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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)

Meeting Report

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

Secretariat of the Public International Law and Anti-Terrorism Division,
Directorate of Legal Advice and Public International Law, DLAPIL

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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 40th meeting in Tromsø (Norway) on 16-17 September 2010, with Mr. Rolf Einar Fife in the Chair. The list of participants is set out in **Appendix I** of this report.

2. Adoption of the agenda

2. The draft agenda was adopted as set out in **Appendix II** of this report.

3. Approval of the report of the 39th meeting

3. The CAHDI adopted the report of the 39th meeting (document CAHDI (2010) 14 prov) taking in account the comments and corrections made by the representative of the European Commission. The Committee instructed the Secretariat to publish the report on the CAHDI webpage.

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

4. Mr Manuel Lezertua, Director of Legal Advice and Public International Law, informed the delegations about developments at the Council of Europe. His statement is set out in **Appendix III** to this report.

Mr Manuel Lezertua also introduced Ms Marta Requena, the new Secretary of the CAHDI and Head of the Public International Law and Anti-Terrorism Division, who officially took office on 1 September 2010.

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

- **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.**

5. The Chair presented a compilation of decisions of the Committee of Ministers (document CAHDI (2010) 19). He recalled that on 21 April 2010, the Ministers' Deputies adopted the decision n°CM/881/21042010, which gave ad hoc mandate 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 (document CDL-AD(2009)038), in the light of the Parliamentary Assembly's Recommendation 1858 (2009) on the same subject, and to report back"*. He emphasised that the ad hoc mandate given to the CAHDI expires on 31 December 2010 (document CAHDI (2010) 15).

6. The report of the Venice Commission on Private Military and Security Firms and Erosion of the State Monopoly on the use of force appears in document CDL-AD (2009) 038. The draft opinion of the Committee, which was prepared by the Secretariat and approved by the Chair and the Vice-Chair, appears in document CAHDI (2010) 16 prov and the Chair presented its content. He then drew attention to the contribution of Switzerland, which appears in document CAHDI (2010) 26 and which places accent on the "Montreux Document". He opened the debate on the draft opinion.

7. Several delegations of member and observer states supported the general approach of CAHDI's draft opinion on the propositions made by the Venice Commission in its report. The mention of the CAHDI welcoming the work of the Venice Commission is included in paragraph 4 of the draft opinion.

8. Switzerland's proposition to a formal endorsement of the Montreux Document was supported by a considerable number of delegations which all equally wished that a more accentuated and clearer support was given to this document. Other delegations, in turn, did not think it necessary for the Council of Europe to formally endorse the Montreux Document, given that all of the member States of the Organisation were not present at the time of editing of the document. It was also mentioned that the Montreux Document was very recent and should be given time to evolve.

9. Some delegations considered that paragraph 4 of the CAHDI's draft opinion overstated the concerns posed by private military and security firms and that the terms did not reflect reality in European States. They also requested some terminological modifications to paragraphs 6 and 7 of the draft opinion.

10. Some delegations observed that it was necessary to clarify that Venice Commission's study was a *Soft Law* document that does not consolidate legal obligations. They requested modifications of the draft opinion to that effect.

11. Several delegations expressed concern that the international regulations were considered as the best way to regulate the industry of private military and security firms. It was thus requested that the draft opinion be modified, in particular its paragraph 9.

12. The Chair noted the agreements of the delegations on the draft opinion as per the modifications outlined above. The Secretariat presented the revised draft opinion in light of the comments by the delegations. The CAHDI adopted its opinion on the propositions that were formulated in the Venice Commission report on private military and security firms and erosion of the state monopoly on the use of force, as reproduced in **Appendix IV** to the present report.

**- Request for possible comments of the CAHDI on Recommendation
1913 (2010) – “The necessity to take additional international legal
steps to deal with sea piracy”**

13. The Chair introduced the document containing the draft opinion on the above mentioned Recommendation, which was prepared by the Secretariat and approved by the Chair and the Vice-Chair of the Committee (document CAHDI (2010) 17 prov). He then invited the delegations to comment on this document.

14. One delegation considered the draft to be a good contribution summarising the current regulation well, but a broader reference to ongoing work of the United Nations would work better to raise awareness of existing initiatives. To this end, this delegation asked that the paragraphs about the work of the United Nations were made more accurate and that a general appreciative remark on the work of the United Nations was formulated. These comments were supported by other delegations.

15. Another delegation considered the paragraphs 6 and 13 a bit unclear and it also considered that the CAHDI should put more emphasis on questions of human rights.

16. Several delegations considered that a proliferation of multilateral documents would not make more effective the fight against piracy and that the UN is the most appropriate forum to address this issue. The delegations also stressed that although the Council of Europe can make some

contribution to this area, it is necessary to send a strong message about the collaboration between the Council of Europe and the United Nations, with particular reference to the updated framework of the United Nations. Therefore the majority of the delegations agreed to reformulate paragraph 4, highlighting the fact that the United Nations remains the most appropriate institution to discuss the issue of piracy.

17. One delegation indicated that the text should refer to “piracy” and not “sea piracy” and the CAHDI suggested that although the title of the recommendation refers to “sea piracy”, the text drafted by CAHDI will simply refer to “piracy”.

18. Some delegations considered that paragraph 11 of the draft text was unclear with regard to the responsibilities of States and needed to be modified. It was suggested that this paragraph be reformulated and merged with paragraph 10.

19. Several delegations considered that the text as well as references to the framework of the United Nations and the case-law of the ECHR should be further clarified. The Chair proposed a series of modifications and asked that certain delegations become the focal point for the reformulation of certain paragraphs of the draft opinion.

20. One delegation questioned the reference made to ECHR cases in footnote 3 of the draft opinion. Another delegation considered these cases to be relevant and wished for them to remain in the footnotes of the draft opinion.

21. Several delegations reminded members of the CAHDI that the Committee on Crime Problems (CDPC) had also been invited to give its opinion on the same subject. These delegations encouraged the Committee members to work in collaboration with their colleagues.

22. The Chair announced the modifications, coordinated by focal points, for the reformulation of certain paragraphs of the draft opinion. After discussing the revised draft, the CAHDI adopted the opinion on Recommendation 1913 (2010) of the Parliamentary Assembly of the Council of Europe – “The necessity to take additional international legal steps to deal with sea piracy”, as reproduced in **Appendix V** to this report.

**- Request for possible comments of the CAHDI on
Recommendation 1920 (2010) “Reinforcing the effectiveness of
Council of Europe treaty law”**

23. The Chair introduced the draft opinion of the CAHDI on the above-mentioned recommendation and opened the discussions on this draft (document CAHDI (2010) 18 prov). Some of the Council of Europe documents relevant to this topic are presented for information in the compilation CAHDI (2010) 23.

24. Some delegations asked the Secretariat to inform the Committee of the ideas behind this document, particularly the idea of introducing a pan-European model legislation.

25. The Secretariat stated that the Parliamentary Assembly has recommended that the conventions of the Council of Europe are complemented with a model legislation to help national parliaments adopt the texts. This recommendation is being implemented by the practice of some other international organisations but not by the Council of Europe. In this regard the Secretariat highlighted that such a practice could deprive states of flexibility and freedom when it comes to incorporating treaties into domestic law.

26. Several delegations opposed the idea of a pan-European model legislation. It was highlighted that such legislation would not be necessary for States with a monist system. Given that the

Council of Europe treaties in principle contain binding regulations, it does not seem logical to “re-elaborate” these rules through model legislation.

27. A delegation suggested that the potential of paragraph 10 could be improved and volunteered to coordinate the reformulation of this paragraph.

28. Another delegation offered its assistance for the reformulation of paragraph 11, which makes reference, in an unclear manner, to the use of the so-called “disconnection clauses”. Other delegations recalled the previous work of the CAHDI on this matter.

29. Following the presentation of the revised draft, the CAHDI adopted its opinion on the Recommendation 1920 (2010) “Reinforcing the effectiveness of Council of Europe treaty law”, which is reproduced in **Appendix VI** to this report.

