

Tromsø, 17/09/10

CAHDI (2010) 27

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

40th meeting, Tromsø, Norway, 16-17 September 2010

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

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 40th meeting in Tromsø, on 16 and 17 of September 2010, with Mr Rolf Einar Fife (Norway) in the Chair. The list of participants is set out in Appendix I of the meeting report¹.

2. The CAHDI adopted its agenda as set out in **Appendix I** of the present report. It also adopted the report of its 39th meeting (Strasbourg, 18-19 March 2010), 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 (DLAPIL) and 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 the opinion on the suggestions made in the Venice Commission report on Private Military and Security Firms and Erosion of the State Monopoly on the Use of Force, as set out in **Appendix II** to the present report. Moreover, the CAHDI adopted two other opinions on Parliamentary Assembly of the Council of Europe (PACE) Recommendation 1913 (2010) – "The necessity to take additional international legal steps to deal with sea piracy" and on PACE Recommendation 1920 (2010) – "Reinforcing the effectiveness of Council of Europe treaty law", as set out respectively, in **Appendix III** and **Appendix IV** to the present report.

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 ratification by its member and observer States of the United Nations Convention on Jurisdictional Immunities of States and Their Property.

In addition, following a decision taken at the 38th meeting, the CAHDI continued to exchange 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

¹ Document CAHDI (2010) 28 prov

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 regarding the enhancement of legal co-operation on extradition matters through INTERPOL. The delegations were further invited to submit or update their contributions to the relevant database at their earliest convenience.

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 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. It also welcomed the contribution of INTERPOL on its co-operation with the United Nations Sanctions Committees.

8. The CAHDI considered the issue of the accession of the European Union to the European Convention of Human Rights. In this respect, the Committee welcomed particularly the information provided by Ms Tonje Meinich, Chair of the CDDH Informal Working Group on the Accession of the European Union to the European Convention on Human Rights (CDDH – UE), Mr Erik Fribergh, Registrar of the European Court of Human Rights and Ms Sonja Boelaert from the Legal Service of the European Commission. In addition, the Committee elected Mr Erik Wennerström (Sweden) as an observer representing the CAHDI within the CDDH – UE.

9. 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.

10. 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.

11. 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 V** to the present report.

12. The CAHDI took note of the report of the International Law Commission (ILC) on the work of its 62nd session. In this respect, the Committee was informed of the outcome of the exchange of views between the ILC, the Chair of the CAHDI and the Director of DLAPIL which took place in Geneva on 20 July 2010.

The CAHDI was also informed by Mr Manuel Lezertua, Director of DLAPIL and Jurisconsult, about the developments regarding the Council of Europe comments and observations on the ILC Draft Articles on "Responsibility of International Organisations". The CAHDI took note that the said Council of Europe draft contribution will be circulated to CAHDI members as soon as possible and in any case before end November 2010. The delegations are invited to

provide possible input therein and to submit the latter to the CAHDI Secretariat as soon as possible and in any case before 15 December 2010.

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. The Committee also considered some topical issues of international law, including the follow-up to the Outcome Document of the 2005 UN World Summit. The CAHDI took note that the information on the work undertaken by the Council of Europe in relation to the fight against terrorism will appear in the meeting report.

14. In accordance with the statutory regulations, the CAHDI elected Ms Edwige Belliard (France), and Ms Concepción Escobar Hernández (Spain), respectively as Chair and Vice-Chair of the Committee for one year, as of 1 January 2011.

15. The CAHDI decided to hold its next meeting in Strasbourg on 17-18 March 2011. It instructed the Secretariat, in consultation with the Chair of the Committee, to prepare in due course the provisional agenda of the meeting.

APPENDIX I

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 39th meeting
4. Statement by Mr Manuel Lezertua, Director of Legal Advice and Public International Law

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:
 - Ad hoc mandate to study the Venice Commission's report on Private Military and Security Firms and Erosion of the State Monopoly on the use of force
 - Request for possible comments of the CAHDI on Recommendation 1913 (2010) – "The necessity to take additional international legal steps to deal with sea piracy"
 - Request for possible comments of the CAHDI on Recommendation 1920 (2010) "Reinforcing the effectiveness of Council of Europe treaty law"
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
 - b. Updates of the website entries
8. National implementation measures of UN sanctions and respect for human rights

