



Strasbourg, 11/09/09

CAHDI (2009) 15

COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)

38th meeting, Strasbourg, 10-11 September 2009

List of items discussed and decisions taken Abridged report

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 38th meeting in Strasbourg, on 10 and 11 September 2009, with Mr. Rolf Einar Fife in the Chair. The list of participants is set out in Appendix I of the meeting report¹.

2. The CAHDI adopted its agenda as set out in **Appendix I** of the present report. It also adopted the report of its 37th meeting (Strasbourg, 19-20 March 2009), and authorised the Secretariat to publish it on the CAHDI's website.

3. The CAHDI was further informed about the developments concerning the Council of Europe since the last meeting of the Committee, in particular those concerning the Council of Europe Treaty Series. The intervention on this matter of Mr. Manuel Lezertua, Director of Legal Advice and Public International Law, Jurisconsult, is set out in Appendix III of the meeting report.

4. The CAHDI considered the decisions of the Committee of Ministers relevant to its work and requests of the CAHDI's opinion. In particular, it took note of the Parliamentary Assembly of the Council of Europe (PACE) Recommendation 1870 (2009) – "Protecting financial aid granted by Council of Europe member States to poor countries against financial funds known as "vulture funds", and PACE Recommendation 1871 (2009) – "Ban on cluster munitions".

It further welcomed the adoption of the Protocol No. 14 bis to the European Convention on Human Rights during the 119th Ministerial Session of the Committee of Ministers of the Council of Europe, held in Madrid on 12 May 2009.

5. The CAHDI considered State practice and case-law regarding State immunities on the basis of contributions by the delegations, including those to the relevant CAHDI database. It invited delegations to submit or update their contributions at their earliest convenience. The Committee also took stock of the process of accession of its member and observer States to the United Nations Convention on Jurisdictional Immunities of States and Their Property.

In addition, the CAHDI discussed the existing practice of Legal Advisers to follow cases pending in national tribunals that concern States' or international organisations' immunities and the possibilities, when possible, to present all related points of law. The CAHDI noted interest of the delegations to continue this exchange as a part of its discussion on State practice and case-law concerning immunities of States and international organisations. In

¹ Document CAHDI (2009) 16

view of this exchange, the Secretariat was instructed to circulate a pertinent questionnaire. Delegations were invited to submit their contributions by **1 March 2010**.

6. The CAHDI further considered the issue of organisation and functions of the Office of the Legal Adviser of the Ministry for Foreign Affairs and invited the delegations to submit or update their contribution at their earliest convenience.

7. The CAHDI further discussed the issue of the national implementation of UN sanctions and respect for human rights on the basis of contributions by the delegations, including those to the relevant CAHDI database. It invited the delegations to submit or update their contribution to the said database at their earliest convenience.

Furthermore, the delegations were invited to submit to the CAHDI Secretariat - **by 1 March 2010** - information on the cases, that have been eventually submitted to national tribunals, by persons or entities removed from the lists established by the UN Security Council Sanctions Committees.

8. The CAHDI took note of the 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 took note of the International Court of Justice's jurisdiction under selected international treaties and agreements and, in particular, the situation concerning the Council of Europe's member and observer States. The Committee invited the delegations to submit to the Secretariat any relevant information on this matter.

Regarding the implementation of Recommendation Rec(2008) 9 of the Committee of Ministers to member states, on the nomination of international arbitrators and conciliators, the CAHDI reiterated the importance of maintaining, and keeping under review, a list of treaties and other instruments which provide for the nomination of arbitrators or conciliators for inclusion in lists maintained for the purpose of implementing provisions concerning the peaceful settlement of disputes. The delegations had been invited to submit to the Secretariat any relevant information on this matter.

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 the delegations. The amended table summarising the delegations' positions is set out in **Appendix II** of the present report.