6. Immunities of States and international organisations:

a. State practice and case-law

30. The Italian delegation informed the CAHDI that on 23 June 2010, the Italian Parliament adopted a law providing that the effect of enforcement orders issued by judicial authorities against a foreign State are suspended until the end 2011, whenever a case concerning the establishment of jurisdiction and immunities of that State is pending before the International Court of Justice (ICJ).

31. The observers from the United States provided information on the decision of the Supreme Court in the case of *Samantar v. Yousuf* (decision of 1 June 2010). This case concerns a complaint submitted by Somali individuals against a former senior Somali political leader for alleged violations of human rights and the application in this regard of the *Foreign Sovereign Immunities Act*.

32. The Slovenian delegation informed the CAHDI that the intergovernmental working group for drafting the law on immunities of International Organisations concluded its work in June 2010. Relevant national services are currently preparing the draft law for consideration by the Parliament.

33. The CAHDI also agreed to keep on the agenda of its next meeting the document entitled: “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” (document CAHDI (2010) 6 prov). The CAHDI invited the delegations which have not yet done so to submit their contributions to the aforementioned document.

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

34. The observers from Japan informed the CAHDI that Japan had deposited the instrument of acceptance of the UN Convention on Jurisdictional Immunities of States and Their Property to the UN Secretary General on 11 May 2010. Prior to the deposition, Japan enacted on 1 May 2010 a domestic law to ensure the implementation of the obligations of this Convention.

35. The Italian delegation informed the CAHDI that the Italian government will start the process of ratification of the UN Convention on Jurisdictional Immunities of States and Their Property. The draft law for the authorisation of ratification will be submitted to the Italian Parliament in the near future.

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

36. The representative of INTERPOL informed the CAHDI of the progress made by his organisation on strengthening legal cooperation in the field of extradition through INTERPOL. The modernisation of INTERPOL's international system of transmission of arrest warrants, commonly referred to as the system of "red notices" was presented in detail. INTERPOL's contribution on this matter appears in document CAHDI (2010) 24.

37. The Chair reminded the CAHDI delegations of the standing invitation to present orally information on national developments concerning the functioning of their Office of the Legal Adviser (OLA) and to contribute to the relevant database on a regular basis. In this regard, the Chair pointed out that the information on the functioning of other offices could be useful in improving the efficiency and effectiveness of national OLAs.

38. The Chair then noted that Lithuania had recently contributed to the website by updating information on the organisation of the Office of the Legal Adviser of the Ministry for Foreign Affairs. The delegations were thus invited to submit or update their contributions to the website at their earliest convenience.

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

39. The Chair presented the documents related to this item (CAHDI (2010) 7 prov, 25 & 11 rev) and then opened the debates.

40. A delegation presented information on the case of a couple which had been listed by the United Nations Security Council Committee on Al-Qaida and Taliban Sanctions (Committee 1267) between 2003 and 2009. Following a long procedure and the removal from the list, the couple has submitted a case before the national tribunal on grounds of moral and material damages.

41. The representative of the European Commission gave the CAHDI members an update on relevant developments in the EU legal framework since the last CAHDI meeting. Reference was made to the judgement of the European Court of Justice of 29 April 2010 in the case n° C-340/08, in which the Court excluded social security benefits from the scope of the EC Regulation n° 881/2002 concerning the freezing of funds of suspected terrorists. Another reference was made to a judgment of the Court of Justice (Grand Chamber) of 29 June 2010 in the case n° C-550/09 concerning the interpretation of Articles 2 and 3 of the EC Regulation n° 2580/2001 of 27 December 2001, concerning specific restrictive measures directed against certain persons and entities with a view to combating terrorism and the challenge – before the national court – of the validity of the decision of the Council to put an organisation on the list provided for in Article 2, paragraph 3, of the above-mentioned Regulation. The CAHDI was also informed that the Court now examines other cases involving different sanctions regimes (sanctions against the Burmese regime, sanctions against the People's Mojahedin Organization of Iran (PMOI)). As for the second Kadi case, it will be considered on 30 September, 2010.

42. The representative of INTERPOL reported on recent developments in the context of cooperation between INTERPOL and the United Nations. At the request of the Security Council, INTERPOL is working with the 1267 Committee to create lists entitled "United Nations special notices". In order to improve this collaboration three important measures are being negotiated. The first measure consists of expanding the cooperation of INTERPOL with all UN Sanctions

Committees and not only with the 1267 Committee. The second measure focuses on improving the quality of the notices, particularly with the establishment of a system of mutual sharing of information with police forces worldwide. The third measure consists of increasing the systems of guaranties. The UN Sanction Committees are in favour of giving a more important role to INTERPOL. These policies aim to improve the quality and thereby the legitimacy of the cooperation system. More detailed information on INTERPOL's cooperation with the United Nations appears in document CAHDI (2010) 25.

9. Accession of the European Union to the European Convention of Human Rights (ECHR):

43. The Chairperson welcomed and thanked the guests of the CAHDI for the discussion on the accession of the European Union to the European Convention of Human Rights (ECHR) (hereafter "The Convention") and opened the discussion.

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)

44. Ms Meinich informed the CAHDI that the CDDH-UE received a general mandate from the Committee of Ministers in May 2010 to elaborate a legal instrument for the accession of the European Union to the Convention. The members of the informal subgroup are elected as experts and not as representatives of the respective member States. The European Union is directly involved through the representative of the European Commission. Ms Meinich presented the conclusions of the first meeting of the group, which was devoted to an exchange of views on the working method (document CDDH-UE (2010)05).

45. Ms Meinich informed the CAHDI that a number of general principles, which will guide future work, had been highlighted, such as: the necessity to preserve the Convention system as it exists, limiting the amendments and adaptations of the system to what is strictly necessary for the accession of the EU, as a non-state entity with a complex legal system; the necessity to respect the distribution of competencies between the EU and its member states, as well as between EU institutions; the work must rely on the current system of the Convention, bearing in mind the need to ensure that future reforms of the system will apply to all current and future State Parties, as well as to the EU.

46. Concerning the form of the accession treaty, two options have been envisaged: either a protocol amending the Convention or an accession treaty between the EU and the 47 Member States. The second option – current working hypothesis – includes a series of advantages: the EU will directly be bound by all provisions, and the treaty will make it possible to take into account not only the question of the accession, but also other issues.

47. Ms Meinich presented to the CAHDI a preliminary list of substantive issues to be examined, as established by the informal working group (document CDDH-UE (2010) 06 rev). These topics are grouped into different categories: the first category relates to general issues, such as the operational provision providing for the EU accession to the Convention, the accession to additional protocols, the formulation of reservations, declarations as well as eventual derogations. The second category concerns more technical questions related to the nature of the EU as a contracting party, i.e. amendments to the Convention or other instruments (e.g. the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights). Regarding this last point, it is emphasised that the changes to be made to the system of the Convention will be minimal and that the amendments to other instruments of the Council of Europe should be limited to those strictly necessary. The third category concerns the procedure before the European Court of Human Rights, and the fourth category concerns financial and

institutional issues, such as the question of the status and participation in the European Court of Human Rights of a judge elected in respect of the EU or the participation of the EU in the expenses related to the Convention system. The fifth category relates to the final clauses (issues relating to signature, ratification, entry into force, etc.)

48. The objective of the informal working group is to identify obstacles or problems concerning the accession of the EU to the Convention and to find legal solutions to them; at the end of the mandate of the informal working group, it will prepare a draft text. Ms. Meinich expressed her appreciation for the expertise of the CAHDI and its possible future contribution to the work of the Group.

- Mr Erik Fribergh, Registrar of the European Court of Human Rights (ECtHR)¹

49. Mr Erik Fribergh first emphasised that the Court is ready to contribute to the exercise at a later stage, if such a desire is expressed. As a Registrar, Mr. Fribergh explains that the problems posed by the accession can be solved, but also calls for caution in order not to create new ones. He recognises the important role of the CAHDI in this process.

50. Regarding legal issues of accession, most of these problems are merely technical in nature and will be easy to solve. However, two substantial points require consideration, namely the mechanism of co-defendant and procedural means to ensure prior involvement of the Court of Justice of the European Union in cases where the compatibility of legislation of the EU with the European Court of Human Rights is concerned. In this regard, Mr. Fribergh also raises the question of the principle of subsidiary. For this principle to be respected it is necessary to have a mechanism where the European Court of Justice can be seized for any question relating to European Union law before the case is brought before the European Court of Human Rights.

