35th) meeting in Strasbourg on 6 and 7 March 2008 and adopted the preliminary draft agenda as it is set out in **Appendix V** to the present report.

211. The Chair proposed, and the CAHDI agreed, to use annotated agendas in future, following the UN system. It was agreed that the Chair and the Secretariat would produce an annotated agenda for the 35th meeting.

212. The Chair then informed the CAHDI that it had been invited by the British authorities to hold its 36th meeting in London in Autumn 2008.

213. The Secretariat informed the CAHDI about the possible organisation, under the Swedish Chairmanship of the Committee of Ministers, of an International Conference on International Courts and Tribunals to take place immediately before the London CAHDI meeting (Autumn 2008)⁴. The event would bring together the presidents and registrars of international jurisdictions and the legal advisers to the Ministries for Foreign Affairs of member and observer states.

214. The delegation of Sweden supported this excellent idea. It took this opportunity to inform the CAHDI that under the Swedish Chairmanship of the Committee of Ministers, priority would be given to the protection of human rights, as the core issue of the Council of Europe's activities. An opportunity to organise a seminar in Stockholm on the implementation of human rights at domestic level was being discussed.

215. The CAHDI adopted the abridged report of the meeting as it appears in **Appendix VI** to the present report and the Chair declared the 34th meeting of the CAHDI closed.

⁴ N.B.: Following the CAHDI meeting, it has been decided to hold the International Conference on 6-7 October and the CAHDI meeting on 7-8 October 2008 in London.

APPENDIX I**LIST OF PARTICIPANTS**

ALBANIA/ALBANIE: Apologised/Excusé

ANDORRA/ANDORRE: -

ARMENIA/ARMENIE: -

AUSTRIA/AUTRICHE:

Mr Helmut TICHY, Deputy Legal Adviser, Federal Ministry for European and International Affairs

AZERBAIJAN/AZERBAIDJAN: -

BELGIUM/BELGIQUE:

Mme Sabrina HEYVAERT, Attaché, Direction du droit international public, Service public fédéral des Affaires Etrangères

BOSNIA AND HERZEGOVINA/BOSNIE-HERZEGOVINE : -

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:

Mr Peter TAKSOE-JENSEN, Ambassador, Under-secretary for Legal Affairs, Ministry of Foreign Affairs

ESTONIA/ESTONIE:

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

FINLAND/FINLANDE:

Mr Marcus LAURENT, Director General, Legal Department, Ministry for Foreign Affairs

Mrs Marja LEHTO, Director, 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 Khatuna TOTLADZE, Deputy Director, International Legal Department, Ministry for Foreign Affairs

GERMANY/ALLEMAGNE:

Ms Susanne WASUM-RAINER, Deputy Director General for Legal Affairs, Ministry for Foreign Affairs

GREECE/GRECE:

Mrs Phani DASCALOPOULOU-LIVADA, Legal Adviser, Head of the Section of Public International Law, Ministry for Foreign Affairs

Mr Michael STELLAKATOS-LOVERDOS, Member of the Legal Service, Ministry of Foreign Affairs

HUNGARY/HONGRIE:

Mr Zoltan BANYASZ, Legal Adviser, International Law Department, Ministry for 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

ITALY/ITALIE:

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

Professeur Annalisa CIAMPI, Université de Verona

LATVIA/LETTONIE:

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LITHUANIA/LITHUANIE:

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LUXEMBOURG: -

MALTA/MALTE:

Mrs Marvic SCIBERRAS ABDILLA, Counsel, Office of the Attorney General

MOLDOVA:

Mr Lilian MORARU, Head of the European Law Directorate, International Law Department, Ministry of Foreign Affairs and European Integration

MONACO :

M. Bernard GASTAUD, Conseiller pour les Affaires Juridiques et Internationales, Ministère d'Etat

MONTENEGRO : -

NETHERLANDS/PAYS-BAS:

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

NORWAY/NORVEGE:

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

Mr Jo HOVIK, Adviser, Section for International Humanitarian and Criminal Law, Ministry of Foreign Affairs

POLAND/POLOGNE:

Mr Remigiusz HENCZEL, Ambassador, Legal and Treaty Department, Ministry for Foreign Affairs

PORTUGAL:

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

ROMANIA/ROUMANIE:

Mr Cosmin DINESCU, Director General, Directorate General for Legal Affairs, Ministry of Foreign Affairs

Ms Alina OROSAN, Deputy Director, International Law and Treaties Department, Ministry of Foreign Affairs)

RUSSIAN FEDERATION/FEDERATION DE RUSSIE :

Mr Roman KOLODKIN, Director, Legal Department, Ministry of Foreign Affairs

Ms Svetlana SHATALOVA, Third Secretary, Legal Department, Ministry of Foreign Affairs

SAN-MARINO/SAINT-MARIN: -

SERBIA / SERBIE

Mr Gaso KNEZEVIC, Chief Legal Advisor, Ministry of Foreign Affairs

SLOVAK REPUBLIC/REPUBLIQUE SLOVAQUE:

Mr Igor GREXA, Director General, Legal and Consular Division, Ministry of Foreign Affairs

SLOVENIA/SLOVENIE:

Ms Simona DRENIK, Head of the International Law Department, Ministry for foreign Affairs

SPAIN/ESPAGNE:

Mme Concepción ESCOBAR HERNÁNDEZ, Professeur de droit international, Chef du Département Juridique International, Ministère des Affaires Etrangères

