



Strasbourg, 22/09/11

CAHDI (2011) OJ 2 annotated

COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)

Annotated agenda

42nd meeting
Strasbourg, 22-23 September 2011

Room 9, Palais de l'Europe

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

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I. **INTRODUCTION**

1. **Opening of the meeting by the Chair, Ms Edwige Belliard**

2. **Adoption of the agenda**

Working documents

- Draft agenda CAHDI (2011) OJ 2 prov
- Annotated draft agenda CAHDI (2011) OJ 2 annotated prov
Restricted

3. **Approval of the report of the 41st meeting**

The CAHDI is invited to approve the report of the previous meeting, held in Strasbourg on 17-18 March 2011 (document CAHDI (2011) 5 prov) and to authorise its publication on the CAHDI website.

Working document

- Draft report of the 41st meeting of the CAHDI CAHDI (2011) 5 prov
Restricted until approval

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

The Secretariat will provide information on developments within the Council of Europe since the CAHDI's 41st meeting.

Working document

- Developments concerning the European Treaties Series since the 41st meeting of the CAHDI CAHDI (2011) Inf 6

II. **ONGOING ACTIVITIES OF THE CAHDI**

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

The CAHDI is invited to take note of Committee of Ministers' decisions relevant to the CAHDI's activities (document CAHDI (2011) 6). Decisions concern, inter alia, the follow-up given by the Committee of Ministers to CAHDI's opinions, the Council of Europe's treaties and the follow-up to the Interlaken Conference.

No requests for CAHDI's opinion have been made by the Committee of Ministers.

Working document

- Committee of Ministers' decisions of relevance to the CAHDI's activities, including requests for CAHDI's opinion CAHDI (2011) 6
Restricted

6. **Immunities of States and international organisations**

- a. State practice and case-law

- recent national developments and updates of the website entries

Delegations are invited to present developments concerning State practice regarding State immunities orally and to update – on a regular basis – their contributions to the database on State practice regarding State Immunities (document CAHDI (2011) Inf 12). Since the European Union presentation of its practice regarding lawsuits in third countries at the 39th meeting of the CAHDI, Serbia submitted new contribution to the database. Those delegations which have not yet done so are invited to submit their contributions at their earliest convenience.

- 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

The Secretariat has circulated a questionnaire on this matter and thus far, has received responses from Albania, Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Luxembourg, Montenegro, Norway, Portugal, Romania, Russian Federation, Slovak Republic, Slovenia, Canada, Japan and the United States. These responses appear in document CAHDI (2011) 12 prov.

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

Each member and observer State is invited to report on its position regarding the UN Convention on Jurisdictional Immunities of States and Their Property. Regarding latest developments, France has approved the Convention on 12 August 2011.

Working documents

- Database on State Practice regarding State Immunities CAHDI (2011) Inf 12
Bilingual
- 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 CAHDI (2011) 12 prov
*Restricted
Bilingual*
- State of signatures and ratifications of the UN Convention on Jurisdictional Immunities of States and Their Property and of the European Convention on State Immunities CAHDI (2011) Inf 9

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 of international law as well as foreign litigation, peaceful settlements of disputes, and other questions of relevance to the Legal Adviser
- b. Updates of the website entries

The delegations are invited to present national developments orally and to update their contributions to this database on a regular basis. Since the last meeting of the CAHDI, the updated contributions of Austria and Serbia have been published in the database. Those delegations which have not yet done so are invited to submit their contributions at their earliest convenience.

Working document

- Database on the organisation and functions of the Office of the Legal Adviser of the Ministry of Foreign Affairs CAHDI (2010) Inf 10
Bilingual

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

Since the contributions of Estonia and Serbia for the 41st meeting of the CAHDI, the updated contribution of the European Union has been published in the database on national implementation measures of UN sanctions and respect for human rights (document CAHDI (2011) Inf 10). Delegations are invited to present national developments orally and to update their contributions to the said database on a regular basis. Those delegations which have not yet done so are invited to submit their contribution at their earliest convenience.