51. Finally, Mr. Fribergh envisaged the possibility of provisional implementation while pending ratification by all States.

52. Mr Fribergh concluded that the European Union's accession to the ECHR was an important step for the protection of human rights both inside and outside Council of Europe member States. The question was important for the Council of Europe as an institution. Mr Fribergh encouraged all concerned parties to ensure, as far as possible, that the accession process was simple and efficient.

- Ms Sonja Boelaert, European Commission, Legal Service, External Relations

53. Ms Sonja Boelaert presented the framework and the legal context of EU accession to the Convention. In legal terms, Ms. Boelaert recalled that Article 6.2 of the Treaty on the European Union stipulates that "*the Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.*" The accession will permit, among other things, a more harmonious development of the case law of the European Court of Human Right and the Court of Justice of the European Union.

54. Ms. Boelaert also recalled the procedure for negotiating a participation agreement under section 218 of the *Treaty on the Functioning of the European Union* and underlined the complexity of the process. She then highlighted the main principles that the EU should follow during the

¹ *Note of the Secretariat:* The speech of Mr Fribergh was distributed by email to the members of the CAHDI on 22 September 2010. It is also published on the restricted website of the CAHDI.

negotiations, for example the principle of neutrality and the principle of autonomous interpretation of the law of the European Union by the EU institutions.

55. On items requiring substantial reflection, Ms. Boelaert evoked the need of adapting the system of the European Convention on Human Rights; the accession of the EU to the relevant protocols of the Convention; the issues of exhaustion of domestic remedies and the mechanism of co-defendant. She also noted that at an institutional level, there is a question of distinction between the jurisdiction of the EU and that of the States.

56. The CAHDI thanked the speakers for their presentations. In the exchange of views which followed some delegations expressed concerns about the idea of provisional application. In some States, the treaties that affect legislative issues require the approval of the Parliament and therefore, provisional application would be problematic. It was stressed that the issue of provisional application would raise constitutional problems for some States. Moreover, such an agreement cannot enter into force with a reduced number of ratifications.

57. One delegation questioned the impact of a finding by the Court of Strasbourg of a violation of the European Convention on Human Rights by a text of the European Union.

58. Another delegation stressed that the system which will be established through the accession of the EU to the Convention should not make the process of individual application to the European Court of Human Rights more complex and procedurally difficult.

59. Other delegations representing non-member States of the EU were concerned about creating a complex and vague system within the Convention. Moreover, in the hypothesis of the decision of the European Court of Human Rights on the incompatibility with the Convention of certain aspects of the European Union law, the question arises on its impact on national legislation transposing the European Union law.

60. The Chair concluded this point by stressing that the CAHDI wished to support the accession of the European Union to the European Convention on Human Rights and was prepared to assist the reflection process on the accession.

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)

61. The CAHDI elected Mr Erik Wennerström (Sweden) as an observer on behalf of the CAHDI in the CDDH-UE.

10. Cases before the ECtHR involving issues of public international law

62. The Slovenian delegation informed the CAHDI of the case *Ališič and others v. Slovenia* and five other successor States of former Yugoslavia concerning the protection of their private property in the process of succession of States.

63. The British delegation gave a series of updates to the CAHDI on cases against the United Kingdom, notably on the cases of *Al Saddoon and Mufhdi*, *Jones and Mitchell & others*. The CAHDI was also informed that in the cases of *Al-Skeini and others*, and *Al-Jedda*, the hearing before the Grand Chamber is scheduled for June 9, 2011.

11. Peaceful settlement of disputes

64. The CAHDI considered the information at its disposal regarding the jurisdiction of the International Court of Justice under international treaties and agreements. It considered, in particular, the list of Council of Europe's member and observer states which are Parties to the aforementioned instruments (document CAHDI (2010) 20). The Committee invited the delegations to submit to the Secretariat any relevant information on this matter.

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

65. The Chair introduced the document containing reservations and interpretative declarations concerning international treaties (CAHDI (2010) 21 rev) and opened the floor for discussion on reservations and declarations made in respect of treaties that have not been developed within the Council of Europe.

66. Regarding **the reservations made by Mauritius** to the *UN Convention on the Rights of Persons with Disabilities and its Optional Protocol*, the Dutch delegation noted that the reservations have a limited impact and recalled that the Netherlands were not yet a party to the aforementioned Convention.

67. The delegations of Moldova and Luxembourg observed that their respective States did not intend to make an objection to these reservations.

68. Regarding **the declaration** of Iran to the same instruments, the Italian delegation informed that Italy intended to object as soon as possible to the declaration made by Iran; its vagueness and imprecision does not allow the other Parties to know the extent of the commitment of the Islamic Republic of Iran.

69. The French and Belgian delegations declared, on behalf of their respective States, that they had already objected to Iran's declaration; France did so in March 2010.

70. The Austrian, German and Swedish delegations declared, on behalf of their respective States, that they intended to object to Iran's declaration.

71. The delegations of Norway, Germany, Ireland and Finland – on behalf of their respective States and although they are not Parties to the Convention – considered that such kind of reservation should give rise to objections. They will consider this issue when ratifying the Convention.

72. The observer from Canada stated that his country considered Iran's declaration as contrary to the object and purpose of the treaty. No formal decision to object has yet been made, but Canada views the declaration as problematic.

73. The British delegation stated that the United Kingdom found Iran's declaration to be problematic and that it is likely to object for the same reason as Italy.

74. The Mexican delegation indicated that Mexico was currently considering the possibility of objecting to Iran's declaration.

75. The Czech, Dutch and Slovak delegations stated that they were considering objecting to Iran's declaration.

76. Regarding **the reservation and the declarations made by the Lao People's Democratic Republic** to the *International Covenant on Civil and Political Rights*, the Belgian and Romanian delegations indicated that their respective States had some concerns regarding Lao's reservation and that they were currently considering the possibility of objecting to it.

77. The observer from the United States of America and the Dutch and Spanish delegations stated that they were currently closely examining the reservation and declarations. Their respective States considered that it would be useful if Laos provided explanations on the exact meaning of its reservation. The United States of America considered that there was no guarantee that the reservation was compatible with the object and purpose of the Convention. The Spanish delegation indicated that Spain had asked Laos twice for some clarification and had received no response.

78. The Greek delegation indicated that Greece was still at the stage of examination of this reservation. The Greek delegation first noted that the reservation contained an interesting interpretation of the right to self determination, but that it was vague and did not allow to understand the extent of Lao's commitment. The Greek delegation stated that for now, Greece had no intention of objecting to the declaration. This position was supported by the Swedish and Finnish delegations. The Finnish delegation stated that Finland was considering the eventual possibility to object to the reservation.

79. The British delegation stated that the United Kingdom was still in the process of examining the reservation and that it expected to obtain clarification from the Republic of Lao on the subject.

80. The Canadian and Irish delegations stated that they were still examining the reservation by Lao, considering it to be vague.

81. Regarding **Pakistan's reservation** to the same instrument, the Norwegian delegation expressed concern with regard to the general reservation on the Sharia laws but also with regard to the reservation on the reporting mechanism in Article 14. The Norwegian delegation considered that the reservation could be contrary to the object and purpose of the Convention.

82. The Dutch delegation indicated that the Netherlands would object to the Pakistani reservation in a timely manner.

83. The British delegation pointed out that the United Kingdom had very serious concerns about the reservation; however, the United Kingdom had initiated a process of dialogue with the authorities in Islamabad, and expected to reach a constructive dialogue, the United Kingdom's objective being for Pakistan to withdraw or modify the reservation.

84. The Greek, Finnish, Belgian and Swedish delegations expressed interest and support for the initiative taken by the United Kingdom to initiate a dialogue. The Belgian delegation urged other CAHDI members to fully support the United Kingdom's efforts.

85. The observer from Canada expressed agreement with the other delegations regarding the problematic nature of Pakistan's reservation.

86. The observer from the United States of America stated that the United States of America were concerned about Pakistan's reservation and the fact that Pakistani authorities had not clarified it.

