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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)

39th meeting
Strasbourg, 18-19 March 2010

MEETING REPORT

Document prepared by the Secretariat of the CAHDI

A. INTRODUCTION

1. Opening of the meeting by the Chair, Mr Rolf Einar Fife

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 39th meeting in Strasbourg on 18 and 19 March 2010, with Mr Rolf Einar Fife in the Chair. The list of participants is set out in **Appendix I** to this report.

2. Adoption of the agenda

2. The draft agenda was adopted without comment as set out in **Appendix II** to this report.

3. Approval of the report of the 38th meeting

3. The CAHDI adopted the report of the 38th meeting (document CAHDI (2009) 16 prov) taking into account the comments made by the observer of Japan. The Committee instructed the Secretariat to publish the report on the CAHDI webpage.

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

4. Mr Manuel Lezertua, Director of Legal Advice and Public International Law, briefed delegations about developments at the Council of Europe since the CAHDI's 38th meeting, in particular those concerning the Council of Europe Treaty Series. His statement is set out in **Appendix III** to this report.

B. ONGOING ACTIVITIES OF THE CAHDI

5. Committee of Ministers' decisions of relevance to the CAHDI's activities, including requests for the CAHDI's opinion

5. The President presented the compilation of decisions of the Committee of Ministers (document CAHDI (2010) 1). He then drew the attention of delegations to document CAHDI (2010) 1 Add, which refers to the draft decision of the Ministers' Deputies considering the possibility to communicate to the CAHDI - for information and possible comments - the Recommendation 1858 (2009) of the Parliamentary Assembly of the Council of Europe on "Private Military and Security Firms and the Erosion of the State Monopoly on the Use of Force". The draft decision will be submitted to the Ministers' Deputies for formal adoption in April 2010.

6. In this regard, the Chair recalled the report of the Venice Commission prepared on the basis of the comments by Mr Iain CAMERON, adopted in March 2009. He encouraged the delegations to exchange views in this area in an informal way in view of possible discussions on the Recommendation 1858 (2009) at the next CAHDI meeting in September 2010.

7. The Swiss delegation noted that the recommendations of the Venice Commission's report are pragmatic and sensible. Because of the difficulties relating to the long drafting process and implementation of a new international convention, the pragmatic approach recommended by the Venice Commission appears to be the most reasonable solution.

8. The Russian delegation invoked the CAHDI's report on "the consequences of the so called disconnection clause" and stressed the importance of maintaining a consistent approach in the use of such clauses in accordance with the decision of the Deputies' Ministers of 10 December 2008[1]. In this regard, the Russian delegation evoked a different model of the

[1]Document CM(2008)164 CM/Del/Dec(2008)1044/10.6cF / 15 décembre 2008

disconnection clause contained in the draft Protocol to the Convention on Mutual Administrative Assistance in Tax Matters, the latter elaborated in 1988 under the auspices of the OECD and the Council of Europe. It also recalled the opinion of the Committee of Ministers on the draft Protocol, addressed to the Parliamentary Assembly of the Council of Europe, stressing the need to respect the model of the disconnection clause. On 12 March 2010, the Standing Committee of the Parliamentary Assembly adopted an opinion consistent with that previously expressed on this matter by the Committee of Ministers. In light of these developments, the Russian delegation encouraged the CAHDI members to take into account the opinion of the Committee of Ministers and the Parliamentary Assembly on the use of the disconnection clause in all treaties of the Council Europe.

9. Mr Lezertua traced the history of the updating process of the Convention on Mutual Administrative Assistance in Tax Matters, which is the only joint convention establishing a legal framework for facilitating the cooperation in tax matters between different States. At the G20 Summit, held in London in 2009, a request for amendment of the Convention was formulated in order to strengthen the international administrative cooperation in the fight against tax fraud. In this regard, the OECD proposed in July 2009 to update the Convention by introducing modernised standards that enable a more efficient fight against tax fraud. The works proceeded in parallel in the framework of the Council of Europe and the OECD with an objective to develop a protocol amending the Convention and making it more effective. The Protocol will be presented in April 2010, at the next meeting of the G20 with an aim to open it for signature in May during the meeting of the Ministers of Finances.

10. The said two organisations are working on the drafting of the text and there have been some differences on several points, especially on the disconnection clause or the clause on data protection. On the occasion of meetings between the OECD and the Council of Europe, the latter proposed the model of the disconnection clause, as drafted by the CAHDI and subsequently inserted in the relevant conventions of the Council of Europe. The OECD was not in favour of this clause and proposed another model of a disconnection clause. One delegation stressed the need to insert in the text the model of the disconnection clause adopted by the Council of Europe, while others believed that the two models in question were equivalent. The EU representative declared than the disconnection clause proposed by the OECD was more appropriate in this case than the standard clause of the Council of Europe. Discussions on this issue are still ongoing. Notwithstanding this divergence, the OECD adopted the text of the Protocol which will be submitted for adoption to the Committee of Ministers of the Council of Europe on 24th March. The Protocol does not contain any clause on the EU accession.

11. The French delegation informed the Committee that the EU Member States will have the possibility to make a declaration, which is similar or almost identical to the standard clause drafted by this Committee.

12. The CAHDI agreed to recall its report on “the consequences of the so-called disconnection clause" and to stress in its abridged report the importance of maintaining a coherent approach in the use of such clauses in line with the Ministers' Deputies decision of 10 December 2008.

- Request for possible comments of the CAHDI on Recommendation 1865 (2009) – “The Protection of Human Rights in Emergency Situations”

13. The Chair presented document CAHDI (2010) 2, which, in consultation with the Vice-Chair, he transmitted to the Secretariat of the Committee of Ministers of the Council of Europe. This document contains a communication on the Recommendation 1865 (2009) of the Parliamentary Assembly of Council of Europe (PACE), entitled "The Protection of Human Rights in Emergency Situations". The Recommendation 1865 (2009) of the PACE, which was transmitted by the Ministers’ Deputies to the CAHDI for information and possible comments, reached the CAHDI’s Secretariat only after the 38th meeting of the Committee (Strasbourg, 10-

11 September 2009). The next CAHDI meeting being scheduled for 18-19 March 2010, the Committee could not consider this request for comments before the fixed deadline, namely 15th December 2009. In spite of the impossibility for the CAHDI to hold an exchange of views on this Recommendation, the communication of the Chair was sent to the Secretariat of the Committee of Ministers. It has been underlined in the communication that the issues raised in the Recommendation 1865 (2009) would imply in any case the amendment of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No 5).

- Request for possible comments of the CAHDI on Recommendation 1888 (2009) – "Towards a New Ocean Governance"

14. The Chair presented the CAHDI's draft comments on PACE Recommendation 1888 (2009) – "Towards a New Ocean Governance" which appears in document CAHDI (2010) 3 and opened the floor for an exchange of views on this matter.

15. The Dutch delegation considered that the reference to UNCLOS[2] in § 4 of the draft comments to the said Recommendation does not reflect this instrument as the principal legal and institutional framework for ocean governance. This delegation expressed its doubt on the relevance of § 5 of the draft comments relating to the possible effects of the appointment of international arbitrators on the oceans' governance. With regard to § 6, it would be more appropriate to note that the CAHDI regularly follows the jurisprudence in the field of law of the sea of international tribunals in general, not only the one of the European Court of Human Rights. In this context, the latter does not deal with cases of maritime delimitation of borders, but rather with specific cases of drug trafficking.

16. The Chair agreed with the comments made by the Dutch delegation. In respect of § 6, he considered that it would be more appropriate to broaden the meaning of the sentence by using the words "exercise of rights" instead of "delimitation".

17. The Canadian observer underlined that all the activities on the seas and the oceans should be legally regulated by UNCLOS. Therefore, there is no need to develop a new legal framework for ocean governance. In this respect, he encouraged States which have not yet done so, to ratify and implement the UNCLOS and other complementary instruments. This observer considered that the Arctic is not an extensively exploited area, since the potential of its resources still remains uncertain. This region is certainly not new, because the five Arctic coastal States have the sovereignty, sovereign rights and jurisdiction over a large part of the Arctic Ocean. With the Ilulissat Declaration of 2008, these States have agreed on the legal framework applicable to the Arctic Ocean. The Canadian observer also drew attention on the fact that the legal regime of the Arctic should not be confused with that of Antarctic.

18. The Romanian delegation agreed with the remarks made by the Dutch delegation on § 4 and especially those on § 6 declaring that the European Court of Human Rights is not the most appropriate institution to deal with cases on maritime delimitation. The delegation also informed the Committee of the relevant jurisprudence of the European Court of Human Rights concerning the issue of maritime delimitation, particularly on the case Pleshkov against Romania[3]. The applicant, a Bulgarian fisherman, was suspected of crossing with his boat the exclusive economic zone off the coasts of Romania where he was fishing, using tools prohibited by law. In the absence of an agreement on delimitation of the exclusive economic zones between Bulgaria and Romania, he complained about the absence of sovereign rights of the Romanian State on what Romania claims to be its exclusive economic zone. The European Court should not decide on the delimitation of the exclusive economic zone, but on the link between the absence of maritime boundaries between the two States in question and the existence of the exclusive economic zone. Therefore the Romanian delegate considered that rephrasing § 6 is desirable.

[2] 1982 United Nations Convention on the Law of the Sea (UNCLOS).
[3] Pleshkov v. Romania (Application No. 1660/03 lodged on 20/12/2002), communicated case.

19. The delegation of the United Kingdom agreed with the position adopted by the Dutch and the Romanian delegations. In respect to the competence of the European Court of Human Rights, the Court should first rule on the applicability of Article 1 of the European Convention on Human Rights. In general, the delegation of the United Kingdom supported the Dutch proposal on the reformulation of § 6. Concerning § 4, States need to be encouraged to ratify and implement the UNCLOS, the latter being the legal reference framework for ocean governance.

20. The Swedish delegation supported the comments of the delegations of the Netherlands and the United Kingdom. It saw no need to define a new legal framework for ocean governance.

21. The Irish delegation strongly supported the comments made by the Dutch delegation relating to § 4, as well as the opinion expressed by the delegates from the United Kingdom and Sweden, indicating that the establishment of a new legal framework for ocean governance is not necessary. Regarding § 6, it would be desirable to refer to international courts and tribunals in general, not only to the European Court of Human Rights.

22. The Greek delegation shared the views expressed previously. The establishment of a new legal framework for ocean governance is not necessary because UNCLOS is the reference legal framework in that field. The European Court of Human Rights is not competent and does not have the expertise to deal with issues as put forward in § 6.

23. The observer from the United States of America agreed with the comments made by the Canadian observer and the Dutch and Swedish delegates. The United States are not party to UNCLOS, but consider that this instrument reflects customary law regarding the traditional use of the oceans. The UNCLOS is the reference legal framework for ocean governance and the accession to UNCLOS is a priority issue for the administration of President Obama.

24. The Austrian delegation supported the views previously expressed by other delegates and observers on the fact that a new legal framework for ocean governance is not necessary. On the question of peaceful settlement of disputes, international tribunals should be a priority. In this regard, a more accurate reference to the jurisdiction of the European Court of Human Rights would be useful in this context. The arbitration may be mentioned as a secondary issue.

25. The Russian delegation concurred with the position adopted by the United Kingdom and the Netherlands. It also drew the attention of delegations on the result of the World Summit on Sustainable Development held in Johannesburg in 2002 considering that it must be taken into account in these draft comments. In this regard, the Russian delegation recalled some measures recommended at the Johannesburg Summit, in particular that the establishment of marine protected areas must be done in accordance with international law and on the basis of scientific information. In addition, it was noted that scientific research on oceans, as recommended by the Resolution 1694 (2009) of the Parliamentary Assembly, would fall under the authority of the concerned coastal State which has sovereignty over its territorial waters.

26. The Slovenian delegation aligned with the comment that a new legal framework for ocean governance is not necessary. It encouraged States, in general, to proceed with the accession and ratification of UNCLOS. The European Court of Human Rights does not provide the appropriate framework for resolving disputes over maritime delimitation or the exercise of sovereign rights. This delegation expressed interest in drawing up a list containing the jurisprudence of the European Court of Human Rights on the law of the sea.

27. The Danish delegation clarified that the term Arctic encompasses the territory of Greenland.

28. The Italian delegation proposed that the draft contain a reference to the jurisprudence of international tribunals, including the European Court of Human Rights.

29. Due to a number of comments on the expressions "new regions" and "intensive exploitation" of the Arctic used in PACE Recommendation 1888 (2009), the Chair underlined that the Arctic is not a new region nor intensively exploited. He then summarised the discussions of the delegations in respect of document CAHDI (2010) 3 and awaited for the written proposals to be reflected in the draft comments, under the coordination of the Dutch delegation.

30. He concluded that there is an important consensus among the delegations that UNCLOS provides the legal framework of reference for ocean governance. In accordance with Article 311, any other instrument adopted by a State Party to UNCLOS must be compatible with it. Therefore, and due to the customary law nature of the majority of UNCLOS provisions, the scope of the draft comments should be strengthened by emphasising that UNCLOS is the legal framework of reference for ocean governance. A number of delegations expressed their interest in exploring the possibilities to refer more broadly to the competent bodies for disputes settlement in the field of the law of the sea. The issue of arbitrators is not necessarily crucial and it is therefore not indispensable to mention it in the comments. The Chair indicated that the CAHDI have taken note of the questions of sustainable development and scientific research on the seabed. The Committee also took a keen interest in the relevant jurisprudence of the European Court of Human Rights regarding the law of the sea.

31. Following the written proposals of delegations, the Chair presented the new version of the draft comments that reflects more adequately the position of the delegations of the CAHDI. The comments on the Recommendation 1888 (2009) - "Towards a New Ocean Governance", as adopted by the CAHDI, appear in **Appendix IV** to this report.