9. Accession of the European Union to the European Convention of Human Rights (ECHR):
 - a. Information to be provided by:
 - Ms Tonje Meinich, Chair of the CDDH Informal Working Group on the Accession of the European Union to the European Convention on Human Rights (CDDH – UE)
 - Mr Erik Fribergh, Registrar of the European Court of Human Rights (ECtHR)
 - Ms Sonja Boelaert, European Commission, Legal Service, External Relations
 - b. Election of an observer on behalf of the CAHDI in the CDDH's Informal Working Group on the Accession of the European Union to the European Convention on Human Rights (CDDH-UE)
10. Cases before the ECtHR involving issues of public international law
11. Peaceful settlement of disputes
12. 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

13. The work of the International Law Commission (ILC) and of the Sixth Committee:
 - Exchange of views between the ILC, the Chair of the CAHDI and the Director of DLAPIL, Geneva, 20 July 2010
 - Council of Europe comments and observations on the ILC Draft Articles on “Responsibility of International Organisations”
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. Fight against terrorism - Information about work undertaken in the Council of Europe and other international bodies
18. Topical issues of international law:
 - Follow-up of the outcome document of the 2005 UN World Summit – Advancing the international rule of law

D. OTHER

19. Election of the Chair and Vice-Chair

20. Date, place and agenda of the 41st meeting of the CAHDI
21. Other business

APPENDIX II

OPINION OF THE COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)

ON THE SUGGESTIONS MADE IN THE VENICE COMMISSION REPORT ON PRIVATE MILITARY AND SECURITY FIRMS AND EROSION OF THE STATE MONOPOLY ON THE USE OF FORCE

1. On 21 April 2010, the Ministers' Deputies adopted Decision No. CM/881/21042010, giving ad hoc terms of reference to the Committee of Legal Advisers on Public International Law (CAHDI), to study the suggestions made in the Venice Commission's report on Private Military and Security Firms and Erosion of the State Monopoly on the Use of Force, in the light of the Parliamentary Assembly Recommendation 1858 (2009) on the same subject, and to report back.
2. The Venice Commission considered certain issues taken up by the Parliamentary Assembly Recommendation 1858 (2009) and proposed the following suggestions which appear in Chapter XIV entitled "The Question of a Recommendation before Beginning Negotiations on a Treaty and Concluding Comments" of the report. Accordingly, the Venice Commission considers:
 - "A first matter is the endorsement of the Montreux Document. As already mentioned, this document itself can be seen as a programme for future legislative action by states, with identifiable goals which the Parliamentary Assembly can follow-up on.
 - A second is that states should review their national laws dealing with registration/licensing of private military and security companies (PMSCs), to see if these provide a proper degree of regulation of the extraterritorial activities of PMSCs. The Montreux Document identifies the desirability of doing this, but an express provision in a recommendation would focus states' particular attention on the urgent need to deal with the subject.
 - A third is that states should review their criminal laws/criminal procedure laws, to determine whether there is jurisdiction over serious offences committed by personnel of PMSCs, at least, where these personnel are nationals of the state in question. Again, the Montreux Document identifies the desirability of doing this (see part 2, paras 19, 49 and 71), but an express provision in a recommendation would focus states' particular attention on the subject.
 - A fourth is that states should begin the process of reviewing their civil law systems to determine whether it is possible at all to make claims for damages for extraterritorial civil wrongdoing against PMSCs incorporated in the state, and possibly even their foreign-incorporated subsidiaries, and if not, to consider enacting appropriate legislation on the issue. Again, the Montreux Document identifies the desirability of doing this (see part 2, paras 22, 50 and 72), but an express provision in a recommendation would focus states' particular attention on the subject".
3. The CAHDI examined these suggestions at its 40th meeting (Tromsø, 16-17 September 2010) and adopted, in accordance with the aforementioned ad hoc

terms of reference, the following opinion which is of particular relevance to the mandate of the CAHDI (public international law).