87. The Greek delegation stated that Greece considered Pakistan's reservation to be one that should be objected to.

88. The Finnish delegation stated that Finland considered that the reservations called for an objection, especially the reservation to Article 40 of the Convention. However, Finland was still in the early stages of the decision making process.

89. The Belgian delegation stated that Belgium, and possibly all member States of the European Union, were pleased that Pakistan had become party to Human Rights instruments but expressed its concern over Pakistan's reservation.

90. The French delegation stated that France held the same preoccupation as the previous delegations. This opinion was also shared by the Swedish and Spanish delegations which were considering the possibility of formulating an objection.

91. Regarding **Brazil's reservation** to the *Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the Abolition of the Death Penalty*, the Finnish delegation stated that the absence of communication by Brazil to the United Nations Secretary General of the relevant provisions of its national legislation applicable during war time was problematic, as such reservations required a thorough review and clarification. For this reason Finland was considering objecting to it.

92. The Spanish delegation indicated that Brazilian representatives had reported that the purpose of the reservation was to guaranty the applicability of Brazilian national legislation on the death penalty in the context of armed conflicts. Some unresolved issues were still remaining. The Spanish authorities had asked Brazil for clarifications but had received no response yet.

93. The Dutch delegation stated that if Brazil forwarded the relevant national legislation before 27 September, the Netherlands would not object to the legislation.

94. The Portuguese delegation indicated that Portugal had asked Brazil for a clarification regarding what likely is a terminological error but had not yet received an answer.

95. Regarding **Indonesia's declaration and reservation** to the *Additional Protocol of the United Nations Convention against Transnational Organized Crime, to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, the observer from the United States of America stated that the declaration was unclear but that the United States did not intend to object to it.

96. Regarding **Yemen's reservation** to the *International Convention for the Suppression of the Financing of Terrorism*, the Swedish delegation stated that Sweden had some concerns with the reservations formulated with respect to Article 2 paragraph 1.b) and therefore considered joining the States which had already formulated an objection to it.

97. The Hungarian delegation stated that Hungary was considering objecting to Yemen's reservation.

98. The French, Italian and Latvian delegations indicated that their respective countries had already objected to Yemen's reservation.

99. The British delegation indicated that the United Kingdom intended to object to Yemen's reservation to Article 2 of the Convention.

100. The Austrian delegation indicated that Austria intended to object to Article 2.1, b). The Mexican delegation indicated that Mexico was considering objecting to Article 2.1, b).

101. The Belgian delegation stated that Belgium was concerned by Article 2, paragraph 1 and intended to object.

102. The Irish and Dutch delegations as well as the observer from the United States of America stated that their respective States intended to formulate an objection.

103. The Norwegian, Finnish and Estonian delegations stated their respective States were examining the formulation of an objection to Article 2, paragraph 1 of the reservation.

104. The Chair opened the floor for discussions on the second part of the document, containing reservations and declarations to treaties concluded within the Council of Europe.

105. Concerning **Azerbaijan's declaration** to the *Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data*, the Dutch and Finnish delegations stated that their respective States were concerned by the consequences of this type of bilateral declaration in a multilateral agreement. Their respective States intended to analyse it carefully before drawing any conclusions.

106. The table summarising the positions of the delegations appears as **Appendix VII** to this report.

107. In conclusion, the Moldovan delegation informed the CAHDI that the Republic of Moldova had started to review a number of its reservations concerning international treaties. Approximately 80 international instruments were being considered, 20 of which referred to Human Rights. The Moldovan delegation hoped that before the next CAHDI meeting Moldova would have withdrawn approximately 20 formulated reservations limiting the territorial application of the Human Rights Convention to Transnistria.

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 Chairperson of the CAHDI and the Director of DLAPIL, Geneva, 20 July 2010

108. Mr. Manuel Lezertua reminded the CAHDI that the annual meetings between the Council of Europe and the ILC had become a tradition since the 90s. The Committee was informed of the *exchange of views between the ILC, the Chairperson of the CAHDI and the Director of DLAPIL* which took place 20 July 2010 in Geneva. The presentations of the President and the Legal Adviser were followed by an hour-long exchange of views with members of the Commission who had expressed a particular interest in a number of recent activities of the Council of Europe, especially those concerning relations between the Council of Europe and the EU. The representatives of the Council of Europe reported on the *Memorandum of Understanding* which was signed between the two Organisations and on the priority question of EU accession to the ECHR following the entry into force of the Treaty of Lisbon. The entry into force of Protocol 14 and the topicality of cases pending before the Court were also discussed.

109. *Concerning the activities of the ILC*, several delegations shared concerns about two topics covered by the ILC during its sixty second session (2010) and which would certainly be discussed at the Sixth Committee in autumn 2010: the expulsion of aliens and the reservations.

110. Several delegations, although they acknowledged the merits of the work of the *Special Rapporteur on the "expulsion of aliens"*, formulated reservations about the appropriateness of the consideration of this broad topic by the ILC, particularly due to the fact that the provisions of several instruments regarding Human Rights cover this issue. They intended to raise this question during the debate of the Sixth Committee on this issue.

111. A number of delegations also stated that the report on the expulsion of aliens contained a number of factual and legal errors, and that this issue would also be raised before the Sixth Committee. Following the concerns expressed about this report and the inaccuracies contained

therein, the Chair invited the CAHDI delegations to carefully examine the report, particularly the references made to national legislation but also the legal and factual issues.

112. Some delegations expressed their appreciation of the work initiated by the *Special Rapporteur on Reservations to Treaties*. However, they expressed certain concerns on the draft guidelines on "invalid reservations". They considered the report as a good theoretical study and as a work of *lege ferenda rather than a work of lege data*. Nevertheless, two delegations indicated that given the volume of the report and the great number of details, this report does not constitute a very practical guide. Furthermore, it was stated that the volume of the report does not allow for its thorough analysis before the next session of the Sixth Committee.

113. On the issue of invalid reservations, one delegation considered that on this topic the report proceeded with rather a progressive development than with a codification, and expressed its doubts about the fact that States would follow the direction recommended by the Special Rapporteur. Reference was also made to the principles drawn from the case-law of the European Court of Human Rights which was presented in the report. In this regard, it was underlined that the practice of this Court could not have a universal application given the cultural diversity of the countries in the world. It was also difficult to support the presumption of its applicability to treaties which do not concern Human Rights.

114. The observer from the United States of America informed the CAHDI that the United States of America would present a candidate – soon to be designated – for the elections to the ILC in 2011.

- Comments and observations of the Council of Europe on the draft of the ILC Articles on "Responsibility of International Organizations"

115. Mr. Lezertua recalled that at the request of the ILC, the Jurisconsult of the Council of Europe received a letter from the Under Secretary General for Legal Affairs and United Nations Legal Counsel regarding the ***Draft Articles on "Responsibility of International Organizations"*** adopted by the Commission at first reading (CAHDI document (2010) Inf 7). In accordance with Articles 16 to 21 of its Statute, the Commission requested that the Draft Articles should be transmitted to the governments of the member States and to international organisations for comments and observations by 1 January 2011.

116. Regarding a possible contribution of the Council of Europe to the Draft Articles, Mr. Lezertua informed the CAHDI that the Legal Department of the Council of Europe would hold a meeting with different departments of the Organisation which could be concerned in order to obtain all relevant information. In this regard, he highlighted in particular that the Research Division of the European Court of Human Rights would be requested to prepare a summary of the case-law of the Court which concerns directly or indirectly areas covered by the Draft Articles of the ILC.

117. The Chair recalled a discussion, which took place during the 39th session of the CAHDI. He noted that the contribution would not engage the CAHDI or the Committee of Ministers, but had to reflect a comprehensive and common approach. The Chair also pointed out that the report should be succinct and emphasised that the Secretariat would have the last word on its contents.

118. Following a delegation's request on the participation of members of the CAHDI in the drafting of the contribution of the Council of Europe and on the procedure for reviewing the contribution, the Chair suggested that the Secretariat of the Council of Europe communicate the draft contribution to CAHDI members, for information and possible comments. However, the CAHDI will not adopt a common position on this contribution.

119. Another delegation expressed its support to the Jurisconsult for this undertaking, and for the proposal to include in the Council of Europe contribution an information on relevant cases of the European Court of Human Rights.

