

London, 08/10/08

CAHDI (2008) 24

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

36th meeting, London, 7-8 October 2008

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

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 36th meeting in London on 7 and 8 October 2008 with Sir Michael Wood in the Chair. The list of participants is set out in Appendix I to the meeting report.¹
2. The CAHDI adopted the agenda as set out in **Appendix I** to the present report. It also adopted the report of its 35th meeting (Strasbourg, 6-7 March 2008) 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 the last meeting of the Committee, in particular those concerning the Council of Europe Treaty Series. His intervention is set out in Appendix III to the meeting report.
4. The CAHDI considered the decisions of the Committee of Ministers relevant to its work and requests for the CAHDI's opinion.

In accordance with the *Ad hoc* terms of reference given to it by the Committee of Ministers on 10 October 2007, the CAHDI adopted a *Report on the consequences of the so-called "disconnection clause" in international law in general and for the Council of Europe's conventions containing such a clause in particular*,² agreed to submit the report to the Committee of Ministers, and recommended that the Committee of Ministers consider making the report public.

Furthermore, following the Committee of Ministers' decision of 15 July 2008,³ the CAHDI adopted an opinion on Recommendation 1842 (2008) of the Parliamentary Assembly as set out in **Appendix II** to the present report.

5. The CAHDI considered state practice and case-law regarding state immunities. It invited delegations to submit or update their contributions to the relevant CAHDI database at their earliest convenience. It further received updates on the process of accession of its member and observer states to the Convention on Jurisdictional Immunities of States and Their Property.

6. The CAHDI considered the situation in member and observer states concerning the Organisation and Function of the Office of the Legal Adviser of the Ministry for Foreign Affairs. In this context, it welcomed the new contributions to the relevant CAHDI database and invited delegations to submit or update their contributions at their earliest convenience. The Committee further discussed the role of the OLA in the implementation of international law at the national level and agreed to keep this item on the agenda.

¹ Document CAHDI (2008) 25 prov.

² Document CAHDI (2008) 1 rev 2.

³ Document CM/Del/Dec (2008) 1032.

7. The CAHDI further discussed the issue of the national implementation of UN sanctions and respect for human rights and in particular it took note with appreciation of the presentation of the representative of the United Nations Analytical Support and Sanctions Monitoring Team for Al Qaida and the Taliban. It further took note of the judgment of the Court of Justice of the European Communities in Joined Cases Kadi and Al Barakaat International Foundation v. Council and Commission. The CAHDI also referred to its restricted database on the national implementation of UN sanctions and respect for human rights and agreed, in principle, to make this database public. With this in mind, the CAHDI's member and observer States were invited to consider their contributions to this database before 1 December 2008.

8. The CAHDI took note of cases brought before the European Court of Human Rights (ECHR) involving issues of public international law on the basis of information provided by delegations. It further invited delegations to keep the Committee informed about relevant pending cases.

9. In the context of its consideration of issues relating to the peaceful settlement of disputes, the CAHDI welcomed the adoption by the Committee of Ministers of its Recommendation Rec(2008)8 to member states on the acceptance of the jurisdiction of the International Court of Justice and its Recommendation Rec(2008)9 to member states on the nomination of international arbitrators and conciliators. Regarding the latter, the CAHDI invited its member and observer States to keep under review the list of treaties and other instruments, set out in the appendix to this Recommendation, which provide for the nomination of arbitrators or conciliators.

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

The CAHDI also continued its consideration of possibly problematic reservations to international treaties applicable to the fight against terrorism in the light of the list it had drawn up in pursuance of the Committee of Ministers' decision of 21 September 2001⁴ and comments provided by delegations.

11. The CAHDI had an exchange of views with Ms Patricia O'Brien, United Nations Under-Secretary-General for Legal Affairs and Legal Counsel.

12. The CAHDI discussed the work of the 60th session of the International Law Commission (ILC) on the basis of its report, presented by a member of the ILC.

13. The CAHDI considered current issues of international humanitarian law on the basis of contributions from delegations.

14. The CAHDI also considered recent developments concerning the International Criminal Court (ICC) as well as developments concerning the implementation and functioning of the international criminal tribunals.

15. The CAHDI further discussed the outcome of the International Conference "International Courts and Tribunals – The Challenges Ahead", organised by the Council of Europe under the Swedish Chairmanship of the Committee of Ministers and at the invitation of British authorities (London, 6-7 October 2008). The Conference provided a forum for fruitful discussions between the CAHDI's members and observers and a significant number of presidents, prosecutors and registrars from international courts and tribunals. The CAHDI agreed to follow the Conference up

⁴ Document CM/Del/Dec (2001)765bis/2.1.

by keeping it as an item on its agenda. The Secretariat of the CAHDI was requested to circulate the Conference conclusions it had prepared.