6. Immunities of States and international organisations:

a. State practice and case-law

- Recent national developments and updates of the website entries

32. The observer from the European Commission informed the Committee that the document it provided for inclusion in the database summarises past experience and practice of the European Commission in relation to lawsuits brought against the EU in third countries. These lawsuits are usually brought by private individuals in the frame of programs of financial or technical assistance provided by the European Commission or the EU in third countries. In general, the EU invokes immunity from such lawsuits on the basis of the principle of functional immunity. This means that unless the EU has expressly waived its immunity, its representatives will not be appearing before the courts of the country concerned and will ask the Ministry of Foreign Affairs of that country to send a "*note verbale*" in order to inform their judicial authorities that the EU invokes immunity. In certain cases, the EU also appoints local counsel to claim immunity on behalf of the EU. As far as the European Commission knows, there has not been a single case in foreign courts in respect of which the EU would have invoked its immunity and the court concerned has not recognised the immunity of the EU. This is probably in part because of the extensive system of legal remedies available before the Court of Justice of the EU.

33. The delegation of the Netherlands informed the Committee of a judgment in the field of labour law delivered by the Supreme Court in October 2009. The dispute was relating to the European Patent Office, one of whose offices is located in the Netherlands, and was first brought before the District Court of The Hague. The Patent Office had successfully invoked its jurisdictional immunity. The plaintiff alleged that the proceedings before the Administrative Tribunal of the ILO, which are specified in the Statutes governing the Patent Office, did not comply with Article 6 of the European Convention on Human Rights (provision regarding fair trial) because hearings are not provided in most cases. The Court of Appeal rejected this

allegation and concluded, by referring to the jurisprudence of the European Convention on Human Rights, that the right to a fair trial is not absolute. Exceptions are allowed, especially in cases where a written procedure is sufficient. This case is currently pending in the Strasbourg Court. The Dutch delegate stressed that often people who are not satisfied with a domestic decision invoke a violation of their rights under the European Convention on Human Rights.

34. The observer from the United States of America evoked the case Samantar v. Yiusuf of the Supreme Court of the United States. The question in this case was whether the immunity of foreign officials regarding domestic disputes should be determined by the Sovereign Immunity Act, as interpreted by the courts or upon the proposal of the executive branch, which happened to be the case with some persons concerned before adopting the State Immunity Act in 1976. This question is very frequently the subject of litigation before the lower courts of the United States of America. The hearing of the said case took place before the Supreme Court in March 2010. The government had participated as *amicus curiae* and joined the plaintiffs' position, arguing that the Foreign Sovereign Immunity Act does not regulate immunity in cases brought against individuals. The claim against the defendant also contained allegations of torture and extrajudicial executions. These acts were brought to the attention of the Court and the action against them has been brought under the Torture Victim Protection Act of 1992. The legal question that this case raises is whether a former government official could be granted immunity against *ius cogens* offenses.

35. The Belgian delegation informed the Committee of a judgment rendered by the Court of Cassation on 21st December 2009 in respect of immunity of international organisations. The Court held that the immunity from enforcement regarding the execution of a court's decision, to which is entitled a former agent of an international organisation, is a disproportionate right to that of the individual to have his/her legitimate rights recognised by a court if there is no other alternative with regard to the immunity from enforcement enjoyed by the international organisation which provides remedies in case of non enforcement of decisions taken against this organisation. In this respect, the high court relied on Article 6 § 1 of the European Convention on Human Rights. Although the Court considers that the right of access to court is subject to limitations, such as jurisdictional immunity or immunity from enforcement, provided for in the headquarters agreements, these limitations can not restrict the access to court of the individual to the extent that the right is violated in its very essence. To determine whether the infringement of fundamental rights is permissible under Article 6 § 1 of the European Convention on Human Rights, it should be examined case by case whether the person against whom the immunity is invoked disposes of reasonable remedies to effectively protect his/her rights guaranteed under the European Convention on Human Rights. The Belgian delegate noted that with this case, the Court gives the opportunity for the judge to arbitrate a conflict between two norms of public international law, on the one hand, the relevant provision of the European Convention on Human Rights, and on the other hand, the provision of the Convention granting immunity from enforcement of the international organisation. Thus, the judge can balance out the rights.

36. The French delegation informed the Committee of a judgment of the Court of Cassation of January 2010. This case concerns the sinking of the Senegalese ship "Le Joola". The families of the French victims initiated proceedings before the French courts which resulted in issuance of nine international arrest warrants against persons of Senegalese nationality for breach of a specific safety obligation and failure to assist a person in danger. The Court of Cassation confirmed the cancellation of the international arrest warrants issued against the Prime Minister and the Minister of the Armed Forces at that time, on the grounds that international customary law - which is opposed to proceedings against one State before the criminal courts of a foreign State, - applies to the State bodies and entities and their agents for acts that fall within the sovereignty of the concerned State.

37. The Swedish delegation informed the Committee of two recent cases concerning immunity where the court interpreted the law by strongly relying on the United Nations Convention. The first judgment, rendered on 30th December 2009, raises the question of

whether a State can claim immunity in a dispute over a lease contract between the Embassy of the concerned State in Stockholm and the owner of the building. The State invokes the immunity which was accepted by the District Court and upheld by the Court of Appeal, but the Supreme Court did not recognise that the State in question could claim immunity in the present case. The court has conducted a thorough analysis of the report of the International Law Commission on Immunities of States and concluded that, since the contract had commercial effects, the immunity did not apply. The other case is currently pending before the Supreme Court. The Court of Appeal has interpreted the law in light of the United Nations Convention on Jurisdictional Immunities of States and their property. The dispute concerns the seizure of real estate belonging to a foreign State in Sweden. The question that arises is to determine to what extent this property has been used for diplomatic purposes. It is a large property, and some of the apartments are occupied by diplomatic staff, but most of them are used for commercial purposes. Thus, the Court of Appeal held that the immunity could not be invoked and therefore admitted that the property could be seized. The judgment of the Supreme Court is expected before the end of 2010.

38. The delegation of the United Kingdom informed the Committee that its contribution will be submitted shortly. It presented three developments in the United Kingdom concerning public international law. Firstly, on the question of universal jurisdiction, the delegate presents the law of the United Kingdom on the matter relating to great breaches of the Geneva Conventions, kidnapping, torture and offenses expressed in the Statute of the International Criminal Court. In general, in the United Kingdom system, private persons are able to seek an arrest warrant of visitors into the United Kingdom on the basis of evidence. Indeed, such a situation occurred recently. Taking into account the complications which occurred in this situation, a consultation within a justice select committee was held on the need for an amendment of the law in question. The government has proposed amending the law so that the arrest warrants can be issued only by the Director of Public Prosecutors rather than by private individuals. One consequence of such a modification of the law would be the fact that the Director of Public Prosecutors would be able to take into account considerations relating to immunity before deciding whether or not to issue the warrant. A second question was related to the extradition, particularly in respect of an extradition request from a high official of a Member State of the Council of Europe made by another Member State in the United Kingdom based on the European Convention on Extradition. This case is still pending and the delegate of the United Kingdom will provide additional information when the domestic courts will render their decision. The third point concerned two joined cases pending before the European Court of Human Rights (Jones v. United Kingdom and Mitchel v. United Kingdom). These cases emerge from the domestic proceedings before the House of Lords on which this delegate reported at the previous meetings (Jones v. Saudi Arabia: allegations of torture committed against Saudi officials by British nationals). The House of Lords upheld immunity. The case before the European Court puts in play the question of immunity in the context of the rights of Article 6 of the ECHR, and specifically the question of whether the finding of immunity is a disproportionate violation of Article 6 in the determination of civil rights and obligations of individuals.

39. The delegation of Germany informed the Committee about a recent decision of the Upper Regional Court of Berlin rendered in March 2010 on the implementation of a judgment concerning payment of compensation. The case concerns the events of the 1980s when a terrorist bomb attack committed on the French Cultural Institute in West Berlin caused numerous civilian casualties. Having found that officials from the Embassy of Syria in East Berlin participated in the attack, the Court ruled against Syria to pay compensation to the victims. The victims' lawyers have tried, unsuccessfully, to enforce the judgment. Currently, there is an exhibition in Stuttgart of objects discovered by German archaeologists during the archaeological diggings done in Syria. The victims' lawyers have tried to seize these objects in order to sell them and compensate the victims. The German court has not allowed this operation because the cultural objects in question are the property of Syria, their presentation is a State activity and therefore they are protected by virtue of State immunity.

40. The Hungarian delegation presented three cases relating to labour law. The first two illustrate the consistent practice of national courts. In the first case, a former employee of the ILO regional office in Budapest initiated legal action against the said office. At the request of the ILO, the Ministry of Foreign Affairs of Hungary, on several occasions, informed the Court of Budapest, responsible for litigation of disputes in labour law, as well as the Hungarian authorities of the jurisdictional immunity enjoyed by the ILO. In the second case, the Court of Budapest had asked the Ministry of Foreign Affairs to provide legal advice on the immunity of the regional office of the ILO. The third case concerns the situation of an employee of a regional international organisation (a "quasi international organisation" called the "Hungarian Foundation") who concluded an agreement with the Hungarian authorities enabling it to enjoy jurisdictional immunity relating to proceedings before the Hungarian courts. If the "Hungarian Foundation" does not waive immunity, its employees could have no legal solution regarding possible remedies to exercise against their employer, given that a case cannot be brought neither before the domestic courts, nor the Administrative Tribunal of Geneva.

- 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

41. The Secretariat presented document CAHDI (2010) 6 prov and Addendum containing contributions from Denmark, Romania and Slovenia.

42. The Hungarian delegation informed the Committee that its contribution to the questionnaire will be submitted shortly.

43. In the document CAHDI (2010) 6 prov, the delegation of Norway presented the legislation that could be relevant in this context. However, the questions raised require further information that the Norwegian delegation will submit subsequently. The information provided relates to cases of special concern that have been the subject of litigation, including before the Supreme Court. The current legislation does not actually cover the management of the communication of relevant data at the given relevant moment. Additional information on this subject will therefore be submitted in due course.

44. The Romanian delegation evoked its contribution and informed the Committee that Romania had passed a law expressly providing for the Ministry to intervene in such proceedings but after a notification by a State or an international organisation involved in the procedure. A consistent case-law exists on this matter, especially cases brought by individuals against international organisations, including the Council of Europe. In these cases, the subject matter is varied. For example, the European Convention on Human Rights was cited because of the non-adoption of a decision regarding a claim of the applicant or for compensation for damages in a case where the application had been rejected. In these cases, the notification had been sent directly to the international organisation in question. The Ministry had been notified by the organisation through the Permanent Representation of Romania to the Council of Europe.

b. UN Convention on Jurisdictional Immunities of States and Their Property

45. The Swedish delegation informed the Committee that Sweden ratified the Convention in December 2009. At the same time, a legislation incorporating the Convention into Swedish law was adopted and will enter into force on the same day as the Convention. The Convention will thus be applied as part of Swedish law. In addition, this delegation informed the Committee about the analysis made on the infrequent case-law of Swedish courts relating to States' immunities. In this regard, it referred to the general trend of Swedish courts to grant State immunity more broadly in comparison to the requirements of customary international law, as reflected in the Convention. Consequently, a number of new cases on States' immunity are pending before national courts that use the aforementioned law as a source of inspiration even though the latter is not yet in force.

46. The Canadian observer informed the Committee that Canada is still reviewing the question of the scope of the UN Convention and the implications for Canada resulting from the application of the latter. It reiterated before the Committee the information it had already given at the 38th CAHDI meeting on the legislative changes proposed by the Canadian government in view to eliminate the impunity of the States designated as supporting terrorism; this legislation could have an effect on Canada's consideration of the UN Convention on State Immunity. Although this bill did not pass, its eventual entry into force, following its possible subsequent adoption, would prevent Canada from becoming a party to the Convention. In addition, even if such legislation does not enter into force, some differences between the Convention and the current Canadian State Immunity Act would require legislative changes in order for Canada to sign and ratify the Convention.

47. The Japanese observer informed the Committee that the provisions of the UN Convention on Jurisdictional Immunities of States and Their Property were approved on 10th June 2009. The law enabling the implementation of the Convention was approved by the Diet and promulgated on 24th April 2009. It will take effect one year after its enactment and the exact date will be fixed by a Cabinet ordinance. The national law will be applied by Japan to all States, regardless of whether the UN Convention takes effect or not. Indeed, although the Convention is applicable only to the Contracting Parties, all States must be treated equally under the domestic judicial proceedings.

48. The Swiss delegation informed the Committee that the Parliament has accepted the Convention in December 2009 and its ratification is expected in April 2010. The Swiss delegate also informed the Committee of a declaration similar to that of Norway that Switzerland will formulate regarding the relationship between the Convention and customary law as to corporeal disputes.

49. The observer from the United States of America informed the Committee that an important number of the principles of the Convention are adopted and approved by the United States of America, but currently, they have no intention of acceding to the Convention. This observer welcomes the wide acceptance of the restrictive theory of sovereign immunity that the Convention advocates; however the extensive case-law developed under the 1976 Foreign Sovereign Immunity Act reveals important differences between the Convention and domestic law. These differences are very difficult to reconcile with regard to the text and the interpretation, particularly concerning the lack of parallel provisions, the differences with regard to refusal of waiver, the notion of attachment against State property, the differences in respect of certain categories of personal property and in respect of the definition of territory and State. The listed differences do not prevent the United States of America to approve the broad objectives of the Convention or the goals that the CAHDI fixed in this field. However, he reiterated to the Committee that at present, strong reasons make impossible the accession of the United States of America to the Convention.

50. The French delegation informed the Committee that the bill authorising the Convention has been submitted before the Senate in July 2009. A *rapporteur* was appointed and the procedure follows its course in view of the authorisation of the ratification of the Convention. It is likely that France would make no declaration.

51. The Chair recalled to the Committee that many States consider that the key provisions of the Convention reflect customary law. He stressed that the entry into force of the Convention is possible, provided that thirty States ratify it. The CAHDI agreed to keep this item on its agenda.

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, and other questions of relevance to the Legal Adviser.

52. Mr Sollier, the representative of the Office of Legal Affairs of Interpol presented the functioning of the said body of Interpol. He started by invoking the questions that the Office of Legal Affairs of Interpol is faced with as everyday matter, especially security issues and more precisely, issues related to the question of the law applied, the time of referral of a case before courts (where referral occurs in advance of the decision or after making the decision), the subject of the referral and the effect of the intervention. Under its mandate, the Office of Legal Affairs has two types of activities: general and specific activities relating to international police cooperation.