120. The representative of the European Commission stated that it was preparing at the present time the final comments on this draft.

121. In conclusion, the Chair considered that given the deadline established by the Commission and the meeting schedule of the CAHDI, the CAHDI could examine the contribution of the Council of Europe by a written procedure

122. The CAHDI noted that the aforementioned draft contribution of the Council of Europe would be circulated to CAHDI members as soon as possible and in any case before the end of November 2010. The delegations were invited to submit all relevant information on this subject to the Secretariat as soon as possible and in any case before 15 December 2010.

14. Consideration of current issues of international humanitarian law

123. The representative of the International Committee of the Red Cross (ICRC) informed the CAHDI of the upcoming finalisation of a study on the current state of international humanitarian law. In this study, which was launched in 2007, the ICRC concluded that international humanitarian law had to be strengthened in several areas, specifically the protection of persons deprived of their liberty in non-international armed conflicts, the application of international humanitarian law and the reparations of victims of rape, the protection of natural environment and the protection of internally displaced persons. Referring to its mandate, the ICRC will begin a dialogue with States and other interested stakeholders on its implementation. After these discussions, the ICRC will decide whether or not to submit concrete initiatives to strengthen international humanitarian law.

124. The ICRC representative then referred to the creation of a database on customary international humanitarian law. It is easily and freely accessible and will be regularly updated with entries on state practice and case law.

125. The ICRC representative informed the CAHDI that the "*Third universal meeting of National Committees for the implementation of international humanitarian law*" would be held in Geneva on 27 to 29 October 2010. The meeting will focus specifically on legal measures and national mechanisms for sustaining an integrated system of sanctions for serious violations of international humanitarian law.

126. The Norwegian delegation announced to the CAHDI that the Convention on Cluster Munitions came into force on 1 August 2010. The British delegation announced that, following the ratification of the Convention by the United Kingdom, the United Kingdom would now attend the first meeting of the Parties to the Convention, scheduled to take place in Vientiane (Laos) in November 2010.

15. Developments concerning the International Criminal Court (ICC)

127. The Norwegian delegation reported on the positive feedback on the Review Conference of the Rome Statute, held in Kampala, Uganda. The Conference was particularly characterised by the presence of high-level participants and by the important decisions being made, *inter alia*, the adoption of the amendment on the crime of aggression and that on Article 8 paragraph 2 e) of the Rome Statute aiming to extend the jurisdiction of the Court, on war crimes, to the use of certain weapons.

128. The Liechtenstein delegation informed the CAHDI of Liechtenstein's decision to ratify as soon as possible the amendments adopted in Kampala.

129. The Moldovan delegation informed the CAHDI that Moldova had ratified the Rome Statute.

130. The Greek delegation expressed its satisfaction with the Kampala Conference, which it considered to be fully success, especially in respect of the definition and conditions of the exercise the ICC jurisdiction on the crime of aggression, despite the difficulties faced during the Conference.

131. The observer from the United States of America pointed out that for the United States. It was important to strengthen its links with the Court. In particular, the United States want to continue working with the Prosecutor. After his return from Kampala, the ambassador of the United States held a press conference during which he highlighted the positive aspects of the Review Conference. However, at the same press conference, it was stressed that US nationals were not subject to the jurisdiction of the Court; this is an important aspect for the United States. Furthermore, the representative of the United States expressed concerns about the amendment mechanism as such. He finally announced that for the United States, the ICC has no jurisdiction over States which have not ratified the Statute.

132. The observer from Japan welcomed the progress made during the Review Conference of the Rome Statute, which took place in Kampala and stressed the importance of basing the application of international criminal justice on the principle of legality and not the basis of *ex post facto* law.

133. However, the observer indicated that though Japan did not join the consensus in Kampala, neither did Japan oppose it. He informed the Committee that, without going into details, the concerns expressed in Kampala remain as they were, and that Japan still believes that in this respect a more profound analysis was needed.

134. As far as Japan was concerned, the ICC Statute inherently requires the highest level of legal clarity and integrity, and the amendments in Kampala lacked legal clarity and coherence as shown by the last-minute compromise. The observer noted nevertheless that no progress could have been achieved without such compromise.

135. The Japanese observer further specified that Japan has particular concerns as to the legality of the amendment procedures. Additionally, concerns were expressed regarding the lack of legal coherence of the adopted provisions allowing, according to Japan, for different interpretations as to the exercise of jurisdiction.

136. Finally, the CAHDI was informed that it was not the intention of Japan to propose a re-negotiation of the adopted provisions, but specified that to ignore confusions and ambiguities left over from the Conference was not a solution either. In this respect, the observer specified that it is incumbent upon the State Parties to clarify legal ambiguities and loose ends as much as possible in order to share a common understanding and to avoid an inefficient functioning of the amended Statute. For that purpose, Japan looks forward to working closely with the concerned Parties.

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

137. The CAHDI agreed on keeping this item on the agenda of its next meeting.

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

138. Ms Marta Requena, Head of the Public International Law and Anti-Terrorism Division of the Council of Europe, presented to the CAHDI recent developments within the Council of Europe in the area of the fight against terrorism. Ms Requena mentioned firstly, the establishment by the Committee of Experts on Terrorism (CODEXTER) of a follow-up mechanism on the implementation of the *Convention on the Prevention of Terrorism [CETS no. 196]*. The *suis generis* nature of the mechanism was emphasised because the latter was not foreseen in the Convention, and the system was set up following the decision of the Committee of Ministers on the proposal of the

States Parties to the Convention and the mechanism was different from other systems that already exist within the Council of Europe.

139. Furthermore, Ms Marta Requena informed the CAHDI that the United Nations Security Council Counter-Terrorism Committee had accepted the Council of Europe's invitation to host the *Special Meeting of the Committee with International, Regional and Sub-Regional Organizations*. This meeting will take place in Strasbourg from 19 to 21 April 2011.

18. Topical issues of international law

140. The Russian and Norwegian delegations informed the CAHDI of the successful negotiations between the Russian Federation and Norway which led to an Agreement on the delimitation of maritime waters, signed at Murmansk on 15 September 2010.

141. The delegation of "the former Yugoslav Republic of Macedonia" delegation invited all CAHDI members to a Conference on "Strengthening Subsidiarity: Integrating the ECHR case law in national legislations and judicial practices", which will take place on 4 and 5 November 2010 in Skopje.

142. The Dutch delegation informed the CAHDI of the ongoing prosecution in the Netherlands of the President of Surinam.

143. Concerning the follow-up of the outcome document of the 2005 United Nations World Summit - Advancing the international rule of law, the CAHDI recalled the decision taken at its 39th meeting and in the absence of proposals for the reformulation of this point, the Committee agreed to come back to this subject in the future with an aim to ensure, where appropriate, more focused discussions.

144. The CAHDI agreed on keeping the question of topical issues of international law on the agenda of its next meeting.

D. OTHER

19. Election of the Chairperson and Vice-Chairperson

145. The Secretariat recalled that the mandates of Mr. Rolf Einar Fife (Norway) and Ms Edwige Belliard (France), respectively Chair and Vice-Chair of the CAHDI, expire at the end of 2010. Pursuant to the statutory regulation, the CAHDI elected Ms. Edwige Belliard (France) and Ms. Concepción Escobar Hernández (Spain), as respectively Chair and Vice-Chair of the Committee, for one year, with effect from 1 January 2011.

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

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

22. Other business

147. The CAHDI closed its 40th meeting by adopting the abridged report as reproduced in **Appendix VIII** of this report.