16. The CAHDI considered the follow-up to the Outcome Document of the 2005 UN World Summit and took note of the work undertaken in the Council of Europe and other international bodies on the fight against terrorism. It agreed to pursue consideration of both matters at its next meeting.

17. The CAHDI also held an exchange of views on the UN Human Rights Committee's Draft General Comment No. 33 under the item "Topical issues of international law".

18. Following the expiry of the second term of office of Sir Michael Wood (United Kingdom), the Chair of the CAHDI, and in accordance with the statutory regulations, the CAHDI elected Mr Rolf Einar Fife (Norway) as Chair for one year as of 1 January 2009. The CAHDI expressed its gratitude to the outgoing Chair for the excellent work he had accomplished.

Moreover, in accordance with the statutory regulations, the CAHDI elected Mr Luis Serradas Tavares (Portugal) as Vice-Chair of the Committee for one year as of 1 January 2009.

19. The CAHDI approved its draft specific terms of reference for 2009-2011 as set out in **Appendix IV** to the present report and decided to submit them to the Committee of Ministers for adoption.

20. Under other business, the CAHDI took note with concern of the worsening of the European Court of Human Rights' situation, where the number of individual appeals pending continues to increase. It noted that the state of ratification of Protocol 14 to the European Convention on Human Rights has remained unchanged for a number of years. In this context, a number of delegations raised the possibility of launching new initiatives aimed at enabling the Court to deal efficiently with the ever-increasing number of pending cases.

21. The CAHDI decided to hold its next meeting in Strasbourg on [19 and 20 March 2009] and adopted the preliminary draft agenda as it appears in **Appendix V** to the present report.

22. The CAHDI thanked the British and Swedish authorities for their warm hospitality and valuable contribution to the preparation of the Conference "International Courts and Tribunals – The Challenges Ahead" and the 36th meeting of the Committee.

APPENDIX I

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 35th 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
 - a. "Disconnection clause": adoption of the draft report of the CAHDI
 - b. Draft opinion of the CAHDI on Parliamentary Assembly Recommendation 1842 (2008)
6. State immunities:
 - a. State practice and case-law
 - b. UN Convention on Jurisdictional Immunities of States and Their Property – *Tour de table* on the situation in each member and observer State
7. 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
8. National implementation measures of UN sanctions and respect for human rights
9. Cases before the ECHR involving issues of public international law
10. Peaceful settlement of disputes:
 - a. Compulsory jurisdiction of the ICJ (Article 36(2))
 - b. Compulsory dispute settlement provisions in international conventions
 - c. Overlapping jurisdiction of international tribunals
 - d. Follow-up to Recommendation CM/Rec(2008)9 of the Committee of Ministers to member States on the nomination of international arbitrators and conciliators
11. 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

12. Exchange of views with Ms Patricia O'Brien, UN Under-Secretary-General for Legal Affairs and UN Legal Counsel

13. The work of the International Law Commission (ILC) and of the Sixth Committee
14. Consideration of current issues of international humanitarian law
15. Developments concerning the International Criminal Court (ICC)
16. Implementation and functioning of other international criminal tribunals (ICTY, ICTR, Sierra Leone, Lebanon, Cambodia)
17. Follow-up to the outcome document of the 2005 UN World Summit – Advancing the international rule of law
18. Fight against terrorism - Information about work undertaken in the Council of Europe and other international bodies
19. Follow-up to the International Conference “International Courts and Tribunals – The Challenges ahead” (London, 6-7 October 2008)
20. Topical issues of international law

D. OTHER

21. Election of the Chair and Vice-Chair of the CAHDI
22. Adoption of preliminary draft specific terms of reference for 2009-2010
23. Date, place and agenda of the 37th meeting of the CAHDI
24. Other business:
 - a. Status of ratification of Protocol 14 to the ECHR

APPENDIX II

OPINION OF THE COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI) ON RECOMMENDATION 1842 (2008) OF THE PARLIAMENTARY ASSEMBLY