53. The general activities focus primarily on the legal security of the Organisation. In exercising this function, the Office of Legal Affairs supports and oversees various police activities that take place within a defined legal framework. This police cooperation is based on confidence (personal relationships, tradition and seniority) which is reflected in the entire police community. For example, Mr Sollier evoked that political and diplomatic opposition between States are often outdated in the context of cooperation between the police of the States concerned. The second general function consists of the prevention of the classic administrative litigation, but also actions brought by persons who claim to be unfairly prosecuted or whose names are inserted without justification in databases accessible to the entire police community. These internal proceedings must be in compliance with international standards in this area. Thus, the immunities enjoyed by Interpol are closely related to the quality of these standards and the internal mechanism. The third general area of action concerns the institutional relations. The cooperative network established with Member States and other international organisations and international tribunals is carried out through agreements. These agreements may be institutional, political, operational or in the form of agreements on general cooperation,. In particular, Interpol has recently concluded an agreement with the Special Tribunal for Lebanon under which the latter has the right to access the databases of Interpol. As a matter of practice, during its investigations, the Tribunal is working in cooperation with experts from Interpol. In the context of the development of institutional relations, Mr Sollier insisted on the political visibility of Interpol - which is a technical organisation - this not only in terms of political organisation, but also as an organisation making its contribution in the debates on diplomatic relations and international relations in general. He drew the Committee's attention on the strengthening in 2009 of the relations between Interpol and the UN, particularly as regards to peacekeeping. Interpol is also working with the Sanctions Committee and is developing relations on the humanitarian law level, fostering its cooperation with the Geneva institutions.

54. With respect to the specific functions, the first one concerns data processing. In the context of police cooperation, Interpol proceeds with exchanges of information between the police which are regulated in detail and often made through databases. Any communication, recording and storing of the data is subject to strict protocols as the information given must be verified, as well as solid and confidential. The second aspect relates to the protection of the independence of Interpol. Police cooperation is under constant risk of abuse. For example, very often conflicts between States persist even after the cessation of military hostilities, that is by means of legal proceedings. Interpol is an organisation which must verify that the requests for arrest warrants which it circulates are not politically motivated. The third function under the specific activities is the promotion of instruments of legal cooperation. Thereby was developed the mechanism of red notices enabling the dissemination by Interpol of international arrest warrants announced by the States. This mechanism, practiced by all police of the world, has existed since 1946. Its disadvantage is that it has not been updated. Indeed, it works on the basis of rules which were innovative at the time of its establishment, but are now obsolete compared to current standards in force. A meeting will be organised in May 2010 in order to

try to re-launch this instrument that is the only universal instrument for cooperation on extradition.

55. Regarding current developments, the legal department of Interpol is regularly confronted with the phenomenon of crime. It is necessary to adapt to the evolution of the nature of crimes, such as technological crimes (cybercrime, counterfeiting, bioterrorism, sophisticated weapons' trafficking on a large-scale). New legal solutions are needed to regulate the judicial cooperation that is generated at this level. At international level, Interpol tries to contribute – through conventions – to the definition of crimes or the establishment of mutual assistance mechanisms. At operational level, the same issues remain, encouraging Interpol to provide legal solutions in order to guide the police cooperation. In order to find these legal solutions, it is necessary to create a common language and safeguards so that this mechanism of cooperation is not a subject of abuses and that it offers safety and confidence. Another challenge that Interpol has been facing is globalisation. The difficulties flowing from this phenomenon are important because Interpol has to conclude agreements and establishes databases on entirely cross-border issues. In addition, the identification and traceability of new actors of international crimes, mainly in the field of terrorism and organised crime, is a serious challenge for Interpol. For instance, regarding the persons committing acts of terrorism, the problem does not lie in the identification of the body of a "suicide bomber" but in preventing the terrorist act. Thus, Interpol has been engaged in legal works in order to develop legal means that respect the rule of law and that outline the intelligence activities while allowing observance and detection. Interpol ensures that law plays a central role in handling security issues.

56. In this respect, at least three precautions must be taken. Firstly, with regard to credibility, legal activities can emerge as central issues in international security matters only if the responses to the problems posed by field personnel are consistent and relevant. Then, with regard to the respect of human rights in the context of security policies, the challenge will consist in concrete terms to make a distinction between individuals responsible or prosecuted for criminal acts and those that are only prosecuted, sought or supervised because of their dangerousness. Thus, a database of Interpol, for instance on terrorism, contains information concerning the person sought, the criteria enabling to insert the name of the person in question in the database, and the control mechanisms allowing to circulate these elements to all police in the world. Therefore, the work carried out is an activity of prevention and fight against crime and not the activity of creating a mechanism for judicial research. The final precaution relates to the problem of harmonisation of the various activities of police cooperation. Interpol is often hampered by a rift within the network of police cooperation between rich and poor States or between those who dispose of technical means and those who do not. Therefore, the communication network of Interpol has a communication link between all countries (188 offices worldwide). The training, enforcement of law, and the practice of all staff of Interpol is based on a set of harmonised rules.

57. The Chair thanked Mr Sollier for his excellent presentation and opened the debate.

58. The delegation of the United Kingdom wanted to know Interpol's practice in case of a request to circulate a red notice concerning a person who would be entitled to immunity. In this case, it invoked the case before the International Court of Justice between Belgium and the Democratic Republic of Congo. In particular, this delegate wanted to know the opinion of Mr Sollier on the discussion at the hearing related to the circulation of a red notice against a person entitled to immunity. This situation would have legal implications, even though the red notice does not produce legally binding effects.

59. The Austrian delegation stressed that the mechanism of red notice is currently not a legally binding mechanism. States must determine how to proceed in case of a red notice circulated in respect of a person entitled to immunity. The Austrian delegate asked Mr Sollier to give his assessment on this issue.

60. The Greek delegation wanted Mr Sollier to explain the regime applicable to politically motivated requests to circulate a red notice. In this respect, it wanted to know what were the relevant international instruments on which Interpol is basing its decisions.

61. In response to questions posed by delegations from the United Kingdom, Austria and Greece, Mr Sollier explained that the system of red notices is governed by Interpol deriving rules, which since 1946 have progressively defined the conditions in which the red notices can be circulated. Beyond the strict regime, an assessment of the request may be made depending on the nature of the request. For example, following a *coup d'Etat*, very often the successor regime issues a red notice request containing a warrant for the arrest of persons belonging to the former regime, including the President of the State. In this case, classical rules are applied, but it is especially important to assess whether the request is based on political or religious reasons, in the context of a military confrontation or for reasons of racial motivation. When a red notice appears suspicious, the Legal Department examines it. In this context, the latter has developed over the years a case-law on what Interpol should accept to circulate the red notice. The European Court of Human Rights and the Inter-American Court of Human Rights have been questioned on the subject. The control mechanism of the red notices is currently insufficient as it is outdated. This reference mechanism implies that each State needs to assess the consequences and the legal value of the red notices. Thus, the regime differs between countries: whereas in some States it is a simple warning, others consider it as an extradition request (some Arab and Latin American countries). In view to strengthen them, these notices must be circulated on the basis of high common standards to all States of this community. Consequently, States would agree to give to the red notices an increasingly important legal value.

62. Mr Sollier distributed a booklet containing case-law and references on each type of offense that can entail a request to circulate a red notice. International offenses imply different solutions; therefore two types of information are used for reference. Some cases are resolved on the basis of international decisions, including on the basis of Security Council resolutions. For example, when a Security Council resolution sanctions a *coup d'Etat*, Interpol draws conclusions so that the arrest warrants against former State leaders will be considered suspicious. In other cases, the criterion of predominance is applied. More specifically, a case will be assessed with respect to the status of the individual concerned, the context in which the offense was committed whether the prosecution was engaged or depending of the nature of the offense. On the basis of the given elements, it must be determined whether the alleged offense of a person was committed because of a political reason or rather a violation of common law. Very often, problems regarding war crimes, crimes against humanity and genocide gave rise to sophisticated assessments, particularly because of the frequent requests for circulation of red notices issued by countries that have been in conflict or had a civil war. A specific case law has been developed in this field.

b. Updates of the website entries

63. The Chair presented document CAHDI (2010) Inf 4 rev, which is a database containing information provided by States and organisations on the organisation and functions of the Office of the Legal Adviser. In this context, the presentation of the work of the Office of Legal Affairs of Interpol is very useful. Also, the President invited States that have not yet done so to submit their contributions or to update them as soon as possible.

8. National implementation measures of UN sanctions and respect for human rights

64. The Chair invited the delegations to present national developments orally and to regularly update their contributions to the database.

65. The CAHDI took note also of the information provided by the delegations with regard to cases that were eventually submitted to the national courts by individuals or entities removed from the lists established by the Sanctions Committees of the Security Council of the United

Nations (document CAHDI (2010) 7). Document CAHDI (2010) 9 relating to the cooperation of Interpol with the Sanctions Committees of the Security Council of the United Nations is also presented.

66. The representative of the European Commission informed the Committee on legislative developments within the European Union, successor to the European Community, following the entry into force of the Treaty of Lisbon on 1 December 2009. As explained in the document included in the CAHDI database, the new Treaty on the Functioning of the European Union (TFEU) includes a number of provisions that are relevant for restrictive measures (sanctions) in the framework of UN mandated sanctions. Article 215 of the TFEU expressly provides that the Council, on proposal of the High Representative and the Commission, can take restrictive measures against third States and against private individuals or legal entities. Article 275 of the same Treaty expressly provides that the European Court of Justice has competence to review Common Foreign and Security Policy decisions imposing such sanctions.

67. Regarding the procedure of implementation and enforcement of sanctions adopted by the United Nations Sanctions Committee on the basis of the Security Council resolutions and following the decision of the Court of Justice in the Kadi judgment, the Commission had first established a procedure to ensure the rights of the defence of Mr Kadi and the Al Barakaat Foundation on an *ad hoc* basis. Subsequently, the Commission made a proposal to the Council for amending the EU's "Al Qaeda" Regulation in order to codify this *ad hoc* procedure and to introduce the same rules on the rights of the defence and the need for transparency in regard to all persons/entities on the relevant list. The procedure implies for the Commission alone to decide on the inclusion of a person/entity on the EU list as soon as the United Nations have notified the listing of any person or entity as well as the narrative summaries of reasons. The Commission communicates this decision and the narrative summaries of reasons transmitted by the UN Sanctions Committee for comments to the listed person/entity ensuring thereby the compliance with the adversarial principle. In case the person/entity provides comments or provides substantially new elements, the Commission will transmit these to the UN and decide after having consulted a Committee of Experts from Member States. In case the UN Sanctions Committee delists a person/entity, the Commission will adopt a delisting decision in respect of the EU list. The EU introduced similar procedures to review the listing of person/entities that had been included on the list prior to the Kadi judgment of September 2008.

68. The European Commission representative also reported on new developments in litigation before the European Court of Justice that have occurred since the last presentation of the European Commission, reflected in the document included in the CAHDI database (document CAHDI (2010) 11).

69. The observer from the 1267 Committee informed the CAHDI on developments in its framework, especially the advancements relating to the implementation of the Resolution 1822 (2008). The Committee was required to conduct, by 30th June 2010, an ad hoc review of all names on the consolidated list. The Committee has reviewed the status of over a hundred names and has published on its website approximately two hundred narrative summaries of reasons for listing. Since the adoption of the Resolution 1822 (2008), more than twenty persons and entities have been removed (delisted) from the consolidated list. The review process can not take place without the support of States that submit to the Committee their contributions and responses. With regard to the progress of the implementation of the Resolution 1904 (2009), the observer mentioned the creation of an Office of the Ombudsman, which assists the Committee in considering the delisting requests through information gathering, dialogue with the petitioner and submission of a comprehensive report to the Committee relating to the request for delisting. According to this Resolution, the Ombudsman should be an eminent individual of high moral quality, known for his/her impartiality and integrity who possesses high qualifications and experience needed in the relevant fields such

as law, human rights, counter-terrorism, sanctions etc. The Secretariat of the 1267 Committee has been evaluating candidates for this post since January 2010.

70. The observer from the United States of America welcomed, both the adoption of the Resolution 1904 (2009) establishing a fair and transparent procedure in the sanctions regime against Al-Qaeda, and the establishment of the Office of the Ombudsman which assists the Sanctions Committee. These reforms as well as the review process of the Resolution 1822 (2008) are significant steps forward that must be supported in order to ensure that the review and the delisting procedures regarding persons or entities on the consolidated list are fair and transparent. It also commended additional measures taken within the EU which ensure transparency and respect of the rights of the defence concerning the listing procedure in the consolidated list. Despite the adoption of the Resolution 1904 (2009), the observer of the United States of America drew the Committee's attention to the fact that problems relating to the regime of the 1267 Committee remain; especially the fact that the proceedings before the 1267 Committee are mainly of diplomatic and intergovernmental character meaning that, in consequence, the lawyers of the persons concerned by this regime have free access only to documents concerning the case which are publicly available. The time is not appropriate to go beyond what is allowed under the Resolution 1904 (2009) because at the present time, it is essential to develop the new procedures. The appointment of the Ombudsman is an important step forward reflecting the desire to establish a fair trial. For the aforementioned reasons, any action by States, both at national and supranational levels, is encouraged.

71. The French delegation welcomed the progress made through the Resolution 1904 (2009) enabling to reconcile the obligations of States in the United Nations framework and the protection of human rights. This delegation also welcomed the progress achieved by the EU. This will help to provide acceptable solutions to the courts dealing with specific cases. In this regard, the establishment of the Office of the Ombudsman is a very positive step which will be assessed by its activities and its role as independent observer in the process of delisting from the consolidated list.

72. The delegation of the United Kingdom also welcomed the adoption of the Resolution 1904 (2009). In this regard, it underlined the need to follow with interest the practical functioning of the new procedures, particularly in view of the work of the European Court of Human Rights and domestic courts, which is closely linked to these developments.