APPENDIX I

LIST OF PARTICIPANTS

ALBANIA/ALBANIE: Apologised/Excusé

ANDORRA/ANDORRE: -

ARMENIA/ARMENIE: -

AUSTRIA/AUTRICHE:

Mr Helmut TICHY, Ambassador, Legal Adviser, Federal Ministry for European and International Affairs

AZERBAIJAN/AZERBAIDJAN: -

BELGIUM/BELGIQUE:

M. Paul RIETJENS, Directeur général des Affaires juridiques, Service public fédéral des Affaires Etrangères

M. Patrick DURAY, Conseiller Général à la Direction Générale des Affaires Juridiques, Service public fédéral des Affaires Etrangères

BOSNIA AND HERZEGOVINA/BOSNIE-HERZEGOVINE: Apologised/Excusé

BULGARIA/BULGARIE:

Mr Branimir ZAIMOV, Acting Head of International and European Union Law Directorate, Ministry of Foreign Affairs

CROATIA/CROATIE: -

CYPRUS/CHYPRE:

Mrs Mary-Ann STAVRINIDES, Senior Counsel of the Republic, The Law Office of the Republic

CZECH REPUBLIC/REPUBLIQUE TCHEQUE:

Mr Milan BERANEK, Deputy Director, International Law Department, Ministry of Foreign Affairs

DENMARK/DANEMARK:

Mr Jacob SKUDE RASMUSSEN, Senior Advisor, International Law, Ministry of Foreign Affairs

ESTONIA/ESTONIE:

Mr Lauri BAMBUS, Undersecretary of Legal and Consular Affairs, Ministry of Foreign Affairs

FINLAND/FINLANDE:

Ms Päivi KAU KORANTA, Director General, Legal Service, Ministry for Foreign Affairs

Ms Anu SAARELA, Head of Unit for Public International Law, Ministry for Foreign Affairs

FRANCE:

Mme Edwige BELLARD, Directeur des affaires juridiques, Ministère des Affaires Etrangères
(*Vice-Chair/Vice-Présidente*)

Mme Céline FOLSCHE, Direction des Affaires Juridiques, Ministère des Affaires Etrangères

GEORGIA/GEORGIE:

Mr Irakli GIVIASHVILI, Director of International Law Department, Ministry of Foreign Affairs

GERMANY/ALLEMAGNE:

Mr Guido HILDNER, Head of Division 500, Federal Foreign Office

GREECE/GRECE:

Mrs Phani DASCALOPOULOU-LIVADA, Legal Adviser, Head of the Legal Department, Ministry for Foreign Affairs

HUNGARY/HONGRIE:

Dr István HORVÁTH, Legal Adviser, Department of International and EU Public Law, Ministry for Foreign Affairs

Dr Éva GRÜNWALD, Desk Officer, International Law Department, Ministry for Foreign Affairs

ICELAND/ISLANDE:

Mr Tomas H. HEIDAR, Legal Adviser, Ministry for Foreign Affairs

IRELAND/IRLANDE:

Mr James KINGSTON, Legal Adviser, Department of Foreign Affairs

ITALY/ITALIE:

Mr Enzo MARONGIU, Legal Adviser, International Treaties and International Dispute Settlement Department, Ministry of Foreign Affairs

Mr Paolo PALCHETTI, Professore di Diritto Internazionale, Università di Macerata

LATVIA/LETTONIE:

Ms Irina MANGULE, Director of the Legal Department, Ministry of Foreign Affairs

LIECHTENSTEIN:

Mr Dominik MARXER, Deputy Permanent Representative to the Council of Europe, Amt für Auswärtige Angelegenheiten (Office for Foreign Affairs)

LITHUANIA/LITHUANIE:

Mr Gintautas VASIULIS, Acting Director, Law and International Treaties Department, Ministry of Foreign Affairs

LUXEMBOURG: Apologised/Excusé**MALTA/MALTE:**

Mrs Marvic SCIBERRAS ABDILLA, Senior Lawyer, Office of the Attorney General

MOLDOVA:

Mr Eugen REVENCO, Head of International Law Department, Ministry of Foreign Affairs and European Integration

MONACO:

M. Bernard GASTAUD, Conseiller pour les Affaires Juridiques et Internationales, Ministère d'Etat

MONTENEGRO:

Ms Bozidarka KRUNIC, Legal Adviser, Ministry of Foreign Affairs

NETHERLANDS/PAYS-BAS:

Mrs Liesbeth LIJNZAAD, Legal Adviser, Head of the International Law Division, Ministry of Foreign Affairs

NORWAY/NORVEGE:

Mr Rolf Einar FIFE, Director General, Department for Legal Affairs, Ministry of Foreign Affairs

(Chair/Président)

Mr Martin SØRBY, Deputy Direction General, Department for Legal Affairs, Ministry of Foreign Affairs

Mr Jo HOVIK, Deputy Permanent Representative of Norway to the Council of Europe, Permanent Representation of Norway to the Council of Europe

POLAND/POLOGNE:

Mr Remigiusz A. HENCZEL, Legal Adviser, Director of the Legal and Treaty Department, Ministry for Foreign Affairs

Mr Ryszard SARKOWICZ, Ambassador, Legal and Treaty Department, Ministry of Foreign Affairs

PORTUGAL:

Mr Miguel DE SERPA SOARES, Director, Department of Legal Affairs, Ministry of Foreign Affairs

Mr Nuno Miguel SANTOS FÉLIX, Embassy Attaché, Department of Legal Affairs, Ministry of Foreign Affairs

ROMANIA/ROUMANIE:

Mr Matei CRISTEA, Third Secretary, Directorate General for Legal Affairs, Directorate for International Law and Treaties, Ministry of Foreign Affairs

RUSSIAN FEDERATION/FEDERATION DE RUSSIE:

Mr Igor PANEVKIN, Deputy Director, Legal Department, Ministry of Foreign Affairs

SAN-MARINO/SAINT-MARIN: –

SERBIA / SERBIE : Apologised/Excusé

SLOVAK REPUBLIC/REPUBLIQUE SLOVAQUE:

Ms Barbara ILLKOVÁ, Director General, Directorate for Legal Affairs, Ministry of Foreign Affairs

SLOVENIA/SLOVENIE:

Ms Simona DRENIK, Head of the International Law Division, Ministry of Foreign Affairs

Ms Tjaša TANKO, III Secretary, International Law Division, Ministry of Foreign Affairs

SPAIN/ESPAGNE:

Mme Concepción ESCOBAR HERNÁNDEZ, Professeur de droit international, Chef du Bureau Juridique International, Ministère des Affaires Etrangères et de la Coopération

SWEDEN/SUEDE:

Mr Carl Henrik EHRENKRONA, Director-General for Legal Affairs, Ministry for Foreign Affairs

Mr Per SJÖGREN, Deputy Director-General, Departement for International Law, Human Rights and Treaty Law Ministry for Foreign Affairs

Dr Erik WENNERSTRÖM, Senior Legal Adviser, Departement for International Law, Human Rights and Treaty Law, Ministry for Foreign Affairs

SWITZERLAND/SUISSE: Apologised/Excusé

"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"/"L'EX-REPUBLIQUE YUGOSLAVE DE MACEDOINE":

Mr Goran STEVCHEVSKI, Director, International Law Department, Ministry of Foreign Affairs

TURKEY/TURQUIE:

Ms Günseli GÜVEN, Acting Head of Department, Legal Adviser, Ministry of Foreign Affairs

UKRAINE : Apologised/Excusé

UNITED KINGDOM/ROYAUME-UNI:

Mr Chanaka WICKREMASINGHE, Legal Counsellor, Room KG 106A, Foreign and Commonwealth Office

Mr Shehzad CHARANIA, Assistant Legal Adviser, Legal Advisers Department, Foreign and Commonwealth Office

EUROPEAN UNION / UNION EUROPEENNE**EUROPEAN COMMISSION / COMMISSION EUROPEENNE**

Mme Sonja BOELAERT, Service Juridique, Relations Extérieures

COUNCIL OF THE EUROPEAN UNION / CONSEIL DE L'UNION EUROPEENNE

Apologised/Excusé

OBSERVERS / OBSERVATEURS**CANADA:**

Ambassador John Hannaford, Embassy of Canada to Norway

HOLY SEE/SAINT-SIEGE:

Msgr Rolandas MAKICKAS, Chargé d'affaires a.i., Apostolic Nunciature for the Nordic Countries

JAPAN/JAPON:

Mr Masahiro MIKAMI, Director, International Legal Affairs Division, International Legal Affairs Bureau, Ministry of Foreign Affairs

Mr Ryuji BABA, Deputy Director, International Legal Affairs Division, International Legal Affairs Bureau, Ministry of Foreign Affairs

MEXICO/MEXIQUE:

Ambassador Joel HERNÁNDEZ GARCÍA, Legal Adviser, Ministry of Foreign Affairs

UNITED STATES OF AMERICA/ETATS-UNIS D'AMERIQUE:

Mr Todd BUCHWALD, Assistant Legal Adviser for United Nations Affairs, US Department of State

Ms Mary McLEOD, Legal Adviser, United States Mission to the United Nations

ISRAEL/ISRAËL:

Ms Esther EFRAT-SMILG, Deputy Legal Adviser and Director of Treaties Department, Ministry of Foreign Affairs

AUSTRALIA/AUSTRALIE: Apologised/Excusé

UNITED NATIONS/NATIONS UNIES: Apologised/Excusé

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)/ORGANISATION DE COOPERATION ET DE DEVELOPPEMENT ECONOMIQUES (OCDE): Apologised/Excusé

EUROPEAN ORGANISATION FOR NUCLEAR RESEARCH (CERN)/ORGANISATION EUROPEENNE POUR LA RECHERCHE NUCLEAIRE (CERN): Apologised/Excusé

THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW/CONFERENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVE: Apologised/Excusé

INTERPOL:

Mr Joël SOLLIER, General Counsel, ICPO-INTERPOL, General Secretariat

INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC)/COMITE INTERNATIONAL DE LA CROIX ROUGE (CICR):

M. Jean-François QUÉGUINER, Chef de l'Unité des Conseillers Juridiques thématiques, Division Juridique

NORTH ATLANTIC TREATY ORGANISATION (NATO) / ORGANISATION DU TRAITE DE L'ATLANTIQUE NORD (OTAN) :

Mr Peter OLSON, Legal Adviser, NATO HQ

SPECIAL GUESTS / INVITES SPECIAUX

Mr Erik FRIBERGH, Registrar of the European Court of Human Rights, Council of Europe

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)

SECRETARIAT GENERAL**DIRECTORATE OF LEGAL ADVICE AND PUBLIC INTERNATIONAL LAW / DIRECTION DU CONSEIL JURIDIQUE ET DU DROIT INTERNATIONAL PUBLIC**

M. Manuel LEZERTUA, Jurisconsult, Director of Legal Advice and Public International Law/ Jurisconsult, Directeur du Conseil Juridique et du Droit International Public

CAHDI SECRETARIAT / SECRETARIAT DU CAHDI

Mrs Marta REQUENA, Secretary to the CAHDI / Secrétaire du CAHDI, Head of the Public International Law and Anti-Terrorism Division / Chef de la Division du droit international public et de la lutte contre le terrorisme

Mme Albina OVCEARENCO, Co-Secretary to the CAHDI / Co-Secrétaire du CAHDI, Public International Law and Anti-Terrorism Division / Division du droit international public et de la lutte contre le terrorisme

Mrs Ana SALINAS DE FRIAS, Legal Adviser/ Conseiller Juridique, 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

INTERPRETERS / INTERPRETES:

Mme Shan BENSON

Ms Elodie Pasquier GASCHIGNARD

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 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 III*French only***Statement of Mr Manuel Lezertua, Jurisconsult, Director of Legal Advice and Public International Law, Council of Europe, on the occasion of the 40th meeting of the Committee of Legal Advisers on Public International Law**

Tromsø, 16 September 2010

Monsieur le Président,
Mesdames et Messieurs,

C'est avec un grand plaisir que je vous retrouve tous à Tromsø lors de cette 40^{ème} réunion du CAHDI. A cette occasion, je voudrais avant tout remercier les autorités norvégiennes pour leur aimable invitation nous permettant ainsi de se rencontrer dans un cadre différent de l'endroit habituel de nos réunions, à Strasbourg.

Je voudrais également vous présenter Mme Marta Requena, la nouvelle Secrétaire du CAHDI, qui a officiellement pris ses fonctions le 1^{er} septembre. Mme Requena était professeur de droit international à l'Université « Pompeu Fabra » de Barcelona avant de rejoindre le Conseil de l'Europe en 1996. Au sein du Conseil de l'Europe, elle a occupé divers postes dans les domaines du droit de la famille, la nationalité ou la protection des données. Ensuite, elle a été nommée Chef de la Division pour l'égalité entre les femmes et les hommes et de la lutte contre la traite des êtres humains, ainsi que Secrétaire exécutive de la Convention du Conseil de l'Europe sur la lutte contre la traite des êtres humains (GRETA et Comités des Parties) au sein de la Direction générale des droits de l'homme et des affaires juridiques du Conseil de l'Europe. En fait, Mme Requena revient au poste du Secrétaire du CAHDI qu'elle avait également occupé en 1996-1997.

A présent, je souhaiterais, comme il est d'usage, évoquer avec vous, les développements importants survenus au sein du Conseil de l'Europe depuis notre dernière rencontre en mars 2010, à Strasbourg, lors de la 39^{ème} réunion du CAHDI.

Comme vous le savez, la vie politique de notre Organisation est rythmée, tous les six mois, par les changements de présidence du Comité des Ministres, organe exécutif décisionnel du Conseil de l'Europe.

A présent, et depuis le mois de mai, c'est au tour de « l'ex-République yougoslave de Macédoine » de présider l'organe décisionnel de l'Organisation. L'actuelle présidence a axé ses priorités sur trois thèmes principaux : le renforcement de la protection des droits de l'homme, l'action en faveur de l'intégration dans le respect de la diversité et la promotion de la participation des jeunes. Elle entend ainsi, avant tout, souligner la nécessité de mettre en œuvre une stratégie de coopération pour protéger les divers droits et coordonner les mécanismes de suivi en instances correspondantes du Conseil de l'Europe en vue de développer et de consolider le système des droits de l'homme, tant à l'échelon national qu'au niveau de l'Organisation.

La Turquie va succéder à l'actuelle présidence en novembre 2010. La lutte contre terrorisme, qui est parmi ses priorités, est d'un intérêt particulier pour les activités du CAHDI. A cet égard, je fournirai davantage d'informations sous point 18 de l'ordre du jour de cette réunion.

Je souhaiterais ensuite mentionner très brièvement la célébration d'une série de réunions et conférences de haut niveau organisées au sein du Conseil de l'Europe depuis un an, qui constituent des rendez-vous politiques importants ayant une influence indéniable sur les activités de notre Organisation, notamment:

- la 7^{ème} Conférence ministérielle du Conseil de l'Europe sur l'égalité entre les femmes et les hommes (24-25 mai 2010, à Bakou, Azerbaïdjan),
- la 23^{ème} Session de la Conférence permanente du Conseil de l'Europe des Ministres de l'Education (4-5 juin, à Brdo, Slovénie) et
- la 15^{ème} Session de la Conférence du Conseil de l'Europe des Ministres responsables de l'aménagement du territoire (CEMAT) (8-9 juillet, à Moscou, Fédération de la Russie).

En outre, la 120^{ème} session du Comité des Ministres du Conseil de l'Europe, regroupant les Ministres des Affaires étrangères des Etats membres du Conseil de l'Europe, a eu lieu à Strasbourg le 11 mai 2010.

Lors de cette session, outre l'adoption des décisions pertinentes relatives à l'avenir de la Cour européenne des droits de l'homme, les Ministres ont également adopté une déclaration sur les relations entre le Conseil de l'Europe et l'Union européenne, thème qui cette année a occupé une place importante au sein de notre Organisation du fait de l'entrée en vigueur du Protocole n°14.

Les relations entre le Conseil de l'Europe et l'Union européenne, et plus précisément, l'adhésion de l'Union européenne à la Convention européenne des droits de l'homme se trouve sans aucun doute au cœur des priorités de l'Organisation.

Le Secrétaire Général du Conseil de l'Europe attribue la plus haute priorité à l'adhésion de l'UE à la CEDH. Dès l'entrée en vigueur du Traité de Lisbonne, divers contacts informels ont eu lieu avant l'adoption, de la part du Conseil de l'UE, du mandat de négociation octroyé à la Commission européenne en juin cette année. Un groupe de travail, constitué à cet égard au sein du Comité Directeur des Droits de l'Homme du Conseil de l'Europe (CDDH), a tenu sa première réunion au début du mois de juillet. D'ailleurs le CAHDI est invité lors de cette réunion d'élire un observateur qui suivra les travaux dudit Groupe de travail.