Delegations are also invited to consider information submitted by delegations on cases that have been eventually submitted to national tribunals by persons or entities removed from the lists established by the UN Security Council Sanctions Committee. Thus far, the Secretariat has received responses from Belgium, Denmark, France, United Kingdom, Canada and the United States of America. These responses appear in document CAHDI (2010) 7 prov.

Working documents

- Cases, that have been eventually submitted to national tribunals, by persons or entities removed from the lists established by the UN Security Council Sanctions Committees. CAHDI (2010) 7 prov
*Restricted
Bilingual*
- Database on national implementation measures of UN sanctions and respect for human rights CAHDI (2011) Inf 10
Bilingual

9. European Union's accession to the European Convention of Human Rights (ECHR)

- Information provided by Mr Erik Wennerström, observer of the CAHDI to the Informal Working Group on the Accession of the European Union to the European Convention on Human Rights (CDDH – EU)

Delegations are invited to take note of the information provided by Mr Erik Wennerström, observer of the CAHDI to the Informal Working Group on the Accession of the European Union to the European Convention on Human Rights (CDDH – EU) regarding the work of the Group since the 41st meeting of the CAHDI.

Delegations are invited to take note of the Draft legal instruments on the Accession of the European Union to the European Convention on Human Rights (document CDDH-UE (2011) 16) which will be considered at the Extraordinary Meeting of the Steering Committee for Human Rights (CDDH) on the Accession of the European Union to the European Convention of Human Rights and Meeting of the CDDH informal Working Group on the accession of the European Union to the European Convention of Human Rights (CDDH-UE) with The European Commission, which will be held in Strasbourg on 12-14 October 2012.

Working document

- Draft legal instruments on the Accession of the European Union to the European Convention on Human Rights (19 July 2011) CDDH-UE (2011) 16

10. Cases before the European Court of Human Rights involving issues of public international law

All delegations are encouraged to report on any judgements or decisions, pending cases or relevant forthcoming events.

11. Peaceful settlement of disputes

Delegations are invited to consider the updated document CAHDI (2011) 7 containing information on the International Court of Justice's jurisdiction under international treaties and agreements. Updates concern in particular treaties on the fight against terrorism. Since the last meeting of the CAHDI, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on Financing Terrorism has been signed by France and the Council of Europe Convention on the Prevention of Terrorism has been ratified by Germany and Hungary.

Working document

- International Court of Justice's jurisdiction under selected international treaties and agreements, situation concerning the member and observer States of the Council of Europe, which are parties to these agreements and treaties CAHDI (2011) 7
Restricted
English only

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

Delegations are invited to consider outstanding reservations and declarations to international treaties concluded within and outside the Council of Europe (CAHDI (2011) 8). Information concerning these treaties can be consulted at <http://conventions.coe.int/> and <http://treaties.un.org>. Delegations are also invited, in particular, to present their intentions in view of completing the table of objections prepared by the Secretariat (CAHDI (2011) 8 Addendum prov).

Working documents

- List of outstanding reservations and declarations to international treaties CAHDI (2011) 8
Restricted
- Table of objections CAHDI (2011) 8 Addendum prov
Restricted
Bilingual

III. GENERAL ISSUES OF PUBLIC INTERNATIONAL LAW**13. Exchange of views with Mr Stephen Mathias, Assistant Secretary-General for Legal Affairs of the United Nations**

Delegations are invited to take note of the presentation made by Mr Stephen Mathias, Assistant Secretary-General for Legal Affairs of the United Nations.

14. 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, 8 July 2011

Delegations are invited to take note of the exchange of views which took place on 8 July 2011, between the International Law Commission, the Chair of the CAHDI and the Director of Legal Advice and Public International Law (Council of Europe).

The Report of the ILC on the work of its 63rd Session was kindly provided by the ILC Secretariat. Ms Concepción ESCOBAR HERNÁNDEZ, Member of the ILC, will present recent activities of the ILC.