1. On 9 July 2008, the Ministers' Deputies communicated Assembly Recommendation 1842 (2008) "Activities of the International Committee of the Red Cross (ICRC)" to the Committee of Legal Advisers on Public International Law (CAHDI) for information and possible comments by 31 October 2008.
2. The Ministers' Deputies also communicated this Recommendation to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT), the European Committee on Migration (CDMG), the Steering Committee on Human Rights (CDDH), the European Committee on Legal Co-operation (CDCJ) and the Steering Committee for Education (CDED). The Ministers' Deputies invited their Rapporteur Group on Social and Health Questions (GR-SOC) to prepare, on the basis of possible comments, a draft reply for adoption at one of their forthcoming meetings.
3. The CAHDI examined the above-mentioned Recommendation at its 36th meeting (London, 7-8 October 2008) and adopted the following comments which concern aspects of the recommendation which are of particular relevance to the mandate of the CAHDI.
4. In Recommendation 1842 (2008), the Assembly recommended that the Committee of Ministers:
 - a support the ICRC in its work on monitoring conditions of detention;
 - b co-operate with ICRC on promoting humanitarian assistance for persons affected by armed conflict and other situations of violence (including refugees and internally displaced people);
 - c contribute to solving the issue of missing persons as a result of armed conflict and other situations of violence in Europe;
 - d promote the dissemination and national implementation of international humanitarian law.
5. From the outset, the CAHDI would like to underline the fact that it attaches considerable importance to international humanitarian law, which is a regular item on its agenda. In particular, the CAHDI has paid special attention to the relationship between international law, human rights law and international humanitarian law.
6. The CAHDI member states and observers regularly report on national events aimed at the promotion and dissemination of international humanitarian law and hold exchanges of views on the promotion of the relevant international instruments, such as the Third Additional Protocol to the Geneva Conventions and the Second Protocol to the Hague Convention of 1954 on the Protection of Cultural Property in the Event of Armed Conflict.
7. The ICRC contributes actively as an observer to the work of the CAHDI, attending its meetings regularly to inform the Committee about the ICRC's on-going projects and initiatives. In particular, the CAHDI closely followed the elaboration and the dissemination of the ICRC Study on Customary International Humanitarian Law and took note of the ICRC document "Principles for Legislating the Situation of Persons Missing as a Result of Armed Conflict or Internal Violence", which was offered as a tool to assist states and their national authoritative bodies with the adoption of legislation that will address, prevent and resolve cases of missing persons.

8. Moreover, at its 28th meeting (Lausanne, 13-14 September 2004) the CAHDI held an exchange of views with Mr Jakob Kellenberger, President of the ICRC, on the relevance of the international humanitarian law in contemporary armed conflicts, the issue of weapons and war, and national implementation of the international humanitarian law. Other issues, such as extra-judicial killings and detention in the context of the fight against terrorism were also addressed during this exchange of views.

9. Finally, the CAHDI pursues its consideration of current issues of international humanitarian law and supports the activities of the ICRC.

APPENDIX III

**OBJECTIONS TO OUTSTANDING RESERVATIONS AND
DECLARATIONS TO INTERNATIONAL TREATIES
OBJECTIONS AUX RÉSERVES ET DÉCLARATIONS AUX TRAITÉS INTERNATIONAUX
SUSCEPTIBLES D'OBJECTION**

(08/10/08)

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*

TREATIES / TRAITÉS

- A. Convention on the Rights of Persons with Disabilities and Optional Protocol thereto / *Convention relative aux droits des personnes handicapées et son protocole facultatif*, New York, 13 December / décembre 2006
- B. International Covenant on Economic, Social and Cultural Rights / *Pacte international relative aux droits économiques, sociaux et culturels*, New York, 16 December / décembre 1966
- C. United Nations Convention against Corruption / *Convention des Nations Unies contre la Corruption*, New York, 31 October / octobre 2003
- D. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Adoption of an Additional Distinctive Emblem (Protocol III) / *Protocole additionnel aux Conventions de Genève du 12 août 1949 relatif à l'adoption d'un signe distinctif additionnel (Protocole III)*, Geneva/ Genève, 8 December / décembre 2005
- E. International Convention for the Suppression of Acts of Nuclear Terrorism / *Convention internationale pour la répression des actes de terrorisme nucléaire*, New York, 13 April/avril 2005
- F. Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents / *Convention sur la prévention et le répression des infractions contre les personnes jouissant d'une protection internationale, y compris les agents diplomatiques*, New-York, 14 December/décembre 1973
- G. Comprehensive nuclear test-ban treaty / *Traité d'interdiction complète des essais nucléaires*, New-York, 10 September/septembre 1996

[illegible]

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 / États-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 IV

COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI) DRAFT SPECIFIC TERMS OF REFERENCE FOR 2009-2011

- | | |
|------------------------------|--|
| 1. Committee Name | Committee of Legal Advisers on Public International Law (CAHDI) |
| 2. Committee Type | Ad hoc committee |
| 3. Source of ToR | Committee of Ministers |
| 4. Terms of Reference | |

Having regard to:

Resolution Res(2005)47 on committees and subordinate bodies, their terms of reference and working methods, adopted by the Committee of Ministers on 14 December 2005;

the need for the development of legal and judicial systems and of law enforcement systems respectful of the rule of law and human rights, as reflected in the Action Plan adopted by the Third Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005), namely in Chapter I – Promoting common fundamental values: human rights, rule of law and democracy;

conclusions and decisions of the Committee of Ministers (CM/Del/Concl(91)455/24, Appendix 5, extended by CM/Del/Dec(2004)904, item 10.1, para. 4 and Appendix 11).

