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

**35th meeting
Strasbourg, 6-7 March 2008**

**PRELIMINARY DRAFT RECOMMENDATION REC(2008)... OF THE COMMITTEE OF
MINISTERS TO MEMBER STATES ON THE ACCEPTANCE OF THE JURISDICTION OF
THE INTERNATIONAL COURT OF JUSTICE**

Document prepared by the Secretariat of the CAHDI

Foreword

The Chair and Vice-Chair of CAHDI hereby circulate a further revised draft Recommendation (distributed prior under document CAHDI (2007) 8 rev) for discussion at the 35th meeting of CAHDI, with a view to its submission to the Committee of Ministers. Comments from delegations to the prior version appear in Appendix 1 to this document.

The underlying aim of the draft Recommendation is to assist States that may be considering accepting the Optional Clause, or amending their acceptance of the Optional Clause, by offering possible drafting suggestions which States may wish to include in their Declarations of Acceptance of the Optional Clause.

**PRELIMINARY DRAFT RECOMMENDATION REC(2008)... OF THE COMMITTEE OF
MINISTERS TO MEMBER STATES ON THE ACCEPTANCE OF THE JURISDICTION OF
THE INTERNATIONAL COURT OF JUSTICE**

1. The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe;
 2. *Considering* that the aim of the Council of Europe is to achieve a greater unity between its members;
 3. *Having regard* to the work of the Committee of Legal Advisers on Public International Law (CAHDI);
 4. *Bearing in mind* the European Convention for the Peaceful Settlement of Disputes (ETS 23);
 5. *Having regard* to the Charter of the United Nations and in particular to Articles 2, 7, 36 and 92 to 96, and to the Statute of the International Court of Justice;
 6. *Recalling* that the International Court of Justice is the principal judicial organ of the United Nations;
 7. *Bearing in mind* United Nations General Assembly resolution 3232 (XXIX) of 12 November 1974 and resolution 44/23 of 17 November 1989;
 8. *Recalling* the United Nations Decade of International Law, which had as one of its main purposes the promotion of means and methods for the peaceful settlement of disputes between states, including resort to and full respect for the International Court of Justice ;
 9. *Bearing in mind* the 2005 World Summit Outcome, adopted by General Assembly resolution 60/1 of 16 September 2005, in which the General Assembly called upon States which had not yet done so to consider accepting the jurisdiction of the International Court of Justice in accordance with its Statute, as well as resolutions 61/39 of 4 December 2006 and 62/70 of 6 December 2007, in which the General Assembly repeated its call;
 10. *Noting* that there is no requirement to make any reservations when accepting the jurisdiction of the International Court of Justice, and that some member States of the Council of Europe have indeed made declarations accepting the Court's jurisdiction without reservation;
 11. *Stressing* that the list of Model Clauses appended to this Recommendation is in no way exclusive, and does not call into question other clauses that States may decide to include in their declarations accepting the jurisdiction of the International Court of Justice;
- * * *
12. Recommends that the Governments of member States that have not yet done so consider accepting the jurisdiction of the International Court of Justice in accordance with Article 36, paragraph 2, of its Statute and that, when doing so, they give consideration as appropriate to the Model Clauses appended to this Recommendation;
 13. Requests the Secretary General to forward this Recommendation to the Secretary-General of the United Nations.

Appendix to Recommendation

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

1. Basic language accepting the Court's jurisdiction

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

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

"until [TIME-LIMIT] notice may be given to the Secretary-General of the United Nations withdrawing the declaration" OR "until such time as a notification may be given to the Secretary-General of the United Nations withdrawing the declaration [with effect from the moment of such notification/with effect from [DATE]]"

B. Clause excluding prior disputes

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

or

"over all disputes, other than disputes arising prior to [DATE] or relating to facts or situations which occurred prior to that date"

C. Settlement by other method

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

D. Clause to avoid 'surprise' applications

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

E. Variation clause

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

Appendix 1

COMMENTS FROM DELEGATIONS TO THE PRIOR VERSION CIRCULATED UNDER DOCUMENT CAHDI (2007) 7

GREECE

Concerning the 'Model Clauses' appended to Recommendation of the Committee of Ministers to Member States on the acceptance of the jurisdiction of the ICJ we would like to note that the non inclusion of a termination clause does not deprive the declaring State of the possibility to withdraw its acceptance of the jurisdiction of the ICJ. Similarly the declaring State may amend its declaration even if it had not made a reservation to this effect in its declaration.

We are not proposing that this note should be inserted in the text of the Model Clauses. Some mention of it could be made however at some other place (eg. Foreword, footnote).

RUSSIAN FEDERATION

1) After paragraph 11 of the preamble of the draft Recommendation add a new paragraph worded as follows: "Notes that the list of possible clauses in the Model Clauses appended to this Recommendation is in no way exclusive and does not call in question other clauses (for instance, excluding a certain type of disputes or disputes arising in relation to particular countries) that States may decide to include in their declarations accepting the compulsory jurisdiction of the International Court of Justice";

2) At the end of the item "B" of the Model Clauses ("Clause excluding stale disputes") add an alternative model clause worded as follows: "other than any dispute arising prior to the date on which this Declaration was deposited with the Secretary-General of the United Nations or relating to facts or situations which occurred prior to that date, even if such facts or situations may continue to have effects thereafter". The proposed clause is formulated on the basis of a number of declarations recognizing *ipso facto* jurisdiction of the Court containing *ratione temporis* clause (e.g. declarations of India, Spain, Poland).

UNITED KINGDOM

The United Kingdom wishes to make the following observation to members of the CAHDI:

"As a state which has made a declaration under article 36(2) of the ICJ Statute, the United Kingdom fully supports the Draft Recommendation, and commends the Model Clauses for possible inclusion in such optional clause declarations. In case this may give added comfort to a state which is contemplating making a declaration for the first time, the United Kingdom simply notes that there is scope to add such other clauses to a declaration which would be reasonable, save only to the extent that any additional clauses should not effectively render nugatory the declaration accepting the jurisdiction of the ICJ."