73. The representative of the European Commission considered that the Resolution 1904 (2009) is a great success, particularly with the establishment of an independent review procedure and the creation of the Office of the Ombudsman. It is important that its regime is rendered functional as soon as possible.

74. The Swedish delegation welcomed the adoption of the said resolution. This delegate noted that it is important to carefully monitor the functioning of the system it establishes and the work of the Office of the Ombudsman. The Resolution 1904 (2009) does not resolve the problem concerning the lack of a fair trial in the context of listing of persons and entities on the consolidated list, however, it marks an evolution from the old regime.

75. The delegation of the Netherlands drew the Committee's attention to the need for a prompt appointment of the Ombudsman. The mandate of the latter is six months; it is therefore important to act promptly in order to facilitate his/her appointment. In this respect, the Dutch delegation encouraged the States to act appropriately within the Fifth Committee of the United Nations.

76. The Finnish delegation agreed with the comments of other delegations regarding the important step forward that achieves Resolution 1904 (2009) with the creation of a more transparent procedure within the Sanctions Committee. This delegation agreed with the opinion expressed by the Dutch delegate that the Ombudsman should be appointed within a very short time so that he/she could start to conduct their functions. As regards to the other

provisions of the said resolution, the Finnish delegation also stressed the need to implement them as quickly as possible.

77. The Slovenian delegation shared the view of other delegations regarding the Resolution 1904 (2009). It reiterated the importance of a prompt appointment of the Ombudsman so that he/she could start working as soon as possible and set up office, especially because of the short duration of the initial mandate.

9. Cases before the ECHR involving issues of public international law

78. The Danish delegation informed the Committee about a very recent Supreme Court decision dismissing the case with regard to the legality of the Danish Parliament decisions to engage the Danish military forces in the military operations in Iraq in 2003. This is mainly a question of procedural law and the Supreme Court considered necessary to reiterate clearly the dualism of the Danish legal system concerning the application of international law. Danish law provides for two separate systems of law and therefore the question of compliance with international law of the military operations in Iraq had no impact on the question of whether there was a violation of the Danish Constitution.

79. The French delegation informed the Committee of the case Medvedyev before the ECHR[4] concerning a vessel engaged in drug trafficking, which raised the question of procedural safeguards enabling to ensure the respect of human rights from the moment the crew was arrested until they were brought before a judge. It is a matter that will have an impact on the question of the fight against piracy. This decision is announced for 29th March 2010.

80. The delegation of the United Kingdom informed the Committee about the hearing before the Grand Chamber in June of the cases Al-Jedda and Al-Skeini v. the United Kingdom[5]. The case of Al-Skeini concerns the extraterritorial application of the ECHR in military operations taking place abroad, and more precisely, operations of the military forces of the United Kingdom in Iraq. The case of Al-Jedda concerns the application of Article 103 of the UN Charter and its relationship with the ECHR. The written submissions must be filed for 31st March 2010 and the hearing will be held on 9th June 2010.

81. The CAHDI invited delegations to keep the Committee informed about relevant pending cases.

10. Peaceful settlement of disputes

82. 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 (document CAHDI (2010) 4). The Committee invited delegations to submit to the Secretariat any relevant information on this matter.

11. Law and practice relating to reservations and interpretative declarations concerning international treaties: European Observatory of Reservations to International Treaties:

83. In the framework of its activity as European Observatory of Reservations to international treaties, the CAHDI examined a list of outstanding reservations and declarations to

[4] Medvedyev v. France (Application No. 3394/03), judgment of the Grand Chamber of the ECHR of 29th March 2010.
[5] Al-Jedda v. the United Kingdom (Application No. 27021/07, lodged on 3/06/2008), communicated case; Al-Skeini v. the United Kingdom (Application No. 55721/07, lodged on 11/12/2007), communicated case.

international treaties and further action taken by the delegations in this regard (document CAHDI (2010) 5).

- List of outstanding reservations and declarations to international Treaties

A. Convention on the Rights of Persons with Disabilities, New York, 13 December 2006

- Reservation formulated by Mauritius

84. The delegation of Sweden specified that it does not consider objecting to this reservation.

85. The delegation of Germany expressed its concern about the text of the reservation, in particular the word “any” used in the text of the reservation of Mauritius. Since its meaning is not sufficiently precise, this delegation considered necessary to initiate an exchange of views with the representatives of Mauritius in order to understand the accurate meaning of the reservation.

86. The delegation of Romania shared the German delegation’s position about the meaning of the reservation of Mauritius. Romania is not yet party to the Convention, but considers objecting to the reservation upon their ratification of the Convention.

- Interpretative declaration formulated by Monaco

87. The delegation of Monaco indicated that the Monegasque authorities were aware of the difficulties that can affect and endure the people with disabilities. In this regard, material measures are continuously implemented to alleviate the deficiencies of persons with disabilities (for example, urban planning or assistance to persons with disabilities depending of the type of disability, including visually impaired people in case of court proceedings). From the legal point of view, national law enshrines the principle of equality before the law that will inspire the bill on the application of this Convention which is currently being prepared.

- Declaration of the Islamic Republic of Iran

88. The delegation of the United Kingdom considered objecting to this declaration because of the impossibility to understand its meaning. It would welcome the comments of other delegations on the possible meaning of the declaration in question.

89. The delegation of France informed the Committee that it intends shortly to object to this reservation.

90. The delegation of Romania considered that the declaration is in fact a reservation which seeks to condition the application of the Convention in accordance with national legislation. This is contrary to the object and the purpose of the Convention; therefore Romania envisages objecting to this declaration when the process of ratification of the instrument, which is underway, will be completed.

91. The delegation of Sweden will object to this declaration as it considers it too broad.

92. The delegation of Germany considered that the term "it" refers to the Islamic Republic of Iran. Germany will likely make an objection to this reservation as it is incompatible with the object and the purpose of the Convention.

93. The Irish delegation considered that this declaration is in fact a reservation. Ireland will probably make an objection to this reservation because of its imprecision.

94. The delegation of Austria shared the analysis of other delegations in respect of this declaration. It intends to object to this reservation.

95. The delegation of the Netherlands declared that it will make an objection to this declaration when it becomes party to the Convention. It considered that the text of the declaration is inappropriate because it is too broad.

96. The delegation of the Czech Republic informed the Committee that it has ratified the Convention and that it would object to this declaration.

97. The delegation of Norway supported the position previously adopted by some delegations regarding the declaration in question. Norway is concerned by this declaration and intends to object when it becomes party to the Convention.

98. The delegation of Slovakia will object to this declaration when the process of ratification of the Convention, which is underway, is completed. It specified saying this declaration is in fact a reservation.

B. Convention on the Elimination of All Forms of Discrimination against Women, New York, 18 December 1979

- Reservations and declarations formulated by Qatar

99. The delegation of Austria informed the Committee that it has already formulated an objection.

100. The Polish delegation envisaged to object to these reservations.

101. The delegation of Greece indicated that Greece has not yet adopted a firm standpoint on these reservations and declarations. It is however likely that Greece will object. With regard to the reservations in question, the Greek delegation considered that they constitute a typical example of reservations, or even a series of reservations that are too broad and go against the object and the purpose of the Convention. This is particularly the case of reservations No. 3, 5 and 6 illustrating the desire of Qatar to submit the application of the Convention to domestic law. This delegation considered that the other reservations are also not acceptable since despite the reference to certain branches of law such as the law relating to nationality, family law or to the established practice, they are not sufficiently precise to satisfy the requirements of clarity. Regarding the declarations, the Greek delegation considered that they are indeed declarations and therefore they could be acceptable.

102. The Finnish delegation noted that Finland is in the process of formulating objections which will be public very soon.

103. The delegation of the Netherlands informed the Committee that the Netherlands will object and it pointed out that the declarations are in fact hidden reservations. The declaration No. 2 concerns Article 5 which is a key provision in the heart of the Convention. This question is therefore problematic and an objection to it will be formulated.

104. The Romanian delegation informed the Committee of its intention to object to these reservations.

105. The delegation of the Czech Republic informed the Committee that it has formulated objections to the reservations No. 2 and 6.

106. The delegation of Latvia pointed out to the Committee that it has already formulated objections in respect of all Articles (Article 2 § 8, Article 8, Article 9 § 2, Article 15 § 1 and Article 16 § a), c) and f)).

107. The observer of Japan claimed to have studied the compatibility of the reservations in question with the object and the purpose of the Convention and the need to possibly file an objection. Although the reservations do not seem to be compatible with the object and the purpose of the Convention, Japan has not objected because it has not done so in respect of similar reservations of Oman and Brunei and in particular, because it considered that the participation to the Convention by the Islamic countries is very important. For the reasons evoked, Japan will not object to the reservations in question.

108. The Spanish delegation declared that it has objected to the reservations formulated by Qatar.

109. The German delegation stated that it will make an objection to the reservations of Qatar. As for declarations, it considered that the first declaration is in fact a reservation. Thus, it will also object to it.

110. The Swedish delegation specified it will make an objection concerning the reservations relating to Articles 9, 15 and 16. Declaration No. 2 seemed to actually be a reservation to which Sweden will probably object.

111. The Slovakian delegation affirmed that it has already objected to the reservations in question, in July 2009.

112. The Norwegian delegation envisages formulating an objection to the reservations.

113. The Belgian delegation declared it has objected to the reservations formulated by Qatar.

C. International Covenant on Civil and Political Rights, New York, 16 December 1966

- Reservation et declarations formulated by the Lao People's Democratic Republic

114. The delegation of the Netherlands indicated it has no problems with regard to the declarations. The reservation in respect of Article 22 is puzzling. The text seems to submit the application of Article 22 to national law in Laos, particularly regarding issues relating to self-determination. The Dutch delegate doubted about the meaning of the interpretation of the part of the reservation providing that Article 22 should be applied in accordance with the right to self-determination and about the possible consequences. It thus considered necessary to further examine the intentions of Laos in this regard.

115. The Swedish delegation had doubts concerning the reservations to Articles 18 and 22. It is probable that it objects to the said reservations.

116. The delegation of Ireland stated that the reservation and the declarations seem puzzling and it is necessary to examine them more thoroughly. This delegation raised the lack of clarity of the reservation, especially the question about the need to make a link between Articles 1 and 22. In this regard, it invoked that according to the general rules on the treaties interpretation, the two Articles should be read together. The reference to the application of Article 22 in accordance with the Constitution and the domestic law of Laos seems questionable. Thus, the objection to this reservation is probable.

117. The observer from Japan noted that the second part of the reservation is unclear and therefore it could be objected to. Not knowing the Constitution of Laos, nor the applicable domestic law, this observer wondered how Article 22 will be applied to concrete domestic situations. If the Constitution and the laws of Laos deny freedom of association and other rights provided by Article 22, the latter would be meaningless. However, according to the first part of the reservation, Laos does not seem to ignore the object and the purpose of Article 22.

It thus appears that this reservation is not understood as being incompatible with the object and the purpose of the Covenant.

D. Convention on the Privileges and Immunities of the Specialised Agencies, New York, 21 November 1947

- Reservation of Saudi Arabia

118. The delegation of the United Kingdom informed the Committee that it will formulate a declaration to this reservation which is not in accordance with the kind of reservation convened as authorised.

119. The French delegation declared it will object to this reservation.

120. The German delegation specified that it would formulate an objection to § 2 of the reservation.

121. The delegation of Austria indicated that it envisages to object to § 2 of the reservation.

122. The Finnish delegation recalled that Saudi Arabia has made a similar reservation to the Vienna Convention on Diplomatic Relations. Finland had not objected to this reservation, which makes incoherent its current position against the reservation of Saudi Arabia. It is however very likely that Finland objects to this reservation.

123. The Swedish delegation declared that it is very likely that it envisages formulating an objection to this reservation.

124. The observer of Japan considered that § 1 of the reservation does not seem to deny all the possible ways of dispute settlement. It recalled in this connection that the method of dispute resolution depends primarily on each State. Therefore, § 1 does not seem problematic. As of § 2, the protection of any correspondence or pouch constitutes an important component of immunities and privileges granted by the Convention. This observer can not say categorically that this reservation goes against the purpose and the object of the Convention.

E. Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, New York, 15 December 1979

- Reservation formulated by Brazil

125. The Swedish delegation declared that it is very likely that Sweden will make an objection to this reservation because it would give Brazilian authorities free reins.

126. The delegation of Germany considered this reservation problematic. Therefore, it proposed that the best approach would be to continue discussions with the Brazilian government in order to get more information about the reservation in question.

127. The French delegation shared the view of other delegations about the problematic nature of this reservation. It specified it could be only a problem of formulation of the reservation. However, it appears too broad as it does not seem to be limited to the authorised case.

F. United Nations Convention against corruption, New York, 31 October 2003

- Declarations formulated by Vietnam

128. The delegation of Germany invoked the problematic nature of the first declaration, because "the criminalisation of illicit enrichment" is a key element of this Convention. It also

specified that it could be only a problem of formulation. It is therefore appropriate to engage discussions with the Government of Vietnam in order to seek clarification about the meaning of this reservation.

129. The Swedish and Polish delegations shared the position taken by the German delegation.

G. Protocol to Prevent, Suppress and Punish Trafficking on Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime, New York, 15 November 2000

- Reservations et declaration formulated by the Syrian Arab Republic

130. The delegation of Greece considered that the reservation is expressed in terms *ex abundante cautela*, implying too much precaution. This reservation is therefore not problematic, nor contrary to the object and the purpose of the Convention. Regarding Article 15 § 2, such a reservation can not be accepted. The declaration on Article 6 § 3 is unnecessary because the text itself provides an opportunity for the State concerned to examine the problem and to act as it deems appropriate.

- Reservations formulated by Qatar

131. The delegation of the Netherlands declared that the reservations are obscure because their purpose is elusive. It is difficult to determine whether this reservation relates to the article as a whole or to the interpretation that would be given to it. This delegation proposed to continue the dialogue with Qatar to find out their intentions with respect to this reservation.