Furthermore, the CAHDI instructed the Secretariat to amend the table and its legend in order to ensure that the table covers the range of potential reactions that States might have to a particular reservation or declaration.

11. The CAHDI held an exchange of views with Mr. Georg Nolte, member of the International Law Commission (ILC), on the work of the 61st session of the ILC and that of the Sixth Committee.

The CAHDI also held an exchange of views with the European Commission for Democracy through Law (Venice Commission), represented by its President, Professor Jan Erik Helgesen.

12. On the basis of contributions from the delegations, the CAHDI took note of current issues of international humanitarian law, recent developments concerning the International Criminal Court (ICC), as well as developments concerning the implementation and functioning of the international criminal tribunals.
13. The CAHDI considered the follow-up to the Outcome Document of the 2005 UN World Summit and agreed to pursue further considerations regarding this matter at its next meeting.
14. The CAHDI took note of the work undertaken in the Council of Europe in the field of the fight against terrorism, in particular of the first Consultation of the Parties to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196), which was held in Madrid on 12 May 2009, in the margins of the 119th session of the Committee of Ministers.
15. The CAHDI considered some topical issues of international law on the basis of contributions from delegations.
16. In accordance with the statutory regulations, the CAHDI elected Mr. Rolf Einar Fife (Norway), and Ms Edwige Belliard (France), respectively as Chair and Vice-Chair of the Committee for one year, as of 1 January 2010.
17. Under other business, the CAHDI took note of the information on the “Round Table on ways of Protection of the Right to a Trial within reasonable Time – Countries’ Experiences and on short-term Reform of the European Court of Human Rights”, to be held on 21-22 September in Bled (Slovenia) in the frame of Slovenian Chairmanship of the Committee of Ministers of the Council of Europe
18. The CAHDI decided to hold its next meeting in Strasbourg on 18 and 19 March 2010 and adopted the preliminary draft agenda as it appears in **Appendix III** of the present report.

APPENDIX I

COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)

**38th meeting
Strasbourg, 10-11 September 2009**

Palais de l'Europe, room 9 – 9h30

AGENDA

A. INTRODUCTION

1. Opening of the meeting by the Chair, Mr Rolf Einar Fife
2. Adoption of the agenda
3. Approval of the report of the 37th meeting
4. Statement by the Director of Legal Advice and Public International Law, Mr Manuel Lezertua

B. ONGOING ACTIVITIES OF THE CAHDI

5. Committee of Ministers' decisions of relevance to the CAHDI's activities including requests of 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. Questions dealt with by offices of the Legal Advisers which one of wider interest and relate to drafting of implementing legislation, foreign litigation, peaceful settlement of disputes, other questions of relevance to the Legal Adviser
 - b. Updates of the website entries
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. 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:

- List of outstanding reservations and declarations to international Treaties

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

12. Exchange of views with the European Commission for Democracy through Law (Venice Commission) represented by its President, Professor Jan Erik Helgesen
13. The work of the International Law Commission (ILC) and of the Sixth Committee : exchange of views with Mr. Georg Nolte, member of the ILC
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. Topical issues of international law

D. OTHER

20. Election of the Chair and Vice-Chair
21. Date, place and agenda of the 39th meeting of the CAHDI
22. Other business

APPENDIX II

TABLE OF OBJECTIONS

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

Legend / Légende:

Sign. : Made upon signature / Formulée lors de la signature

● 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. Convention on elimination of all forms of discrimination against women / *Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes*, New-York, 18 December/décembre 1979
- C. 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)*, 8 December/décembre 2005
- D. International Covenant on Civil and Political Rights / *Pacte international relatif aux droits civils et politiques*, New-York, 16 December/décembre 1966
- E. Convention on prohibitions or restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects (Protocol III) / *Convention sur l'interdiction ou la limitation de l'emploi de certaines armes classiques qui peuvent être considérées comme produisant des effets traumatiques excessifs ou comme frappant sans discrimination (Protocole III)* / Geneva/Genève, 10 October/octobre 1980
- F. Convention on the Privileges and Immunities of the Specialized Agencies / *Convention sur les privilèges et immunités des agences spécialisées*, New-York, 21 November/novembre 1947
- G. 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