4. From the outset, the CAHDI expresses its appreciation to the Venice Commission for its work on this matter. The Committee observes the growing trend, among some states, for private security and military companies to assume various security and military assignments. The CAHDI takes note of the expressions of concern, as also reflected in the report of the Venice Commission, as regards any activities that would blur distinction between combatants and non combatants. In view of that, the international community is increasingly paying attention to some serious questions arising from the PMSCs' activities and to the need to regulate them.
5. The Venice Commission considered that a possible Council of Europe treaty on this subject would, at the present time, be time-consuming and problematic to draft. In light of the ongoing developments in the framework of the UN and the suggestions made by the Venice Commission in its report, the CAHDI agrees with the latter that it would not be appropriate at the present time to engage into possible negotiations of a Council of Europe treaty regarding the PMSCs.
6. The CAHDI welcomes the initiatives proposed in the Venice Commission's report relating to issues of international concern, namely the specific national review and possible enhancement of the provisions of the internal legal order of Council of Europe member states relevant to PMSCs. In this regard, the CAHDI highlights that national provisions should be reviewed bearing in mind the key objectives of international humanitarian law and, as applicable, the findings of the Montreux Document.
7. In particular, the CAHDI stresses the importance for national civil law systems, criminal laws and criminal procedure laws as well as laws dealing with registration and licensing of PMSCs, especially those applying to PMSCs' extraterritorial activities, to be in line with pertinent international instruments.
8. The Committee recalls that the Montreux Document pursues a humanitarian objective. Moreover, its aim is that of summarising existing international legal obligations. Furthermore, it compiles a range of good practices on the said matter, to be considered by States in their legislative action.
9. With reference to the endorsement of the Montreux Document, as suggested in the Venice Commission report, the CAHDI underlines the importance of future legislative action by States, taking into consideration and disseminating as widely as possible the content of the Montreux Document. The need for further international legal regulation should, as appropriate, be re-considered at a later stage in light of an assessment of the effectiveness of the national steps identified in order to prevent violations of international human rights and humanitarian law in this field.

APPENDIX III

OPINION OF THE COMMITTEE OF LEGAL ADVISORS ON PUBLIC INTERNATIONAL LAW (CAHDI)

ON PARLIAMENTARY ASSEMBLY RECOMMENDATION 1913 (2010) “THE NECESSITY TO TAKE ADDITIONAL INTERNATIONAL LEGAL STEPS TO DEAL WITH SEA PIRACY”

1. On 26 May 2010, the Minister's Deputies communicated Parliamentary Assembly Recommendation 1913 (2010) to the Committee of Legal Advisors on Public International Law (CAHDI) for information and possible comments by 20 September 2010.
2. In its Recommendation, the Assembly recommends that the Committee of Ministers, with the help of a newly mandated expert group or through an already existing mechanism:
 - conduct an in-depth study on member states' practice in dealing with suspected pirates and the state of national criminal law concerning the repression and prosecution of acts of piracy;
 - prepare, according to existing international guidelines, a code of conduct on how to deal with suspected pirates in full compliance with international human rights standards in order to ensure the harmonisation of national criminal legislation on the subject of combating sea piracy;
 - promote the conclusion of international agreements clearly specifying state responsibility for the prosecution of pirates and the elaboration of common procedures to be followed for this purpose;
 - seek appropriate ways in which the existing international legal framework can be adapted to face current needs of policing at sea and consider creating, provided all existing disadvantages in this field are removed, a special mechanism (international or with international participation) for the prosecution of persons suspected of piracy.

The Assembly further recommends that the Committee of Ministers enhance co-operation in combating sea piracy with other international organisations, including the United Nations, the African Union, NATO and the European Union, with a view to eradicating it from the waters off the Somali coast, while ensuring full observance of the requirements stemming from the European Convention on Human Rights and other pertinent international legal instruments.

3. The CAHDI examined the above-mentioned recommendation at its 40th meeting (Tromsø, 16-17 September 2010) and adopted the following comments on aspects of the recommendation which are of particular relevance to the mandate of the CAHDI (public international law).
4. From the outset, the CAHDI agrees that it is necessary for the international community to combat piracy effectively as it is seriously threatening shipping traffic and the safety of people and goods. The CAHDI takes note of the work of the Contact Group on Piracy off the Coast of Somalia, including its Working

Group 2 on Legal Issues, as well as the recent report of the United Nations Secretary General on possible options to further the aim of prosecuting and imprisoning persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia¹ and the appointment of Mr Jack Lang as Special Adviser on Legal Issues related to Piracy off the Coast of Somalia. As noted by the President of the Security Council, the report provides a solid base for future work in order to enhance international, regional and national cooperation in bringing pirates to justice. The CAHDI considers that, as in the past, the United Nations remains the most appropriate institution to discuss the issue of piracy and its legal framework, given the global scope of the law of the sea.