Within the framework of the Programme of Activities, under Programme II.2.4 - International law and international tribunals, the Committee is instructed to:

examine questions of public international law;

exchange and, where appropriate, co-ordinate the views of member states at the request of the Committee of Ministers, Steering Committees and Ad hoc Committees and at its own initiative.

5. Composition of the Committee

A. Members

Governments of member states are entitled to appoint representatives, experts in the field of public international law, of the highest possible rank, preferably chosen among the Legal Advisers to the Ministries of Foreign Affairs.

The Council of Europe budget will bear the travel and subsistence expenses on one representative from each member state (two in the case of the state whose representative has been elected Chair)

B. Other Participants

- i. The European Commission and the Secretariat General of the Council of the European Union may send representatives to meetings of the Committee, without the right to vote or defrayal of expenses.

ii. The states with observer status with the Council of Europe (Canada, Holy See, Japan, Mexico, United States of America) may send representatives to meetings of the Committee, without the right to vote or defrayal of expenses.

iii. The following intergovernmental organisations may send representatives to meetings of the Committee, without the right to vote or defrayal of expenses:

- The Hague Conference on Private International Law;
- North Atlantic Treaty Organisation (NATO);¹
- The Organisation for Economic Co-operation and Development;
- The United Nations and its specialised agencies;²
- European Organisation for Nuclear Research (CERN);³
- International Criminal Police Organisation (INTERPOL).

C. Observers

The following non-member states and non-governmental organisations may send representatives to meetings of the Committee, without the right to vote or defrayal of expenses:

- Australia;
- Israel;⁴
- New Zealand;
- International Committee of Red Cross (ICRC).⁵

6. Working Structures and Methods

The CAHDI may set up working parties and have recourse to consultant experts.

7. Duration

The present terms of reference expire on 31 December 2011

-- Notes -----

Note 1 See CM/Del/Dec/Act(93)488/29 and CM/Del/Concl(92)480/3.

Note 2 For specific items at the request of the Committee.

Note 3 For specific items at the CERN's request and subject to the Chair's approval.

Note 4 Admitted as observer "for the whole duration of the Committee" by the CAHDI, March 1998. The same is valid for subordinated committees. Decision confirmed by the Committee of Ministers (CM/Del/Dec(99)670/10.2 and CM(99)57, para.D15). See CM/Del/Dec(2000)735/2.1a, para. 4 and SG/Inf(2000)48, para. 34. See CM/Del/Dec(2001)742/10.1 and Appendix 8, see CM/Del/Dec(2002)816/10.1 and Appendix 7.

Note 5 Admitted as observer for the whole duration of the Committee, see CM/Del/Dec(2003)861/10.1, para. 2 and CM(2003)146, para; 12; see CM/Del/Dec(2004)883/10.1, para. 1 and Appendix 16.

Decision References

29/11/2006 [CM/Del/Dec\(2006\)981](#), Item 10.1b -- [CM/Del/Dec\(2006\)981/10.1](#), Appendix 3 valid until 31/12/2008

APPENDIX V

PRELIMINARY DRAFT AGENDA FOR THE 37th MEETING

A. INTRODUCTION

1. Opening of the meeting by the Chair, Mr Rolf Fife
2. Adoption of the agenda
3. Approval of the report of the 36th 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. Immunities of States and international organisations:
 - a. State practice and case-law
 - b. UN Convention on Jurisdictional Immunities of States and Their Property
7. 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
8. National implementation measures of UN sanctions and respect for Human Rights
9. Cases before the ECtHR involving issues of public international law
10. Peaceful settlement of disputes:
11. 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

12. Consideration of current issues of international humanitarian law
13. Developments concerning the International Criminal Court (ICC)
14. Implementation and functioning of other international criminal tribunals (ICTY, ICTR, Sierra Leone, Lebanon, Cambodia)
15. Follow-up of the International Conference "International Courts and Tribunals - The Challenges Ahead" (London, 6-7 October 2008)

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
18. Topical issues of international law

D. OTHER

19. Date, place and agenda of the 38th meeting of the CAHDI
20. Other business:
 - a. Status of ratification of Protocol 14 to the ECHR