- Reservation and declaration formulated by Indonesia

132. The French delegation invoked the ambiguity of the declaration.

H. Protocol against Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organised Crime, New York, 15 November 2000

- Reservation and declaration formulated by Indonesia

133. The French delegation invoked the imprecision of the declaration.

I. International Convention for the Suppression of the Financing of Terrorism, New York, 9 December 1999

- Reservations formulated by Pakistan

134. The observer from the United States of America looked at the potential opportunity to object to the reservation to Article 14. It would like to hear the views of other delegations regarding the compatibility of this reservation with the object and the purpose of the Convention.

135. The Dutch delegation specified that the Netherlands are also examining the issue of the reservation to Article 14, because it is not clear from the text how Pakistan considers itself bound by this provision. This delegation preferred to engage a dialogue with the Government of Pakistan before making a decision on this subject.

136. The delegation of Greece declared that the intention of the reservation on Article 14 seems to allow the refusal of extradition because of the political nature of a given crime. The reservation is enough complicated, which is reason enough for it to be contrary to the object

and the purpose of the Convention. Regarding the reservation to article 11 § 2, the Greek delegation specified that the provision in question seems not to envisage the possibility of not treating *ab initio* the Convention as legal basis for extradition, so that even such a right is given to the States, but only in case of a request for extradition from another State Party. Consequently, it seems impossible to refuse generally to admit the Convention as legal basis for extradition.

137. The Finnish delegation noted that, concerning the reservation on Article 14 of the Convention, Pakistan refers to national law. This is often a problematic issue and Finland would like to find out the meaning of the legislation of Pakistan in this area before making a decision on the said reservation.

138. The delegation of Germany shared the concerns of the Dutch and Finnish delegations relating to the reference to the domestic law of Pakistan. It preferred to explore this issue further before making a decision.

139. The Swedish delegation specified that Pakistan does not consider this Convention as legal basis for cooperation with other States Parties in the field of extradition. The extradition to other countries is governed by the domestic legislation of Pakistan. In this regard, the Swedish delegate wondered where the problem of this provision was since its meaning seemed clear.

140. The Chair took note of the question of the Swedish delegation and drew the attention of delegations to document CAHDI (2010) 5 Addendum containing a table of outstanding reservations and declarations to international treaties. He invited delegations to examine its content and to indicate whether a particular update is necessary.

141. The Committee instructed the Secretariat to amend the table and its legend in the light of the positions of delegations. This table appears in **Appendix V** to the present report.

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

12. Accession of the European Union to the European Convention of Human Rights: exchange of views with Mr Jean-Paul Costa, President of the European Court of Human Rights (ECHR)

142. The CAHDI welcomed the Interlaken Declaration adopted at the High Level Conference on the Future of the European Court of Human Rights on 19th February 2010.

143. The President of the European Court of Human Rights, Mr Jean-Paul Costa delivered a speech before the CAHDI evoking the following two questions of current interest which are essential to the European Court of Human Rights and may be of interest to CAHDI: firstly, the Interlaken Conference and its follow-up, and secondly, the question of the accession of the European Union to the European Convention on Human Rights. The speech of President Costa appears in **Appendix VI** to this report.

144. The President of the CAHDI thanked Mr Jean-Paul Costa, the President of the ECHR for his intervention before the CAHDI and the subsequent exchange of views.

145. The French delegation evoked the possible increase in applications before the Court as a result of the European Union's accession to the European Convention on Human Rights. In this regard they also wondered about the future of the "Bosphorus" case-law of the Grand Chamber of the Court[6].

[6] Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland (Application No. 45036/98), judgment of the Grand Chamber of the ECHR of 30th June 2005.

146. President Costa considered that because of the conditions of admissibility; in particular the criteria regarding the jurisdiction of the Court and the exhaustion of domestic remedies, the number of applications filed against the European Union should not be too great. The consequences of the "Bosphorus" case-law, of which various interpretations have been made, would be determined by the Court, through judgments on a similar question as the considered in the said case.

147. The Spanish delegation, under the Spanish presidency of the European Union, informed the CAHDI of the European Commission's adoption of the recommendations allowing the initiation of the procedure of elaboration by the European Council of the negotiating mandate relating to the European Union's accession to the European Convention on Human Rights. In this context, it raised the need for all Member States of the European Union to accept the instrument resulting from the negotiations. It also stressed the importance of the CAHDI's role in this accession process, particularly because of its effectiveness as far as issues of international law and human rights are concerned.

148. President Costa specified that discussions on the accession of the European Union to the European Convention on Human Rights would not consist in a renegotiation of the Lisbon Treaty or Protocol No.14.

149. Mr. Lezertua indicated that following a pragmatic approach, the Secretary General will present to the Council of Europe's Committee of Ministers his proposals on the format of negotiation on the basis of content and negotiating objectives set out in the European Union's negotiating mandate. At present, four proposals are being discussed. Firstly, if the European Convention on Human Rights requires no modification, an instrument of soft law with a "memorandum of understanding" would be possible. The adoption of a treaty seems more likely, given the nature of the Lisbon Treaty. Negotiations could also be shaped by adopting a bilateral treaty between the European Union and the Council of Europe, or by an amending Protocol such as Protocol 14. The negotiation between the European Union and the Council of Europe remains a priority for the Secretary General of the Council of Europe, who in this regard, is strongly committed to finding a solution to be commonly approved by both organisations as quickly as possible.

150. The Irish delegation noted that the agreement which would have to be reached would not concern the two organisations; instead it would be an agreement between the European Union and the States Parties to the European Convention on Human Rights, which each State would have to subscribe to individually.

151. In response to the question of the Irish delegation on the proposals of a specific mechanism for third party intervention in cases where the European Union would be involved, President Costa referred to the mechanism currently in place. As an example he invoked the case of "Bosphorus", where the European Commission has intervened as a third party by submitting written comments and taking part in hearings. He stated that in the context of the European Court of Human Rights including the European Union, this mechanism would be developed further.

13. Exchange of views with Mr Sean Hagan, General Counsel, Director of the Legal Department of the International Monetary Fund (IMF)

152. The Chair of the CAHDI welcomed Mr Sean Hagan, General Counsel, Director of the Legal Department of the International Monetary Fund (IMF) and greeted this opportunity to hold an exchange of views with the Senior Legal Officer of the IMF. Mr Hagan presented the Committee with information concerning the structure and activities of the Legal Department of the IMF and his statement is set out in **Appendix VII** to the present report.

153. Following his presentation, Mr Hagan held an informal exchange of views with the Committee. At this occasion, the delegations and Mr Hagan discussed topical issues,

including but not limited to the role of the IMF in securing financial stability and other objectives, the effect of IMF measures, the dispute settlement mechanism of the IMF , the accession of Kosovo[7] to the IMF and the contribution of international organisations, including the IMF, to the work of the International Law Commission (ILC) on the principles governing the responsibility of international organisations on internationally wrongful acts.

154. The Chair of the CAHDI thanked Mr Hagan for his intervention before the CAHDI and the subsequent exchange of views.

14. Consideration of current issues of international humanitarian law

155. The Norwegian delegation recalled to the Committee the adoption of the Convention on Cluster Munitions in Dublin, on 30th May 2008. Currently, it is signed by 104 States and ratified by 30, with its expected entry into force on 1st August 2010. The Norwegian delegate invited States that have not yet done so, to sign or ratify the said Convention. The first meeting of the States Parties will take place in Laos from 8th to 12th November 2010.

156. The observer from the International Committee of the Red Cross (ICRC) intervened before the CAHDI making two observations. First, concerning children involved in armed conflict, the ICRC informed the Committee that it would soon publish guiding principles regarding the implementation at national level of a comprehensive system for children associated to armed forces or groups. The principles were developed on the basis of work carried out during an experts' meeting held in Geneva in December 2009. Their aim is to propose concrete and detailed measures for achieving comprehensive and effective implementation at national level of international rules protecting children involved in armed conflict. Secondly, the ICRC will hold, from 27th to 29th October 2010, in Geneva, the third universal meeting of national committees on the implementation of international humanitarian law in order to take stock of the implementation of a comprehensive system for the repression of series of violations of international humanitarian law. The observer of the ICRC expressed a wish for this meeting to be considered as a follow-up to the stock taking exercise of the ICC Review Conference.

157. The delegation of the United Kingdom informed the Committee that a legislation enabling the ratification of the Convention on Cluster Munitions is currently being discussed by the Parliament. The United Kingdom ratified the Third Additional Protocol to the Geneva Conventions which will enter into force in April 2010. The case of Al-Skeini of the ECHR raises questions about the interactions between the ECHR and international humanitarian law. This delegation also evoked two national developments in the field of international humanitarian law concerning Afghanistan: first, through its Defence Secretary, the United Kingdom has recently made an announcement on its detention policy in Afghanistan. On the other hand, the delegation mentioned the court proceedings against the Ministry of Defence in the case of Evans, which raises questions about the handing over to Afghanistan of detainees taken by the Brutish forces in Afghanistan and the compatibility of this procedure with the ECHR.

158. The delegation of Finland informed the Committee of its involvement in the preparation of a study on computer network attacks in the context of armed conflict. This study is funded by the Ministry of Foreign Affairs of Finland and it addresses questions concerning the perpetrators of the computer network attacks in the context of the law of armed conflicts, the targets that can be attacked with the means of computer network attacks and the manner in which these actions are conducted in the context of the law of armed conflicts.

159. The delegation of Austria invoked the meeting of November 2009 held in Geneva on the implementation of international humanitarian law and the mechanism applicable to questions arising from this problem. It encouraged in particular the ICRC to inform the Committee in due course on a possible follow-up to this meeting and its follow up documentation.

[7]All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

15. Developments concerning the International Criminal Court (ICC)

160. The observer of the ICRC supported the efforts that States have made in the preparation of the first Review Conference of the ICC. The ICRC also provided support to the stock taking exercise of the Conference, which will enable the conduct of a thorough assessment of the implementation at national level of the principle of complementarity. The ICRC stands ready to assist States, particularly concerning the implementation at national level of the prosecution for war crimes. The observer expressed a wish that concrete results are adopted at the end of the Conference. As an example, a proposal for States to make pledges was mentioned. The ICRC will provide, if necessary, further information. With regard to the amendment concerning gas weapons, poison and expanding bullets proposed by 18 States, the ICRC encouraged its adoption since it fully reflects a strong desire to align the provisions of the Statute of the ICC with international humanitarian law and a better protection of victims in non-international conflicts. A document illustrating that these prohibitions are customary in States' practice because of their criminal nature, is in preparation and will be available soon.

161. The Canadian delegation encouraged the continuation of this exercise. As a party to the Statute of the ICC, Canada is committed to working effectively to ensure the achievement of positive results and supports the development of a declaration of States Parties confirming their commitment to the principles governing the ICC. Regarding the crime of aggression, the negotiations of almost eight years have led to the almost consensual approval of the said crime definition. With regard to the filter's issue, the Canadian delegate invited States parties to work together on the adoption of a consensual solution, which he believes will require reciprocity between the parties concerned. The question of the jurisdiction implies that the Security Council plays an essential role.

16. Implementation and functioning of other international criminal tribunals (ICTY, ICTR, Sierra Leone, Lebanon, Cambodia)

162. The Chair invited the delegations to take note of the relevant contribution of Interpol (document CAHDI (2010) 10).

163. The delegation of Serbia informed the Committee of the cooperation between Serbia and the ICTY. This cooperation has certainly improved over the last two years because the Serbian authorities have set up special bodies for cooperation (Chancellery of cooperation, Special Prosecutor, Special Representative's office in Belgrade). The communications between the two sides, directly or through diplomatic channels, and which also prove to be very useful, have intensified. At national level, the Serbian justice rendered important judgments concerning war criminals in the recent events on the territory of the former Yugoslavia. Serbian authorities and the ICTY have already begun discussions on the finalisation of activities of this Tribunal.

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

164. The Chair questioned the relevance of keeping this item on the agenda and invited delegations to express their opinion in this respect.

165. The delegation of Germany drew the attention of the Committee on the UN project of Audiovisual Library of International Law that the German authorities contended with a contribution of 25,000 Euros per year. This delegation encouraged other States to support this project which is very useful.

166. The Swiss delegation recalled the Committee that it was among the initiators recommending to put this question on the agenda. However, this item has lost its relevance, namely because of the lack of development in this field, even at the level of the United Nations. The Swiss delegate considered that the international rule of law should have been

considered in the context of a more specific content. Accordingly, it is preferable to temporarily suspend this point of the agenda instead of keeping it *pro forma* and return to it in due course.

167. The Serbian delegation did not support the suspension of this item of the agenda and the Swedish delegation proposed to redraft it.

168. The delegation of Switzerland invited other delegations to try to organise discussions under this item in a more concrete manner in order to make them more substantial and structural and to organise thematic debates on the present matter. This delegate proposed to consider at the next meeting of the Committee how to continue discussions on this question. At that time, if there is no meaningful structure to give to this point, the suspension of the agenda should be reconsidered.

169. The observer of Canada suggested that questions such as the translation of international legal norms, the relationship between international humanitarian law and human rights or the interpretation of some reflections of the judges, should be among the thematic issues to consider. The aim would be to make the debates more operational galvanising them with regard to specific questions.

170. The Chair closed the discussion on this point by concluding that this item will be maintained on the agenda of the next meeting. He suggested redrafting this point of the agenda by developing a broader concept such as, for example, the contribution to the advancement of the international rule of law. However, if on this occasion, no concrete proposal is made, it will be suspended from the agenda in due course.

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

171. Mr Guessel, Secretary of the CAHDI and Anti-Terrorism Coordinator of the Council of Europe, informed the Committee on recent developments within the Council of Europe in the area of the fight against terrorism.

172. During the past six months, and following the First Consultation of the Parties to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196), the CODEXTER has undertaken a number of activities. Indeed, after the request by the Consultation of the Parties, the Committee of Ministers instructed the CODEXTER to follow the implementation of the Convention between the Consultations of the Parties. The CoE Convention on the Prevention of Terrorism does not have a follow-up mechanism; therefore, the CODEXTER analysed the possibilities to carry out this control. At the last meeting of the CODEXTER, a Working Group was established in order to prepare for the next meeting of the Committee a proposal on possible implementation of the Convention on the Prevention of Terrorism. Future developments of this initiative will be reported later in this Committee.