5. The CAHDI first wishes to underline the importance of the existing legal instruments in this field, in particular the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS). Articles 100 to 111 of the Convention provide mechanisms of dissuasion and rules on the legal action to be taken following the arrest of persons suspected of piracy on the high seas.
6. The UNCLOS, a large part of which reflects customary law, is the legal reference in this field given that 160 states or entities, 42 of which are Council of Europe member states, are party to the Convention². The CAHDI therefore recommends that the Ministers' Deputies invite the Council of Europe member states which have not yet done so to consider the ratification or accession to this instrument. The Committee also draws states' attention to the importance of bringing their national legislation on combating piracy into line with the related provisions of the UNCLOS so as to enable, as appropriate, the exercise of national criminal jurisdiction.
7. Furthermore, the CAHDI notes the relevance of the 1958 Geneva Convention on the High Seas – which defines piracy in almost identical terms to those used in the UNCLOS – to states which are not party to the UNCLOS. Certain other international texts may also be relevant to the fight against piracy. In this context, the CAHDI refers to the 1988 International Maritime Organization Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (the SUA Convention), the 1979 International Convention against the Taking of Hostages, the 2000 United Nations Convention against Transnational Crime and the Djibouti Code of Conduct to repress acts of piracy and armed robbery against ships in the Western Indian Ocean and the Gulf of Aden.
8. Concerning the specific situation in Somalia, mentioned in the Parliamentary Assembly's recommendation, the CAHDI evokes the resolutions taken in this context³ by the UN Security Council pursuant to Chapter 7 of the UN Charter. The CAHDI further takes note of the fact that the UN Security Council has expressed its intention to remain seized of this matter.
9. The CAHDI underlines that Council of Europe member states are required to fulfil their obligations under different international human rights instruments, in particular the European Convention on Human Rights. These concern, inter alia,

¹ Reference S/2010/394

² State of signatures and ratifications at the date of 16 September 2010. See following link for further details: <http://treaties.un.org>

³ Resolutions 1816 (2008), 1838 (2008), 1846 (2008), 1851 (2008), 1897 (2009), 1918 (2010) of the UN Security Council and Statement by the President of the Security Council S/PRST/2010/16 of 25 August 2010.

the right to a fair trial, the prohibition of torture and inhuman or degrading treatment, the non-application of the death penalty and respect for the rights of detainees. In this regard, the CAHDI refers to the well-established case law of the European Court of Human Rights⁴.

10. Finally, the CAHDI would underline the importance for states to strengthen international co-operation in launching prosecutions against persons suspected of piracy. In this connection, it notes that important initiatives have already been taken at international level and that these are reflected in the recommendation of the Parliamentary Assembly of the Council of Europe. Moreover, the Committee can but encourage member states and international organisations to conclude further bilateral or regional agreements or to develop joint strategies, while taking into account the existing international law and the demands of national legal systems.

⁴ See, *inter alia*, recently *Medvedyev and others v. France* judgment of 29 March 2010 [GC], No. 3394/03, paras. 64-65

APPENDIX IV

OPINION OF THE COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)

ON RECOMMENDATION 1920 (2010) OF THE PARLIAMENTARY ASSEMBLY ON “REINFORCING THE EFFECTIVENESS OF COUNCIL OF EUROPE TREATY LAW”

1. On 9 June 2010, the Ministers' Deputies forwarded Recommendation 1920 (2010) of the Parliamentary Assembly to the Committee of Legal Advisers on Public International Law (CAHDI) for information and possible comments by 15 October 2010.
2. In its Recommendation, the Parliamentary Assembly asks the Committee of Ministers to:
 - approve an action plan to secure the early ratification by all member States of the core Council of Europe treaties, as defined in the appendix to the Assembly resolution, with the fewest possible reservations;
 - urge member States to withdraw their reservations, derogations and restrictive declarations concerning Council of Europe treaties, particularly the European Convention on Human Rights, and instruct the Committee of Legal Advisers on Public International Law (CAHDI) to intensify its existing efforts in this area and to reduce the use of such clauses;
 - agree on an action programme of new conventions to be drawn up, as a matter of priority, over the next five years;
 - instruct the Steering Committee on Human Rights (CDDH), the European Committee on Legal Co-operation (CDCJ) and the European Committee on Crime Problems (CDPC), in close co-operation with the Council of Europe's Legal Advice Department and the Treaty Office, to examine the binding legal instruments within their respective areas of authority, with a view to identifying:
 - treaties that are still relevant but require updating;
 - treaties that are obsolete and should be abrogated;
 - treaties which have lost their relevance and have not come into force within a certain number of years of their adoption and which should be withdrawn;
 - in the light of changes in European law within the European Union, particularly the advent of framework decisions or community acts, consult the CAHDI on the possible adoption by the Council of Europe of pan-European model acts to supplement its treaties.