La première réunion du Groupe de travail a été précédée d'une rencontre à haut niveau entre le Secrétaire Général du Conseil de l'Europe M. Jagland, et la Vice-présidente de la Commission européenne, Mme Reding, laquelle a voulu souligner devant le Comité des Ministres du Conseil de l'Europe la volonté de l'UE de voir aboutir ce dossier dans les meilleurs délais. Le Service juridique de la Commission européenne s'est montré très bien disposé et coopératif, et il a été indiqué que l'UE avait la volonté de s'insérer dans le système de la CEDH tel qu'il existe (même si certaines spécificités de l'UE devront être prises en compte) et contribuer ainsi au renforcement de la Convention et de la protection des droits des citoyens. Les négociations devraient s'accélérer afin qu'un projet de traité puisse émerger vers la fin de l'année ou début de l'année prochaine.

La forme que devrait revêtir l'instrument a déjà fait l'objet de discussions. Il a été convenu qu'il devrait s'agir d'un traité d'adhésion (plutôt qu'un protocole d'amendement, cf. étude CDDH de 2002). La Commission a notamment invoqué le fait que c'est cette terminologie qui est employée justement par le traité de Lisbonne. Il n'est toutefois pas exclu que d'autres instruments juridiques soient nécessaires pour régler des questions qui n'auraient pas leur place dans un traité d'adhésion (par ex. la contribution financière de l'UE, certains détails procéduraux relatifs à la Cour, etc.).

La possibilité pour l'UE de formuler des réserves a également été abordée. Le Service Juridique de la Commission tend à considérer que l'UE devrait avoir cette possibilité, alors que certaines délégations (Pays-Bas par exemple) pensent que les réserves éventuelles de l'UE doivent faire partie de la négociation et figurer dans le traité d'adhésion. Le Groupe de travail reviendra sans aucun doute sur cette question lors d'une prochaine réunion.

Concernant autres actualités juridiques de notre Organisation, je voudrais vous faire part de l'entrée en vigueur de deux conventions et des avancements relatifs aux trois conventions.

- Le 1^{er} juin 2010, le Protocole n° 14 à la Convention de sauvegarde des droits de l'homme et des libertés fondamentales, amendant le système de contrôle de la Convention, est entré en vigueur. Comme vous le savez, ce Protocole est essentiel pour un fonctionnement plus satisfaisant de la Cour de Strasbourg en ce qu'il permet surtout de palier à l'engorgement de la Cour. Il apportera principalement les changements à la Convention dans trois directions: le renforcement de la capacité du filtrage de la Cour, pour faire face au grand nombre de requêtes manifestement irrecevables, des mesures pour traiter plus efficacement les affaires répétitives et un nouveau critère de recevabilité concernant les affaires dans lesquelles le requérant n'a pas subi aucun préjudice important.

De plus, le Protocole renforce les pouvoirs du Comité des Ministres et modifie le mandat des juges, qui sera d'une durée neuf ans non renouvelable. Il permet naturellement l'adhésion éventuelle de l'Union européenne à la Convention.

- Une autre Convention – la Convention du Conseil de l'Europe sur la protection des enfants contre l'exploitation et les abus sexuels – est entrée en vigueur le 1^{er} juillet 2010. Cette Convention est le premier instrument à ériger en infraction pénale les abus sexuels envers les enfants, y compris lorsqu'ils ont lieu à la maison ou au sein de la famille, en faisant usage de la force, de la contrainte ou de menaces. Outre les infractions plus généralement rencontrées dans ce domaine – abus sexuels, prostitution infantile, pornographie infantile, participation forcée d'enfants à des spectacles pornographiques –, le texte traite aussi de la mise en confiance d'enfants à des fins sexuelles (« grooming ») et du « tourisme sexuel ». La promotion et la diffusion de ce texte est faite essentiellement dans le cadre du Programme de trois ans que poursuit le Conseil de l'Europe « Construire une Europe pour et avec les enfants ».

Comme je l'ai évoqué précédemment, certains avancements relatifs à d'autres conventions ont également marqué l'actualité juridique de notre Organisation.

- Tout d'abord, le 27 mai 2010, le Protocole d'amendement à la Convention concernant l'assistance administrative mutuelle en matière fiscale a été ouvert à la signature des Etats signataires de la Convention. L'Organisation de Coopération et de Développement Economique (OCDE) et le Conseil de l'Europe se sont accordés sur une mise à jour de la Convention d'assistance administrative mutuelle en matière fiscale qui vise à aider les États à mieux appliquer leur législation fiscale, dans le cadre des efforts internationaux pour lutter contre la fraude fiscale transnationale. Le Protocole prévoit notamment l'échange de renseignements, les contrôles fiscaux simultanés multilatéraux, la notification de documents et l'assistance transnationale au recouvrement des impôts, tout en respectant la souveraineté nationale et les droits des contribuables et en offrant des garanties étendues en matière de confidentialité des renseignements échangés.

A cet égard, je voudrais rappeler les discussions de la 39^{ème} réunion du CAHDI et vous donner quelques précisions concernant la clause de déconnexion figurant à l'article VII du Protocole d'amendement à la Convention concernant l'assistance administrative mutuelle en matière fiscale (STCE 208).

En effet, cette article remplace le paragraphe 2 de l'article 27 de la Convention et lors de l'adoption du Protocole d'amendement, le Comité des Ministres a pris note de la déclaration des Etats membres de l'UE parties à la Convention selon laquelle « Les dispositions de l'article 27(2) de la Convention, telles que modifiées par le Protocole 2010, sont sans préjudice de l'objet et du but de la présente Convention et sans préjudice de sa pleine application dans les relations des Etats membres de l'Union européenne parties à la Convention avec d'autres parties à la Convention ».

De plus, au moment de l'adoption du Protocole, une délégation a déclaré que: « Ce texte est le résultat des circonstances particulières et ne doit pas servir de précédent ».

A cette occasion, des discussions ont porté en effet sur la particularité du Protocole qui est un texte joint du Conseil de l'Europe et de l'OCDE. Ainsi, il a été convenu que les règles contenues dans le Protocole et la Convention de 1988 puissent constituer le droit applicable pour les Etats membres de l'UE parties à la Convention, ce que d'ailleurs ne permettait pas la clause de déconnexion standard.

- Ensuite, le 7 juillet 2010, le Comité des Ministres a adopté le texte du Troisième Protocole additionnel à la Convention européenne d'extradition, qui complète la Convention à certains égards afin de simplifier et d'accélérer la procédure d'extradition lorsque l'individu recherché consent à l'extradition.

- Enfin, le Comité de Ministres discute à présent le texte définitif de la Convention du Conseil de l'Europe sur la contrefaçon des produits médicaux et les infractions similaires menaçant la santé publique, avec l'objectif de contribuer à la lutte contre la circulation des produits médicaux contrefaits, dangereux, qui ont été produits sans la réalisation de tests de laboratoire onéreux et qui attentent contre le droit à la vie et à la santé des patients et consommateurs en général.

J'en ai terminé avec ce rapide tour d'horizon des activités du Conseil de l'Europe. Le Secrétariat reste bien évidemment à votre entière disposition pour toute information supplémentaire.

Il me reste à vous souhaiter une très agréable et fructueuse 40^{ème} réunion. Je vous remercie de votre attention.

APPENDIX IV

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 V

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 Somalia² 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 Convention³. 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 context⁴ 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*, 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 Rights⁵.
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

² Reference S/2010/394

³ State of signatures and ratifications at the date of 16 September 2010. See following link for further details: <http://treaties.un.org>

⁴ 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.

⁵ See, *inter alia*, recently *Medvedyev and others v. France* judgment of 29 March 2010 [GC], No. 3394/03, paras. 64-65

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.

APPENDIX VI

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 CAHDI 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 VII

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**

[illegible]

	Convention	A				B		C	D	E	F	G
		1	2	3	4	5	6	7	8	9	10	11
States / Etats	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**

	Convention	A	B
States / Etats	Reservation/ Réserve	1	2
		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

(***) Considers it a late reservation and therefore not in force / Considère ceci comme une réserve tardive et donc pas en vigueur

APPENDIX VIII

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 report⁶.

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 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

⁶ Document CAHDI (2010) 28 prov

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.