States / Etats	Convention	A			B	C	D	E	F	G
		1	2	3	4	5	6	7	8	9
	Reservation/ Réserve	El Salvador	Mauritius Maurice	Korea Corée	Qatar	Israel	Bahamas	USA	Saudi Arabia Arabie Saoudite	Egypt Egypte
	Deadline Délai	23/01/09	Sign.	17/12/09	07/05/10	21/11/08	05/01/10	04/02/10	03/04/10	Sign.
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 / <i>Estonie</i>									
Finland / <i>Finlande</i>	○								
France									
Georgia / <i>Géorgie</i>									
Germany / <i>Allemagne</i>	○								
Greece / <i>Grèce</i>									
Hungary / <i>Hongrie</i>									
Iceland / <i>Islande</i>									
Ireland / <i>Irlande</i>									
Italy / <i>Italie</i>									●
Latvia / <i>Lettonie</i>				○					●
Liechtenstein									
Lithuania / <i>Lituanie</i>									
Luxembourg	□	□							□
Malta / <i>Malte</i>									
Moldova	□	□							□
Monaco									
Montenegro									
Netherlands / <i>Pays-Bas</i>	●								
Norway / <i>Norvège</i>									
Poland / <i>Pologne</i>	○								
Portugal									
Romania / <i>Roumanie</i>									
Russian Federation / <i>Fédération de Russie</i>									○*
San Marino / <i>Saint-Marin</i>									
Serbia / <i>Serbie</i>									
Slovakia / <i>Slovaquie</i>	○								
Slovenia / <i>Slovénie</i>									
Spain / <i>Espagne</i>									
Sweden / <i>Suède</i>	●	○							
Switzerland / <i>Suisse</i>									
"the former Yugoslav Republic of Macedonia" / "l'ex-République yougoslave de Macédoine"									
Turkey / <i>Turquie</i>									
Ukraine									
United Kingdom / <i>Royaume-Uni</i>									
Canada									
Holy See / <i>Saint-Siège</i>									
Israel									
Japan / <i>Japon</i>				□		□			
Mexico / <i>Mexique</i>									
United States of America / <i>Etats-Unis d'Amérique</i>									□ ¹

(*) 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*

¹ The delegation of the United States of America expressed the wish to see the table amended in order to better reflect its position/ *La délégation des Etats-Unis d'Amérique a fait part de son souhait de voir le tableau amendé en vue de mieux refléter sa position.*

APPENDIX III

PRELIMINARY DRAFT AGENDA FOR THE 39th MEETING

A. INTRODUCTION

1. Opening of the meeting by the Chair, Mr. Rolf Einar Fife
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B. ONGOING ACTIVITIES OF THE CAHDI

5. Committee of Ministers' decisions of relevance to the CAHDI's activities including requests of the CAHDI's opinion
6. Immunities of States and international organisations:
 - a. State practice and case-law :
 - recent national developments and updates of the website entries
 - exchange of national practices on possibilities for the Ministry of Foreign Affairs to raise public international law issues in procedures pending before national tribunals and related to States' or international organisations' immunities
 - 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. Questions dealt with by offices of the Legal Adviser which are of wider interest and related to the drafting of implementing legislation, foreign litigation, peaceful settlements of disputes, other questions of relevance to the Legal Adviser.
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 - List of outstanding reservations and declarations to international Treaties

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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 outcome document of the 2005 UN World Summit – Advancing the international rule of law
16. Fight against terrorism - Information about work undertaken in the Council of Europe and other international bodies
17. Topical issues of international law

D. OTHER

18. Date, place and agenda of the 40th meeting of the CAHDI
19. Other business