Furthermore, the Assembly asks the Committee of Ministers to draw up strict guidelines to control the practice of the so-called disconnection clause in Council of Europe treaties, on the base of the work of the CAHDI, in order to ensure the

- coherence of the Council of Europe treaty law, and to avoid establishing new dividing lines in Europe.
3. The CAHDI examined the above-mentioned Recommendation at its 40th meeting (Tromsø, 16-17 September 2010) and adopted the following comments which are of particular relevance to the activities of the CAHDI and to its mandate (Public International Law).
 4. From the outset, the CAHDI observes that the Council of Europe conventions constitute a unique integrated system of legal standards collectively defined within the Organisation and agreed upon by the member States. The Council of Europe should continue playing a major role in setting standards and developing international law in the areas of human rights' protection, democracy and the rule of law.
 5. In this context, and as regards the issue of reducing the use of reservations, derogations and restrictive declarations, the CAHDI has conducted two specific recent activities in its capacity as European Observatory of reservations to international treaties. Since 1998, the CAHDI regularly considers a list of outstanding reservations to international treaties, concluded within and outside the Council of Europe. Members of the CAHDI are therefore regularly called upon to consider outstanding reservations and declarations and to exchange views on national positions. A table of objections to these clauses is regularly presented to the Committee of Ministers together with abridged reports of the CAHDI meetings. This activity constitutes one of the core activities of the CAHDI.
 6. With regards to reservations to international treaties applicable to the fight against terrorism, the CAHDI has specifically - since its 23rd meeting (4-5 March 2002) - held exchanges on views on possible problematic reservations to regional and universal conventions relating to the fight against terrorism with a view to co-ordinating the positions taken by member States. Since then, the CAHDI has produced a list of possibly problematic reservations. In 2004 the Ministers' Deputies examined the list, and invited the member States concerned to consider withdrawing their respective reservations. They further invited the Secretary General to notify to non-member States the conclusions of CAHDI with regard to their respective reservations and invited member States to volunteer to approach those non-member States with regard to their respective problematic reservations. In 2009 the Deputies took note of a Revised List of Problematic Reservations and Declarations to International Treaties Applicable to the Fight Against Terrorism. The CAHDI stands ready to reopen this activity if such an interest is expressed by States and/or decision-making bodies of the Council of Europe.
 7. Furthermore, the CAHDI takes note of the suggestion of the Parliamentary Assembly to involve the Steering Committee on Human Rights (CDDH), the European Committee on Legal Co-operation (CDCJ) and the European Committee on Crime Problems (CDPC) – together with the Council of Europe's Legal Advice Department and the Treaty Office – in the review of the CoE binding legal instruments with the aim of identifying treaties that require updating, that are obsolete or which have lost their relevance. Taking into account the nature of this activity and the scope of the competence of the CAHDI (public international law), the CAHDI expresses its interest to remain closely associated to this Council of Europe activity. In this respect, the CAHDI would like to recall that it has already conducted activities which are pertinent to this new activity,

suggested by the Assembly in this Recommendation, such as the activities on the role of the depositaries of treaties, within or outside the Council of Europe, on consent of State to be bound by the treaty, and on State succession in Europe relating to treaties.

8. Moreover, the CADHI takes note of the suggestion made by the Parliamentary Assembly Recommendation to “consult the CAHDI on the possible adoption by the Council of Europe of pan-European model acts to supplement its treaties” (...) “in the light of changes in European law within the European Union, particularly the advent of framework decisions or community acts”.
9. In this sense the CAHDI would like to underline that, according to Article 15 of the Statute of the Council of Europe, the Committee of Ministers is the competent body of the Council of Europe to adopt decisions and/or to address recommendations to member States. Additionally, the CAHDI would like to recall that, in this regard, the Statute foresees only two different categories of legal acts to be adopted by the Committee of Ministers, either conventions or recommendations.
10. In response to the Parliamentary Assembly suggestion concerning “pan-European model acts to supplement its treaties”, the CAHDI observes, without ignoring the possible harmonising effect that such model acts might entail, that such a proposal would not be consistent with the Council of Europe treaty practice.

Moreover, the CAHDI observes that States and their authorities should retain the flexibility required to incorporate international treaties into the respective domestic legal orders.

Given that the Council of Europe member States have different systems of transforming treaty obligations into their national laws, it is also not clear whether “pan-European model acts” could be of significant assistance in facilitating the implementation of Council of Europe treaties.