M. Julio MONTESINOS, Diplomate, Chef adjoint de la Conseillerie Juridique Internationale

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

SWEDEN/SUEDE:

Mr Carl Henrik EHRENKRONA, Director General for Legal Affairs, Ministry for Foreign Affairs

Ms Elinor HAMMARSKJÖLD, Director General, International Law and Treaty Law Department, Ministry for Foreign Affairs

SWITZERLAND/SUISSE:

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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:

Mr Omer ALTUG, Ambassador, Chief Legal Adviser, Ministry of Foreign Affairs

UKRAINE: -

UNITED KINGDOM/ROYAUME-UNI:

Mr Daniel BETHLEHEM, Legal Adviser, Foreign and Commonwealth Office

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

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

EUROPEAN UNION / UNION EUROPEENNE

EUROPEAN COMMISSION / COMMISSION EUROPEENNE

M. Frank HOFFMEISTER, Juriste, Service juridique

COUNCIL OF THE EUROPEAN UNION / CONSEIL DE L'UNION EUROPEENNE

Mr Jenő CZUCZAI, Principal Jurist, Legal Service, Council of the European Union

OBSERVERS / OBSERVATEURS

CANADA:

Mr Alan KESSEL, Legal Adviser, Department of Foreign Affairs and International Trade

HOLY SEE/SAINT-SIEGE: Apologised/Excusé

JAPAN/JAPON:

Mr Rokuichiro MICHII, Director, International Legal Affairs Bureau, Economic Treaties Division, Ministry of Foreign Affairs

Mr Akira TAKANO, Consul, Consulate General of Japan

MEXICO/MEXIQUE:

Mr Joel HERNANDEZ, Legal Adviser, Secretaria de Relaciones Exteriores

UNITED STATES OF AMERICA/ETATS-UNIS D'AMERIQUE:

Mr John B. BELLINGER, III, Legal Adviser, US Department of State

ISRAEL / ISRAËL:

Mr Ehud KEINAN, Legal Adviser, Ministry of Foreign Affairs

UNITED NATIONS/NATIONS UNIES:

Mr Carlton GREENE, Expert, Al-Qaida/Taliban Monitoring Team

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

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: Mr Rutsel S.J. MARTHA, General Counsel, Office of Legal Affairs

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

Ms Maria-Teresa DUTLI, Head of the Advisory Service on International Humanitarian Law

NORTH ATLANTIC TREATY ORGANISATION (NATO) / ORGANISATION DU TRAITE DE L'ATLANTIQUE NORD (OTAN):

Mme Laura MAGLIA, Legal Assistant, Legal Department

SPECIAL GUESTS/INVITES SPECIAUX

M. Philippe COUVREUR, Greffier, Cour internationale de Justice

Professeur Alain PELLET, Membre de la Commission du droit international,

Professor Martti KOSKENNIEMI, The Erik Castrein Institute of International Law

SECRETARIAT GENERAL

CAHDI SECRETARIAT / SECRETARIAT DU CAHDI

M. Manuel LEZERTUA, Director of Legal Advice and Public International Law/Directeur du Conseil Juridique et du Droit International Public

Mr Rafael A. BENITEZ, Secretary of the CAHDI/Secrétaire du CAHDI, Directorate of Legal Advice and Public International Law/Direction du Conseil Juridique et du Droit International Public

Mme Albina OVCEARENCO, Administrator/Aministratrice, Directorate of Legal Advice and Public International Law/Direction du Conseil Juridique et du Droit International Public

Mr Gerhard KREUTZER, Administrative assistant/Assistant administratif, Directorate of Legal Advice and Public International Law/Direction du Conseil Juridique et du Droit International Public

Mme Francine NAAS, Assistant/Assistante, Directorate of Legal Advice and Public International Law/Direction du Conseil Juridique et du Droit International Public

Ms Saskia DANIELL, Assistant/Assistante, Directorate of Legal Advice and Public International Law/Direction du Conseil Juridique et du Droit International Public

INTERPRETERS/INTERPRETES:

Christopher TYCZKA
Nicolas GUITTONNEAU
Angela BREWER

APPENDIX II**AGENDA****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 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
6. Programme of activities of the CAHDI for 2008-2009
HDI (2004) 16
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. 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 ICJ
 - b. Overlapping jurisdiction of international tribunals: Exchange of views with Professor Koskeniemi
 - c. Lists of arbitrators and conciliators nominated by States
 - d. Exchange of views with Mr Couvreur, Registrar of the ICJ, on budgetary and other matters relating to the ICJ

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

APPENDIX III

**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 2007.⁵
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.

⁵ 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 Assembly⁶ 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.⁷ 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."⁸

⁶ 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.

⁷ 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/legal/doc-e/index.htm>.

⁸ See report of the Secretary-General pursuant to paragraph 2 of Security Council Resolution 808 (1993), 3 May 1993, document S/25704.

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. 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 / États	Convention	A		B	C	D		E	F
		1	2	3	4	5	6	7	8
	Reservation/ Réserve	Bahrain	Maldives	Montenegro	Iran	Turkey/ <i>Turquie</i>	Egypt/ <i>Egypte</i>	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-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*

(**) 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 V**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
- "disconnection clauses"
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

APPENDIX VI

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.⁹

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,¹⁰ 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 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 Document CAHDI (2007) 26.

¹⁰ Comments of 11 June 2007 approved by written procedure.

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 2008.¹¹

¹¹ See footnote 4.