Working documents

- Presentation by Ms Edwige Belliard, Chair of the CAHDI, at the 63rd session of the ILC CAHDI (2011) Inf 7
French only
- Presentation by Mr Manuel Lezertua, Jurisconsult, Director of Legal Advice and Public International Law, Council of Europe, at the 63rd session of the ILC CAHDI (2011) Inf 8
French only
- Report of the ILC, 63rd Session A/66/10
Restricted
English only

15. Exchange of views on the Council of Europe Convention Review

At the 41st meeting of the CAHDI, it was stated that the Council of Europe is currently analyzing the relevance of its Conventions. This initiative is one of the priorities of the Secretary General in 2011 and it aims to provide a basis for consideration of follow-up action, including measures to increase the visibility and the number of parties to the relevant Conventions. Indeed, both the Committee of Ministers and the Parliamentary Assembly of Council of Europe have pointed out that the Conventions of the Council of Europe are one of the main assets of the Organisation and its reputation on the international stage.

Delegations are invited to hold an exchange of views on the Preliminary Draft Report of the Secretary General on the Outline of Council of Europe Convention review (document SG/Inf(2011)21).

On 5th September 2011, CAHDI delegations received this document via electronic mail and the Chair of the CAHDI invited the delegations who wish to do so, to transmit their comments by mail. France presented written comments, which appear in document CAHDI (2011) 15 prov.

In light of the ensuing comments, the CAHDI will forward to the Secretary General the outcome of its discussions and a draft report will be presented to the Committee of Ministers on 30 September 2011 by the Secretary General.

Working documents

- Outline of Council of Europe Convention review SG/Inf(2011)2 FINAL
Restricted
- Comments by the delegations of the CAHDI on the classification of the Council of Europe Conventions in the frame of the activities of the CAHDI CAHDI (2011) 9
Restricted
Bilingual
- Preliminary Draft Report of the Secretary General on the Outline of Council of Europe Convention review SG/Inf(2011)21
Restricted
- Comments of delegations on Preliminary Draft Report of the Secretary General on the Outline of Council of Europe Convention review CAHDI (2011) 15 prov
Restricted
Bilingual

16. Consideration of current issues of international humanitarian law

- Intervention by Mr Maurizio Moreno, President, International Institute of Humanitarian Law

Delegations are invited to take note of the presentation made by Mr Maurizio Moreno, President of the International Institute of Humanitarian Law.

17. Developments concerning the International Criminal Court (ICC)

Delegations are invited to present any recent developments concerning the International Criminal Court (ICC).

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

Delegations are invited to share information about the implementation and functioning of other international criminal tribunals.

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

- Intervention by Mr David Scharia, United Nations Security Council Counter-Terrorism Committee Executive Directorate (CTED)

Delegations are invited to take note of the information about work undertaken by the Council of Europe and other international fora and in particular the information on the work undertaken by the United Nations Security Council Counter-Terrorism Committee and its Executive Directorate (CTED).

Working documents

- United Nations Security Council Resolution 1963 (2010) S/RES/1963 (2010)
- Information about the Special meeting of the United Nations Security Council Counter-Terrorism Committee (CTC) with International, Regional and Sub-Regional Organisations, hosted by the Council of Europe on 19-21 April 2011 CAHDI (2011) Inf 11
English only
- Counter-Terrorism Committee Report on the practitioners' seminar on "Bringing terrorists to justice", New York, 1-3 December 2010 S/2011/240

20. Topical issues of international law

- Request of the Steering Committee for Human Rights (CDDH) on the possibility of introducing a simplified procedure for the amendment of certain provisions of the ECHR

On 22 June 2011, the Chairperson of the CDDH, Ms Almut Wittling-Vogel sent a letter to the Chair of the CAHDI, Ms Edwige Belliard, asking the advice of the CAHDI on the introduction of a simplified procedure for the amendment of certain provisions of the European Convention on Human Rights. The letter includes a compilation of information provided by member States on the compatibility of a simplified amendment procedure with domestic law (document DH-PS(2011)001) as well as the report of the 2nd meeting of the Committee of Experts on a simplified procedure for amendment of certain provisions of the European Convention on Human Rights (document DH-PS(2011)R2).

Following the question posed by the Chairperson of the CDDH in the above-mentioned letter, delegations are invited to discuss the Draft Opinion of the Committee of Legal Advisers on Public International Law presented by the Chair of the CAHDI (document CAHDI (2011) 13).