173. On the occasion of a visit to New York in December 2009, Mr Lezertua, Director of Legal Advice and Public International Law, presented before the Counter-Terrorism Committee of the United Nations the developments in Council of Europe in the field of the fight against terrorism. The information on the fight against terrorism and respect of human rights exchanged during this event, organised for the first time in the history of the Organisation, has proven to be very useful for both, the Council of Europe, at a regional level, and for the United Nations.

174. Due to the structural reforms within the Council of Europe, sought by the Secretary General, counter terrorism activities seek further concrete impetus. The Anti-Terrorism Division has elaborated the programme entitled “Bringing terrorists to justice: promoting the implementation of European standards and documenting good practices”, which is currently being presented to volunteer Member States. The first pilot project was conducted in Skopje in December 2009. However, given the lack of financing, Mr Guessel would like to draw the attention of the legal services of Member States on their possibilities to help the pursuit of this project through voluntary contributions.

175. The Swedish delegation informed the Committee that in December 2010, a bill containing the approval of the Convention on the Prevention of Terrorism was submitted to the Parliament. In addition, a legislation enabling the compliance with the said Convention and the 2008 EU Framework Decision on combating Terrorism will also be adopted. This law will be presented to the Parliament and its entry into force is scheduled for 1st December 2010.

19. Topical issues of international law

176. The CAHDI took note of the request of the International Law Commission (ILC) addressed to the Legal Adviser to the Council of Europe to provide comments and observations on Draft Articles of the ILC on “Responsibility of International Organisations" (document CAHDI (2010) 8 and Inf 7).

177. Mr Lezertua, Director of Legal Advice and Public International Law traced the history of the Draft Articles on "Responsibility of International Organisations". Indeed, the UN General Assembly has suggested to the Commission to address the question of responsibility of international organisations. The Commission adopted in December 2009 the Draft Articles on "Responsibility of International Organisations", evidently a complex issue. The General Assembly Resolution 64/114 encourages States, as well as international organisations, including the Council of Europe, to submit observations and comments on this question before 1st January 2011. Mr Lezertua would like to inform the CAHDI that this request has been received by the Council of Europe. In this respect, he invited delegations to express their opinions and make suggestions on the way to proceed and on the possible role of CAHDI in the process.

178. The Austrian delegation raised the question of whether the Council of Europe has already contributed to this activity of the Commission. As regards the procedural aspect of the question, according to the Austrian delegate, it is a complex subject that could be discussed at the next Committee meeting in Tromsø. In this regard, it proposed discussions on past experiences related to the engagement of the responsibility of the Council of Europe.

179. The Chair reminded the Committee that the ILC had requested several times through the UN General Assembly, contributions from international organisations, particularly in order to identify any empirical basis for a thorough analysis. Very few international organisations have contributed in this regard. As for the practice of the Council of Europe concerning its responsibility, it is suggested that a Secretariat conduct a relevant study.

180. In addition to discussions concerning the practice of the Council of Europe on its international responsibility, the delegation of the United Kingdom also proposed discussions on the Draft Articles themselves, which would be useful for the preparation of the observations on the Draft Articles, which should then be submitted to the Secretariat of the UN.

181. The Dutch delegation agreed with the delegations of Austria and the United Kingdom that the practice of the Council of Europe on this question should be discussed at the next meeting of CAHDI. Around twenty organisations have contributed to this process concerning the Draft Articles on "Responsibility of International Organisations” and it is important for the Council of Europe to participate as well.

182. The Swedish delegation specified that the CAHDI will lead more general discussions on this subject. Regarding the contribution of the Council of Europe, it is the duty of the Secretary General to submit the response containing the position of the Council of Europe in this regard.

183. The European Commission representative informed the Committee that it had throughout the past work of the ILC on the Responsibility of International Organisations provided the ILC with oral and written comments. This representative also stressed the relevance of the EU annual interventions on this subject in the Sixth Committee of the UN General Assembly.

184. The Chair suggested and the CAHDI agreed to include in the agenda of the next meeting the item on Draft Articles on "Responsibility of International Organisations".

185. Regarding other topical issues, the Danish delegation raised two questions. Firstly, it mentioned the maritime piracy and more specifically the question of human rights of suspected pirates detained on naval vassals. In this regard, the Danish delegate cited the study by Dr. Douglas Guilfoyle (University College London) containing a compilation of relevant international law relating to the question of prosecution of suspected pirates. It will ensure that the Secretariat of the Committee has the references of this study. Secondly, the Danish delegate invoked international law and jurisdiction in the area of libel proceedings. For example, it referred to a number of cases where lawyers have sued or threatened to sue Danish newspapers in United Kingdom courts owing to the well-known incident on the cartoon published by a Danish newspaper. Despite numerous points of political character and other legal questions involved, it should be noted that the law of the United Kingdom is very liberal on this question.

186. The Canadian observer referred to the follow-up to the Montreux Document carried out by Swiss authorities. He approved the Montreux document considering it as an important tool. He expressed his concern about the activities of the Working Group on the Use of the Mercenaries that has circulated for comments a draft convention on the private military and security companies. Canada has already declared itself in the past against such a project. Taking into consideration the relative novelty of this subject, Canada is sceptical about the drafting, presently premature, of a legally binding document on the subject. Similarly, the Canadian representative doubted that the discussions about a convention governing private military and security companies within that Working Group or the Third Committee are suitable.

D. OTHER

20. Date, place and agenda of the 40th meeting of the CAHDI

187. Following the kind invitation of the Norwegian authorities, the CAHDI decided to hold its next meeting (40th) on 16th 17th September 2010 in Tromsø, Norway. The Committee instructed the Secretariat, in consultation with the Chair of the Committee, to prepare in due course the provisional agenda of the meeting.

21. Divers questions

188. The CAHDI took note of the departure of Mr Alexander Guessel, the Secretary of the CAHDI. It expressed its gratitude for the work he has done and wished him all the best in his future professional activities.

189. The Ambassador Paul Seger, Director, Jurisconsult, representing the Swiss delegation, informed the Committee of his new position within the Embassy of Switzerland in New York. At this occasion, he thanked all delegations for their excellent cooperation, hoping to pursue it in the context of other working bodies.

190. On behalf of all delegations, the President expressed to Mr Seger the best wishes in his new duties.

- **List of items discussed and decisions taken**

191. The Committee adopted the abridged report of the meeting taking into account the comments of the Delegation of the Russian Federation on the co-called “disconnection clause” mentioned in § 8 of this report. The abridged report, as adopted, appears in **Appendix VII** of the report.

APPENDIX I

LIST OF PARTICIPANTS

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REGISTRY OF THE EUROPEAN COURT OF HUMAN RIGHTS / GREFFE DE LA COUR EUROPEENNE DES DROITS DE L'HOMME
M. Patrick TITIUN, Chef de Cabinet du Président

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Mme Jana NIKOLOVSKA, Lawyer/Juriste, Public International Law and Anti-Terrorism Division / Division du droit international public et de la lutte contre le terrorisme

Mme Francine NAAS, Assistant/Assistante, Public International Law and Anti-Terrorism Division / Division du droit international public et de la lutte contre le terrorisme

Mme Isabel CRISTOVAM-BELLMANN, Assistant/Assistante, Public International Law and Anti-Terrorism Division / Division du droit international public et de la lutte contre le terrorisme

INTERPRETERS/INTERPRETES

Mme Christine FARCOT
M. Robert SZYMANSKI
M. Christopher TYCZKA

APPENDIX II

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 38th 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 :

   - Request for possible comments of the CAHDI on Recommendation 1865 (2009) – "The protection of Human Rights in emergency situations"

   - Request for possible comments of the CAHDI on Recommendation 1888 (2009) – "Towards a new ocean governance"

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, and other questions of relevance to the Legal Adviser.

   - Presentation by the Office of Legal Affairs of Interpol

   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

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. Accession of the European Union to the European Convention of Human Rights: exchange of views with Mr Jean-Paul Costa, President of the European Court of Human Rights (ECHR)

13. Exchange of views with Mr Sean Hagan, General Counsel, Director of the Legal Department of the International Monetary Fund (IMF)

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 of 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. Date, place and agenda of the 40th meeting of the CAHDI

21. Other business

APPENDIX III

Statement by Mr M. Lezertua, Director of Legal Advice and Public International Law (Jurisconsult), at the 39th meeting of the CAHDI

Mr President,

Ladies and Gentlemen,

I am delighted to welcome you once again to Strasbourg to what is already the 39th meeting of the CAHDI.

As is customary on these occasions, I would like to take a few minutes to look at what has been happening in the organisation, as there have been a large number of rapid changes since your last meeting in September 2009.

The most important piece of news is that on 30 September the Parliamentary Assembly elected Mr Thorbjorn Jagland to the post of Secretary General of the Council of Europe. Mr Jagland is a former Prime Minister and Minister for Foreign Affairs of Norway and former President of the Norwegian parliament.

His first official mission on 19 October was to Brussels for a meeting with Mr Barroso, President of the European Commission, at which he declared that the European Union was the Council of Europe's most important institutional partner. In the following weeks he also met Ms Catherine Ashton, which gave him the opportunity to reaffirm the Council's commitment alongside the European Union, and on 2 March he also met Mr Van Rompuy. These meetings demonstrate his resolve to consolidate the Council of Europe's political role in the European project.

Mr Jagland subsequently launched a major internal reform of the Council of Europe, for which he has secured Member States' direct and unanimous support. To help him carry out this reform he has appointed Mr Gérard Stoudman, former Director of the OSCE Office for Democratic Institutions and Human Rights and former UN High Representative for Elections in Côte d'Ivoire, as his Special Representative for Organisational Development and Reform.

The aim of the reform is to strengthen the political role of the organisation and to focus its action on democratic security. The Council of Europe's political tools and internal control functions are to be strengthened, human and financial resources will be redeployed to priorities and the organisation's communication policy and programming will be reviewed. The Secretary General's priorities for 2011, which will be presented to the Committee of Ministers in early April, should reflect this approach and focus on three operational pillars of activity: human rights, democracy and the rule of law.

The political situation of the organisation changed radically in February following the Russian Federation's ratification of Protocol No. 14 to the European Convention on Human Rights.

Shortly before the opening of the Interlaken Conference on the Future of the European Court of Human Rights on 18 February, the Russian Federation lodged its instrument of ratification of Protocol No. 14 with the Secretary General.

As you are all aware, this means that Protocol No. 14 will come into force on 1 June 2010. This is a development which we all welcome. It is a crucial step in the reform of the Court as it will now be possible to apply the new procedures of a single judge and the new competences of three-judge committees to all Member States. The Protocol also allows for the application of the new criteria for admissibility and changes the duration of the judges' term of office.

This is, of course, of paramount importance but those of you who were at Interlaken know that it is only the first step, which could open the way to a number of others which are equally important and may require the establishment of a filtering mechanism or even more subsidiarity. It is now up to the Committee of Ministers to decide which options will best enable the Court to work more dispassionately and effectively.

The entry into force of Protocol No. 14 also paves the way for the European Union's accession to the European Convention on Human Rights.

The Secretary General has addressed this issue several times since the Interlaken Conference and it is now one of the Council of Europe's key priorities. As legal advisers to the ministers of foreign affairs, you are some of the main players in this process.

* * *

The future of the Court and the European Union's accession to the Convention are obviously also two of the main priorities of the current Swiss Chairmanship of the Committee of Ministers of the Council of Europe. The Council of Europe warmly welcomes the fact that Switzerland has invested a great deal of energy, since November, in taking these subjects forward, with a great deal of success.

The Swiss Chairmanship, which will complete its term of office in May, is also focusing on the strengthening of democratic institutions and on improving the Council of Europe's transparency and effectiveness. These priorities are fully in line with the reform being carried out by the Secretary General.

In May, Switzerland will hand over the chairmanship of the Committee of Ministers to "the former Yugoslav Republic of Macedonia".

* * *

With regard to relations between the Council of Europe and its Member States, I would also like to mention the Secretary General's visits to Moscow and Ankara to meet the Russian and Turkish presidents and ministers for foreign affairs, and to Berlin and London to meet the German and British ministers for foreign affairs. The purpose of these visits was to strengthen the Council of Europe's political role and underline the Secretary General's determination to fully associate Member States in the current reform process.

With regard to relations with other international organisations, in addition to the high-level meetings with the European Union that I have already mentioned, Secretary General Jagland has also held several meetings with Marc Perrin de Brichambaut, OSCE Secretary General.

* * *

To conclude my review of this extremely busy agenda, I would like to refer briefly to the Council of Europe Treaty Series. The most important event in this field has already been mentioned and that is the entry into force on 1 June 2010, of Protocol No. 4 amending the European Convention on Human Rights, but I shall say no more on that subject.

I would also like to draw your attention to the opening for signature of *Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings* and of the *Additional Protocol to the European Charter on Local Self-Government on the right to participate in the affairs of a local authority*.

Finally I would like to draw your attention to a Parliamentary Assembly report entitled "Reinforcing the effectiveness of Council of Europe treaty law".
In this document, the Assembly's rapporteur, Mr John Prescott, highlights the key role played by the Council of Europe in establishing human rights standards and developing international law.

He believes that the Council of Europe Member States must renew their commitment vis-à-vis this normative corpus. He also recommends that the number of treaties ratified, in particular the most fundamental, must be increased and that existing treaties must be re-examined and updated as appropriate.

Finally, he calls into question the increasing use of so-called “disconnection clauses” and invites the Committee of Ministers to regulate this practice more strictly.

The report makes several references to the CAHDI and we therefore thought it would be a good idea to submit it to you as soon as it was adopted.

We will, of course, keep you informed of any action taken in response to the report, in particular by the Committee of Ministers.

That completes my rapid review of recent developments at the Council of Europe. Please do not hesitate to contact the Secretariat for any further information you might wish to have.

I wish you a very pleasant and productive 39th meeting. Thank you for your attention.