11. Finally, as regards the suggestion of the Parliamentary Assembly concerning the practice of the so-called disconnection clause, the CAHDI recalls its report on the consequences of the so-called “disconnection clause” and stresses the importance of maintaining a coherent approach in the use of such clauses in line with the Ministers’ Deputies decision of 10 December 2008. In this respect, the CAHDI stands ready to work closely with the relevant decision-making bodies of the Council of Europe if the need arises.

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*

◐ 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

PART I / PARTIE I : RESERVATIONS AND DECLARATIONS TO TREATIES CONCLUDED OUTSIDE THE COUNCIL OF EUROPE / RESERVES ET DECLARATIONS AUX TRAITES CONCLUS EN DEHORS DU CONSEIL DE L'EUROPE

- A. Convention on the Rights of Persons with Disabilities and Optional Protocol Thereto / *Convention relative aux droits des personnes handicapées et Protocole facultative se rapportant à la Convention* ; New York, 13 December / décembre 2006
- B. International Covenant on Civil and Political Rights / *Pacte international relatif aux droits civils et politiques*, New York, 16 December / décembre 1966
- C. 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
- D. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime / *Protocole additionnel à la Convention des Nations Unies contre la criminalité transnationale organisée visant à prévenir, réprimer et punir la traite des personnes, en particulier des femmes et des enfants* , New York 15 November / novembre 2000
- E. Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized 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
- F. International Convention for the Suppression of Acts of Nuclear Terrorism / *Convention internationale pour la répression des actes de terrorisme nucléaire*, New York, 13 April / avril 2005
- G. 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

PART II / PARTIE II : RESERVATIONS AND DECLARATIONS TO COUNCIL OF EUROPE TREATIES / RESERVES ET DECLARATIONS AUX TRAITES CONCLUS AU SEIN DU CONSEIL DE L'EUROPE

- A. Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data / *Convention pour la protection des personnes à l'égard du traitement automatisé des données à caractère personnel*, (ETS N° 108), 1 October / octobre 1985
- B. Council of Europe Convention on Action against Trafficking in Human Beings / *Convention du Conseil de l'Europe sur la lutte contre la traite des êtres humains*, (CETS N° 197), 1 February / février 2008

**PART I / PARTIE I : RESERVATIONS AND DECLARATIONS TO TREATIES CONCLUDED OUTSIDE THE COUNCIL OF EUROPE /
RESERVES ET DECLARATIONS AUX TRAITES CONCLUS EN DEHORS DU CONSEIL DE L'EUROPE**

States / Etats	Convention	A				B		C	D	E	F	G
	Reservation/ Réserve	1	2	3	4	5	6	7	8	9	10	11
		Mauritius Maurice	Monaco	Iran (Islamic Republic of) Iran (République islamique d')	Canada	Lao People's Democratic Republic République démocratique populaire lao	Pakistan (Islamic Republic of) Pakistan (République islamique du)	Brazil Brésil	Indonesia Indonésie	Indonesia Indonésie	Morocco Maroc	Yemen
	Deadline Délai	17/01/11	22/09/10	02/11/10	10/03/11	14/10/10	28/06/11	27/09/10	26/10/10	25/10/10	05/04/11	09/03/11
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												

	Convention	A				B		C	D	E	F	G
States / Etats		1	2	3	4	5	6	7	8	9	10	11
	Reservation/ Réserve	Mauritius Maurice	Monaco	Iran (Islamic Republic of) Iran (République islamique d')	Canada	Lao People's Democratic Republic République démocratique populaire lao	Pakistan (Islamic Republic of) Pakistan (République islamique du)	Brazil Brésil	Indonesia Indonésie	Indonesia Indonésie	Morocco Maroc	Yemen
	Deadline Délai	17/01/11	22/09/10	02/11/10	10/03/11	14/10/10	28/06/11	27/09/10	26/10/10	25/10/10	05/04/11	09/03/11
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

PART II / PARTIE II : RESERVATIONS AND DECLARATIONS TO COUNCIL OF EUROPE TREATIES / RESERVES ET DECLARATIONS AUX TRAITES CONCLUS AU SEIN DU CONSEIL DE L'EUROPE

States / Etats	Convention	A	B
		1	2
	Reservation/ Réserve	Azerbaijan Azerbaïdjan	Azerbaijan Azerbaïdjan
	Deadline Délai	06/05/11	01/07/11
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			

Convention / State	A	B
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

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