Working documents

- Letter from the Chairperson of the CDDH, Ms Almut Wittling-Vogel DG-HL/ADS/aj
English only
- Committee of Experts on a simplified procedure for amendment of certain provisions of the European Convention on Human Rights (DH-PS) : report of the 2nd meeting, Strasbourg, 9-11 March 2011 DH-PS(2011)R2
- Compatibility of a possible simplified amendment procedure with domestic law: Compilation of information provided by member States DH-PS(2011)001
Bilingual
- Draft Opinion of the Committee of Legal Advisers on Public International Law on the Request of the Steering Committee for Human Rights (CDDH) for the Introduction of a Simplified Procedure for Amendment of Certain Provisions of the European Convention on Human Rights CAHDI (2011) 13 prov
Restricted

IV. TERMS OF REFERENCE OF THE CAHDI FOR 2012-2013

Delegations are invited to take note of the reform process undertaken by the Council of Europe, and especially the proposed new set-up for intergovernmental structures.

According to the document SG/Inf(2011)9 FINAL, in 2012-2013, it is proposed that the Committee of Legal Advisers on Public International Law (CAHDI) will be maintained in its current format.

According to the letter from Mr Gérard Stoudmann (document CAHDI (2011) 11), Special Representative of the Secretary General for Organisational Development and Reform, the Committee of Ministers will be invited to adopt the terms of reference of all steering committees and subordinate structures before the end of 2011 and these terms of reference will relate to the programme of activities for 2012-2013. All intergovernmental structures will be time-limited and will be given a clear mandate linked to the programme cycle. None will be automatically renewed or prolonged. Moreover, a critical review on the functioning of the new intergovernmental set-up will be carried out before the end of March 2013.

In this respect, delegations are invited:

- *to hold an exchange of views on CAHDI's Terms of Reference for 2012-2013 and to adopt the draft terms of reference which will be submitted to the Committee of Ministers for approval (document CAHDI (2011) 10 prov);*
- *to hold an exchange of views on CAHDI's priorities in 2012-2013, in light of the priorities for 2012-2013 of the Organisation (document CM(2011)48 rev).*

Working documents

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| • Draft terms of reference of the CAHDI for 2012-2013 | CAHDI (2011) 10 prov <i>Restricted</i> |
| • Letter for the attention of the Committee Chairpersons from Mr Gérard Stoudmann, Special Representative of the Secretary General for Organisational Development and Reform | CAHDI (2011) 11 <i>Restricted</i> <i>English only</i> |
| • Proposals by the Secretary General – Reform – Proposed new set-up for intergovernmental structures | SG/Inf/(2011)9 FINAL <i>Restricted</i> |
| • Priorities for 2012-2013 and their budgetary implications | CM(2011)48 rev <i>Restricted</i> |

V. OTHER

21. Election of the Chair and Vice-Chair

The terms of office of Ms Edwige Belliard (France) and Ms Concepción Escobar Hernández (Spain), respectively Chair and Vice-Chair of the CAHDI, expire at the end of 2011. The CAHDI is called upon to elect a Chair and a Vice-Chair for a period of one year expiring 31st December 2012.

Working document

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| • Election of the Chair and Vice-Chair of the CAHDI for one year | CAHDI (2011) 14 |
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22. Date, place and agenda of the 43rd meeting of the CAHDI (envisaged dates: Strasbourg, 29-30 March 2012)

Delegations are invited to decide on the date, place and agenda of the 43rd meeting of the CAHDI. The envisaged place and dates for the time being are 29-30 March 2012 in Strasbourg.

23. Other business

TENTATIVE ORDER OF BUSINESS

| 22 September 2011 | |
|--------------------------|--|
| 09:00- 12:30 | Items: 1 – 5, 15 and 20, 6 – 9 |
| 12:30-14:30 | Lunch break |
| 14:30-17:30 | Items: 13, 10 – 12 |
| 17:30 | <i>End of the first day of the meeting</i> |

| 23 September 2011 | |
|--------------------------|---|
| 9:30- 13:00 | Items: 16, 14, 15 (if necessary), 17 – 19, 20 (if necessary), IV, 21 – 23 |
| 13:00 | Lunch break |
| Afternoon | Reserved |