APPENDIX IV

COMMENTS OF THE COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI) ON PARLIAMENTARY ASSEMBLY RECOMMENDATION 1888 (2009) "TOWARDS A NEW OCEAN GOVERNANCE"

1. On 21 October 2009, the Ministers' Deputies communicated Parliamentary Assembly Recommendation 1888 (2009) to the Committee of Legal Advisers on Public International Law (CAHDI) for information and possible comments by 31 March 2010.

2. In its Recommendation, the Parliamentary Assembly called on the Committee of Ministers to:
   - instruct a committee of experts to define a legal and institutional framework for new ocean governance;
   - invite the Parliamentary Assembly to take part in the work of the committee of experts.

   The Assembly also recommended that the Committee of Ministers call on governments of Member States to:
   - take part in the EurOcean intergovernmental project;
   - promote the establishment and proper management of marine protected areas.

3. The CAHDI examined the above-mentioned Recommendation at its 39th meeting (Strasbourg, 18-19 March 2010) and adopted the following comments concerning aspects of the recommendation which are of particular relevance to the mandate of the CAHDI (public international law).

4. From the outset, the CAHDI would like to underline the importance of the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS), which provides the regulatory framework for use of the world's seas and oceans and is the key legal reference in this field. 160 States or entities are parties to UNCLOS[1], of which 42 are Council of Europe members. Also large parts of UNCLOS reflect customary law. The CAHDI considers that UNCLOS is the comprehensive legal and institutional framework for oceans governance, and does not see the need to establish a new framework. The CAHDI recommends to the Deputies to call on Council of Europe member States which have not yet done so to ratify or to accede this instrument at their earliest convenience.

5. The CAHDI considers that – as before – the United Nations remains the most appropriate institution for discussing oceans governance, given the global reach of the law of the sea.

6. In this respect, the CAHDI also recalls the importance of the peaceful settlement of disputes in the field of the law of the sea, including as provided for in UNCLOS. In this respect States may use the opportunity provided under UNCLOS to nominate suitably qualified people to lists of arbitrators and to update such lists on a regular basis. In this regard, the CAHDI would like to recall its contribution to the Committee of Ministers' adoption of Recommendation CM/Rec(2008)9 to Member States on the nomination of international arbitrators and conciliators.

7. The CADHI considers that the Arctic is not a new region, nor is it currently intensively exploited. Also in this region UNCLOS constitutes the existing legal framework for oceans governance.

[1] Status as at 4th February 2010. See link below for full details: http://treaties.un.org/

8. Finally, in the course of its work, the CAHDI has also taken note of relevant recent cases brought before international courts, including the European Court of Human Rights, concerning directly or indirectly the law of the sea. The CAHDI follows on a regular basis the development of case law in this field.

9. The CAHDI advises the Committee of Ministers that there is no need to establish a committee of experts to attempt to define a legal and institutional framework for oceans governance as requested, as it considers the current legal framework to be sufficient.

APPENDIX V

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*
O State intends to object / *L'Etat envisage de faire objection*
◘ State does not intend to object / *L'Etat n'envisage pas de faire objection*
♦ State intends to make a declaration upon ratification / *L'Etat envisage de faire une déclaration au moment de la ratification*

TREATIES / *TRAITÉS*

A. Convention on the Rights of Persons with Disabilities / *Convention relative aux droits des personnes handicapées,* 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. International Covenant on Civil and Political Rights / *Pacte international relatif aux droits civils et politiques*, New York, 16 December/*décembre* 1966
D. Convention on the Privileges and Immunities of the Specialized Agencies / *Convention sur les privilèges et immunités des institutions spécialisées*, New York, 21 November / *novembre* 1947
E. Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty / *Deuxième Protocole facultatif se rapportant au Pacte international relatif aux droits civils et politiques visant à abolir la peine de mort*, New York, 15 December / *décembre* 1989
F. United Nations Convention against Corruption / *Convention des Nations Unies contre la corruption*, New York, 31 Octobre / *octobre* 2003
G. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime / *Protocole visant à prévenir, réprimer et punir la traite des personnes, en particulier des femmes et des enfants, additionnel à la Convention des Nations Unies contre la criminalité transnationale organisée*, New York 15 November / *novembre* 2000
H. Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the Untied Nations Convention against Transnational Organised Crime / *Protocole contre le trafic illicite de migrants par terre, mer et air*, *additionnel à la Convention des Nations Unies contre la criminalité transnationale organisée,* New York, 15 November / *novembre* 2000
I. International Convention for the Suppression of the Financing of Terrorism / Convention *internationale pour la répression du financement du terrorisme*, New York, 9 December / *décembre* 1999

States / *Etats*	Convention	A			B	C	D	E	F	G			H	I
		1	2	3	4	5	6	7	8	9	10	11	12	13
	Reservation/ *Réserve*	Mauritius *Maurice*	Monaco	Iran (Islamic Republic of) *Iran (République islamique d')*	Qatar	Lao People's Democratic Republic *République démocratique populaire lao*	Saudi Arabia *Arabie Saoudite*	Brazil *Brésil*	Viet Nam	Syrian Arab Republic *République arabe syrienne*	Qatar	Indonesia *Indonésie*	Indonesia *Indonésie*	Pakistan
	Deadline *Délai*	17/01/11	22/09/10	02/11/10	07/05/10	14/10/10	30/04/10	27/09/10	24/08/10	07/07/10	09/06/10	26/10/10	25/10/10	18/06/10
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 VI

Statement by Mr Jean-Paul Costa, President of the European Court of Human Rights

Mr President,
Ladies and Gentlemen,

It is a pleasure and an honour for me to accept this invitation from the CAHDI and to address this committee to which I attach great importance.

I would like to take this opportunity to raise two topical subjects which are essential for the European Court of Human Rights and should be of interest to the CAHDI: the Interlaken Conference and its follow-up, and the question of the European Union's accession to the European Convention on Human Rights.

I would also like to express my gratitude to the CAHDI, in particular for the very constructive and useful role it played in the discussions concerning the implementation of Protocol No. 14bis, adopted at the Madrid Conference on 12 May 2009, paving the way for the provisional application of the procedural provisions set out in Protocol No. 14.

Protocol No. 14 was ratified by the Russian Federation and the instrument of ratification was lodged with the Secretary General of the Council of Europe just before the Interlaken Conference. The Protocol will come into force on 1 June 2010. The adoption of interim measures in Madrid, and in particular of Protocol No. 14bis, most definitely helped secure an end to this lengthy legal episode.

As I already said, my address will focus on two geographical references: Interlaken and Lisbon.

The Interlaken Declaration was adopted by acclamation by all the delegations of Member States of the Convention at the end of the Conference on the future of the Court. The Declaration includes important political elements, particularly with regard to Member States' renewed commitment to protecting human rights in Europe and their support for the protection mechanism established by the Convention, in which the Strasbourg Court plays a key role. The Declaration is both legal and technical and ends with a relatively detailed Action Plan, setting out objectives and deadlines. It invites a number of bodies, in particular the Committee of Ministers of the Council of Europe and its relevant departments, to take the necessary steps within a clearly specified time-frame to ensure that this complicated timetable is met. The Interlaken Declaration contains short and medium-term mandates which do not necessarily require changes or amendments to the European Convention on Human Rights and long-term mandates entailing substantial work and which may require modifications to the Convention.

The Interlaken Conference was an idea which I personally launched in 2009 and which could never have taken place without the Swiss authorities' generous contribution and efficient organisation.

I would like to make a number of comments concerning the Court's implementation of the measures proposed in the Interlaken Declaration.

First of all, many of the measures need to be taken by the Court itself. The Interlaken Declaration encourages us and gives us the possibility to do so in a very active manner. Protocol No. 14 is itself a very important element in this mechanism. The provisional application, following the Madrid Conference, of the procedural provisions of Protocol No. 14 (for example, the single judge procedure instead of the three-judge committee and the extended competence of three-judge committees instead of seven-judge Chambers) had already begun prior to the Interlaken Conference. Nineteen Member States are currently concerned by these provisions and we have already implemented the provisional arrangements I have just mentioned in respect of individual applications against these States. The concrete results of this measure are significant given that between the last few months of 2009 and the first two months of 2010, 3,400 applications were examined under the single judge procedure. From June onwards, this measure will concern all Member States of the European Convention on Human Rights and it is then that we will see just how effective it is.

The next important thing is that the European Court of Human Rights has already decided to adjust its internal organisation to implement all the provisions of Protocol No. 14 in respect of all 47 Member States as from 1 June 2010. The Court's Committee on Working Methods and its Committee on the Rules of Procedure have played an important role in this process. For example, the Committee on rules of procedure has taken steps to amend the Court's rules of procedure and bring them into line with Protocol No. 14. On Monday 29 March 2010 the Plenary Court of judges will be asked to approve the required changes to the three-judge committee procedure.

I would also like to mention that we have already started working on one of the problems identified at the Interlaken Conference as a major problem, which explains the heavy workload of the European Court of Human Rights, namely repetitive applications. These applications are not inadmissible but on the contrary justified applications which do not raise any new legal issues. They are in fact the reiteration, by applicants who find themselves in similar situations, of applications already lodged by other applicants in which the Court found a violation of the Convention following judgements for which there is a well-established case law. These applications, which can currently only be examined by a seven-judge chamber, take up a disproportionate amount of the time of judges of the European Court of Human Rights and of members of the Court Registry. They will in future be examined, in accordance with the new provisions of Protocol No. 14, by a three-judge committee.

In view of the excessive number of applications, which in turn leads to excessive delays in handing down judgements, several methods have been established for dealing with repetitive applications. Some solutions depend on Member States themselves, which can apply the subsidiarity principal. That is what happens when a problem is clearly identified at national level, and domestic measures are consequently taken either to avoid fresh applications of the same type being brought before the Strasbourg Court or to try and solve cases which have already been registered through a friendly settlement or a unilateral declaration by the respondent government.

The number of such applications may reflect a systemic or structural problem. With the encouragement of the Committee of Ministers of the Council of Europe, we have established the so-called "pilot judgements'" procedure, which has helped find a clear legal solution to the systemic problem. A mechanism of tripartite co-operation has been established between the Court, the Department for the Execution of the Court's judgements, which is answerable to the Committee of Ministers, and the respondent State, to freeze identical cases to which the same solution could be applied as the one

applied in the pilot judgement. The respondent State is encouraged in the context of this co-operation to take general or individual measures that could offer a solution to many of these repetitive cases.

Discussions on repetitive applications and pilot judgements intensified during the Interlaken Conference. Indeed, at the Court's forthcoming Plenary Assembly on 29 March 2010, the Court's Committee on Rules of Procedure will be mandated to draw up more precise rules for the identification of pilot judgements and the procedures to be followed, which should subsequently be made available to States and applicants.

The need for effective filtering was also discussed at the Interlaken Conference. Paradoxically in the current system, over 90% of cases are manifestly ill founded or inadmissible because most applicants bring their case before the Court without any knowledge of the minimum rules of procedure or the limits of both the Convention and the Court, which is not omnicompetent but operates solely within the framework of its temporal, material and personal jurisdiction.

Filtering helps pinpoint new, serious cases and to devote more time to them than to more straightforward cases which are unlikely to succeed. On this subject I would like to make two comments. First of all, filtering is carried out within the Court without the need for any changes to the Convention. Secondly, the Interlaken Declaration encourages the Court to develop the filtering system, for example by establishing a rotation of the judges so that the filtering is carried out without it always being necessary for the same people to do tedious work. Immediately after the Interlaken Conference, we started discussing the ways in which this filtering might be improved. Some of the proposals made by the delegations, and which are reflected in the Interlaken Declaration, suggest that in the long term a more powerful internal body should be set up within the Court, perhaps even with the possibility of using additional judges. This would obviously require amendments to the Convention. The Action Plan of the Interlaken Declaration includes mandates for the Committee of Ministers and intergovernmental mechanisms to enable it to study the possibilities and perhaps even take the required decisions.

If you don't mind Mr President, I would now like to move on to the subject of the Lisbon Treaty.

As far as the European Union's accession to the European Convention on Human Rights is concerned, the Lisbon Treaty revives an old proposal already set out in the constitutional treaty that was set aside after the "no" vote in the referendums in France and the Netherlands. In this connection I would point out that this idea, which began to circulate in the 1980s, giving the Court of Justice of the European Communities the opportunity to give an opinion on the subject in 1996, did not originate in the European Court of Human Rights. It was initially part of the constitutional project and subsequently of the Lisbon Treaty, which came into force on 1 December 2009. It should however be noted that Protocol No. 14 also allows for the European Union's accession to the European Convention on Human Rights.

As things stand, when an applicant believes, rightly or wrongly, that an act or decision of an EU body violates his or her rights under the European Convention on Human Rights, the application against the European Union is rejected *ratione personae* because by definition the European Union is not party to the Convention. When the European Union accedes to the Convention, the legal situation will be completely different. Applications will not be inadmissible on the aforementioned ground but, on the contrary, the Court will

be able to examine them in accordance with the conditions of admissibility and on their merits.

I personally endorse this project, as I can see the long-term advantage of establishing a single European legal area with a single system for the protection of fundamental human rights standards.

Despite the European Union's clearly expressed political resolve to accede to the European Convention on Human Rights, the entry into force of the Lisbon Treaty and Protocol No. 14 raises substantial legal and technical problems, which are holding up this project. By way of example I would mention the obvious question of the election of a judge in respect of the European Union. The question is whether it is possible to use exactly the same mechanism as is currently used to elect judges or whether it will be necessary to set up a more specific and more complex mechanism; then there are also internal problems which depend more on the Court's internal functioning, such as the jurisdiction of the judge appointed in respect of the European Union; should he or she deal solely with applications against the European Union or also with cases against the other contracting parties and to what extent would the division of the Court into five sections be affected by extending jurisdiction to include the European Union? There will also be problems relating to the execution of a judgement in which the Court finds that there has been a violation of the Convention by an act or decision of an EU body: What action should be taken by the Department for the Execution of the Court's judgements? How should the European Union be represented on this execution mechanism? And so on.

These are complex issues and they must be addressed. The CAHDI will certainly have the opportunity to discuss all these questions concerning the conditions and modalities of the European Union's accession to be European Convention on Human Rights.

Under the Spanish Presidency of the European Union, the European Commission will be mandated to negotiate the conditions and modalities of the European Union's accession to the Convention with the Council of Europe. In this connection, I would like to express two wishes.

First of all I personally would like the European Court of Human Rights to be closely involved in the discussions so that it can give its opinion on the issues raised. The consequences of the EU's accession to the Convention are important for the daily functioning of the Court, for the development of its case law and for interaction between the decisions of the European Union and the decisions taken by Member States. The Strasbourg Court is therefore obviously concerned by the result of the European Union's accession to the Convention. My second concern is that this process should be carefully thought out and not overhasty but rapid nevertheless. If the discussions concerning the modalities and conditions of the implementation of the Lisbon Treaty and Protocol No. 14 take too long, we may lose sight of our fundamental goal.

Finally I would like to mention the EU Charter of Fundamental Rights, which will become binding when the Lisbon Treaty comes into force. Our Court has always considered this document favourably. For example, the European Court of Human Rights has quoted the Charter in some of its judgements, in particular the Goodwin[1] judgement on the rights of transsexuals, which drew on the Charter as the expression of the international

[1] Christine Goodwin v. the United Kingdom judgment (Application No. 28957/95), handed down by the Grand Chamber of the European Court of Human Rights on 11 July 2002, § 58 and § 100.

community's changed attitude towards this subject. The Court welcomes the entry into force of the Charter, which contains so-called "horizontal" clauses making it possible to base the interpretation of articles of the Charter on the Strasbourg Court's interpretation of the Convention in the same fields. Another horizontal provision imposes a minimum level of protection guaranteed by the Charter of Fundamental Rights equal to that of the European Convention on Human Rights. We are therefore convinced that this development with regard to the Charter – which on certain points goes further than the Convention by supplementing and modernising it – will not lead to the erosion of fundamental rights in the European Union.

To finish, I would like to say that I believe that the CAHDI is a particularly appropriate body for dealing with the follow-up to the Interlaken Conference and the question of the European Union's accession to the European Convention on Human Rights. This is a historic moment in the construction of a European legal area.

Thank you for your attention.

APPENDIX VII

Statement by Mr. Sean Hagan, General Counsel and Director of the Legal Department of the International Monetary Fund (IMF)

The views expressed herein are those of the author and should not be attributed to the IMF, its Executive Board, or its management

Chairman, Ladies and Gentlemen:

First of all, let me express my gratitude for the opportunity to be present in Strasbourg for the 39th meeting of the CAHDI. I am delighted on this occasion to present a brief overview of the IMF's activities, and to address the current challenges faced by the institution.

The IMF is an international organization established by a treaty, the Articles of Agreement, and currently has 186 member states. The treaty confers upon the Fund some very specific powers and purposes, which are exhaustive and economic. This specificity is generally understood as precluding the Fund from exercising its powers for political purposes.

The powers of the IMF fall into two categories: financial and regulatory. Regarding the regulatory powers, when countries join the IMF, they incur certain obligations under the Articles of Agreement regarding the conduct of their economic policies, and the Fund has the responsibility for overseeing the performance of these obligations.

With respect to its financial powers, the mandate is rather specific: to provide assistance to members that are experiencing balance of payments problems. When providing this assistance, the Articles of Agreement impose two conditions. First of all, the country must make an effort to resolve, rather than delay, the resolution of the underlying balance of payments problem. Second, the Fund, as a financial institution, must have adequate assurances that it will be repaid, bearing in mind that the maturity of the IMF's loans is shorter in comparison to development banks. In sum, therefore, before the IMF provides any financing, it must be satisfied that the country is adopting economic policies that will enable it to resolve the underlying causes of its economic imbalances within a time framework that will enable the Fund to be repaid. These considerations provide the basis for what is known as the "IMF conditionality". It should be borne in mind that the amount of financing that the Fund can typically provide relative to the needs of its members is somewhat limited. However, the Fund seeks to perform a "catalytic role", through the combination of the IMF's financial commitment and the economic reforms being undertaken. These actions are aimed at creating a degree of market confidence to stem capital flows.

The reforms that members must undertake to resolve their problems often require legal reforms, since economic policy may only be implemented within a legal and institutional framework. This is one of the reasons why our Technical Assistance and Law Reform Unit is actively involved in the area of central bank, commercial bank and insolvency legislative reform.

With regard to the recent financial crisis, many of the IMF's supported-programs have been in Central and Eastern Europe. The problems experienced in those countries are,

at one level, similar to those experienced elsewhere in the last fifteen years. More specifically, countries have been able to finance their growth essentially through opening their financial markets and through extensive external borrowing. While that has reaped big benefits, it has also created - in the countries in question - asset price inflation. The capacity of the country to repay those loans was facilitated by a fixed exchange rate which over time had become overvalued. This overvaluation undermined the competitiveness of those countries, and investors became increasingly nervous about the sustainability of the exchange rates. When there was a reversal of market confidence and these countries realized that they did not have adequate reserves to support the exchange rate, a devaluation in some countries ensued, leading to severe economic dislocation given the fact that the debt is denominated in foreign exchange. In this context, when countries requested financial assistance from the Fund, the assistance often related to the development of a framework for restructuring debt and helping to stabilizing the exchange rate, as well as fiscal and monetary policy adjustment.

While the above features of the crisis – and the Fund's response – is similar to earlier crises, including the Asian Crisis, there are other aspects of the recent crisis that are novel. In particular, the current crisis was precipitated not only by a lack of confidence in the policies of those members who eventually approached the Fund, but also by the economic crisis in the core of the system; i.e., in the United States and Western Europe. The withdrawal of capital was, in no small part, a result of a deleveraging process, as investors sought to cover their positions in those jurisdictions. In that context, some countries in the global economy considered their economies were experiencing a period of instability, notwithstanding the fact that these countries had been pursuing, and continued to pursue, sound economic policies. These countries did not have an immediate need for IMF finances, but wanted to have some financial safety net available in case a crisis appeared. However, they did not wish to approach the IMF, mainly because they considered this as carrying a certain stigma.

Taking into account these concerns, in 2009 the IMF established a new instrument called the Flexible Credit Line (referred to as the FCL). The ***FCL was designed to meet the increased demand for crisis-prevention and crisis-mitigation lending from countries with robust policy frameworks and strong track records in economic performance.*** The qualification criteria are the core of the FCL and serve to demonstrate the IMF's confidence in the qualifying member country's policies and ability to take corrective measures when needed. At the heart of the qualification process for an FCL is an assessment that the member country has very strong economic fundamentals and institutional policy frameworks, is implementing—and has a sustained track record of implementing—very strong policies, and remains committed to maintaining such policies in the future. Once a member qualifies, the resources committed under the FCL are made available to the member without any further conditions. Finally, it is important to note that ***the resources under an FCL*** can be made available even though the country does not experience a balance of payments problem at the time it is requested, the idea being that Fund support will actually help prevent a crisis from occurring. A number of member countries have availed themselves of the FCL, specifically: Mexico, Colombia and Poland.

I will now turn to the second category of the IMF's powers that I referred to earlier, and that is the Fund's regulatory power. I begin by noting that this is both an evolving and complex issue.

When the IMF was established following World War II, countries incurred obligations under the Articles of Agreement in order to maintain the value of their exchange rate.

This approach was taken because of the concern that the economic nationalism in the 1930's was one of the causes of World War II, and this nationalism was manifested through competitive exchange rate devaluations by countries, as they desired to make their economies more competitive. The view after World War II was to create an environment that would preclude such competitive devaluations and the founders of the Fund sought to achieve this through a fixed exchange rate system.

That system broke down in the early 1970's and a flexible exchange rate system was introduced. The IMF's Articles of Agreement were amended, and since then, the obligations of countries under the IMF's Articles allow members to maintain a flexible exchange rate system, with important qualifications. In particular, members are required to following both domestic policies and external policies that support the stability of the overall exchange rate system. Moreover, the Fund is charged with engaging with members on a regular basis to ensure that they are adhering to these obligations. This engagement provides the basis for what is known as IMF surveillance. More specifically, the IMF holds annual consultations with its member countries, to exchange views with the member and focus on whether there are risks to domestic and external stability that argue for adjustments in economic or financial policies.

The current crisis raises a question concerning the extent to which the IMF can perform its surveillance function effectively if it does not exercise extensive oversight of members' financial sector policies. Indeed, one of the lessons of this crisis is that a weak financial sector can have broader and negative macroeconomic implications. In an effort to avoid this situation in the future, there is, at present, an ongoing discussion as to whether it will be necessary to amend the existing legal framework to ensure that the Fund has the capacity to perform this function in an effective manner.

The final issue I will touch upon relates to the decision making process of the IMF. In this regard, I can inform you that the governance structure of the IMF is under discussion with a view to reform. In the IMF, countries exercise their votes, not through a "one country - one vote" system, but through a system of weighted voting power, determined in relation to countries' economic weight in the global economy. Some countries, especially emerging market economies, currently perceive their voting power as understated because of their economic growth over the recent period. The IMF is therefore in the midst of a reform discussion designed to recognize those developments and increase the voting powers of those countries.

A related issue concerns the composition of the IMF's Executive Board. It is important to recognize that the Executive Board is the organ that takes almost all of the key decisions in the IMF. Recommendations concerning these decisions are made by the IMF's Managing Director and the Fund's staff, who are independent of the political process. Under its current configuration, the IMF's Executive Board is comprised of 24 Executive Directors, of which five are appointed by the five members with the largest quotas (currently, the United States, Japan, Germany, France and the United Kingdom). The other nineteen Executive Directors are elected every two years by the remaining members. Members who participate in the regular election of Directors typically form groupings and vote for an agreed candidate. That candidate, once elected as a Director, casts the number of votes equivalent to the votes allotted to each of the members who elected him or her. One of the issues currently under discussion is whether or not those members who presently appoint a Director should be permitted to participate in the regular election of Directors, and therefore possibly allowing them to form constituencies with other members. To allow for this, the Articles of Agreement would have to be amended since, as I noted earlier, the largest five members are required to appoint a

Director, which precludes them from consolidating their voting power with other members.

Different points of view arise from these considerations. For those who favor some consolidation in the representation of Europe at the IMF, moving to an all elected Board would be a step toward permitting this possibility. On the other hand, the tasks of the IMF do not only concern economic policies in Europe, but also economic reforms all over the world, including in Asia and in Africa. On those issues, there may be considerable differences of positions among European countries at the IMF, reflecting not only economic policies differences but also foreign policy differences.

Chairman, Ladies and Gentlemen, I thank you for your attention.

APPENDIX VIII

List of items discussed and decisions taken
Abridged report

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 39th meeting in Strasbourg, on 18 and 19 of March 2010, with Mr Rolf Einar Fife (Norway) in the Chair. The list of participants is set out in Appendix I of the meeting report[1].

2. The CAHDI adopted its agenda as set out in **Appendix I** of the present report. It also adopted the report of its 38th meeting (Strasbourg, 10-11 September 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 for the CAHDI's opinion. In particular, the CAHDI adopted its comments on PACE Recommendation 1888 (2009) – "Towards a new ocean governance", as set out in **Appendix II** to the present report. Moreover, recalling its report on the consequences of the so-called "disconnection clause", the CAHDI stressed the importance of maintaining a coherent approach in the use of such clauses in line with the Ministers' Deputies decision of 10 December 2008[2].

5. The CAHDI considered State practice and case-law regarding State immunities on the basis of contributions by the delegations, including those relevant to the 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, following a decision at its last meeting, the CAHDI exchanged views - on the basis of contributions provided by the delegations to the relevant questionnaire - 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. The CAHDI agreed to keep this item on the agenda of its next meeting and invited delegations which have not yet done so to submit their contributions to the aforementioned questionnaire.

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 welcomed in particular the presentation by the Office of Legal Affairs of Interpol. The delegations were further invited to submit or update their contributions to the relevant database at their earliest convenience.

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[1] Document CAHDI (2010) 14 prov
[2] Document CM(2008)164 CM/Del/Dec(2008)1044/10.6cE / 15 December 2008

7. The CAHDI further discussed the issue of national implementation of UN sanctions and respect for human rights on the basis of contributions by delegations, including those relevant to the CAHDI database. It invited the delegations to submit or update their contributions to the database at their earliest convenience. The Committee also took note of information on 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 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 delegations 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 table summarising the delegations' positions is set out in **Appendix III** to the present report.

11. The CAHDI welcomed the Interlaken Declaration adopted at the High Level Conference on the Future of the European Court of Human Rights on 19 February 2010. The Committee also held an exchange of views with Mr Jean-Paul Costa, President of the European Court of Human Rights, *inter alia*, on the issue of an accession of the European Union to the European Convention of Human Rights.

12. The CAHDI held an exchange of views with Mr Sean Hagan, Director of the Legal Department of the International Monetary Fund.

13. 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) and developments concerning the implementation and functioning of the international criminal tribunals.

14. The CAHDI considered the item regarding follow-up to the Outcome Document of the 2005 UN World Summit. For the next meeting of the Committee, the delegations were invited to consider the need for and possibilities to rephrase this item in order to ensure more focussed discussions, as appropriate.

15. The CAHDI took note of the work undertaken by the Council of Europe in relation to the fight against terrorism, in particular the on-going activity for the establishment of a follow-up mechanism for the effective use and implementation of the CoE Convention on the Prevention of Terrorism (CETS No. 196).

16. The CAHDI considered some topical issues of international law on the basis of contributions from delegations. In particular, the CAHDI took note of the request from the International Law Commission (ILC) to the Jurisconsult of the Council of Europe to

provide comments and observations on the ILC Draft Articles on “Responsibility of International Organisations” by 1st January 2011.

17. The CAHDI took note of the departure of Mr Alexandre Guessel, the Secretary of the CAHDI. The Committee expressed its gratitude for his work and wished him all the best in his future professional activities.

18. Following a kind invitation from the Norwegian authorities, the CAHDI decided to hold its next 40th meeting in Tromsø, Norway, on 16-17 September 2010. The Committee instructed the Secretariat to prepare - in due course and in consultation with the Chair of the Committee - the preliminary draft agenda for this meeting.