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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW

(CAHDI)

Meeting report

42nd meeting
Strasbourg, 22-23 September 2011

I. INTRODUCTION

1. Opening of the meeting by the Chairperson, Ms Edwige Belliard

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 42nd meeting in Strasbourg on 22 and 23 September 2011 with Ms Edwige Belliard in the Chair. The list of participants is reproduced in **Appendix I** to this report.

2. Adoption of the agenda

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

3. Approval of the report of the 41st meeting

3. The CAHDI adopted the report of the 41st meeting (document CAHDI (2011) 5 prov) taking into account the amendment to paragraph 9 requested by the Belgian delegation. The CAHDI instructed the Secretariat to publish it on the Committee's website.

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

4. Mr Manuel Lezertua, Director of Legal Advice and Public International Law (DLAPIL) and Jurisconsult, informed delegations of recent developments in the Council of Europe. The CAHDI took note in particular of the progress of work concerning the reform of the Organisation, developments concerning the Council of Europe Treaty Series and the information relating to new conventions in the process of being drawn up within the Council of Europe. Mr Lezertua's statement is reproduced in **Appendix III** to this report.

II. ONGOING ACTIVITIES OF THE CAHDI

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

5. The Chairperson presented a compilation of Committee of Ministers decisions of relevance to the activities of the CAHDI (document CAHDI (2011) 6). She mentioned in particular the follow-up given by the Committee of Ministers to the opinions of the CAHDI regarding Parliamentary Assembly Recommendation 1913 (2010) on "The necessity to take additional international legal steps to deal with sea piracy" and Parliamentary Assembly Recommendation 1920 (2010) on "Reinforcing the effectiveness of Council of Europe treaty law".

6. In addition, with regard to the outcome of the discussions within the CAHDI on the draft Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, the Chairperson announced that this convention had been adopted by the Committee of Ministers and opened for signature on 11 May 2011 under number 210 in the Council of Europe Treaty Series. As of 22 September 2011 sixteen States had already signed the Convention.

6. Immunities of states and of international organisations

a. State practice and case-law

7. The Chairperson thanked Serbia for its recent contribution to the CAHDI database on State practice regarding State Immunities (document CAHDI (2011) Inf 12) and noted that 29 member States of the Council of Europe and three observer States had contributed to this database so far. She also pointed out that the database was an efficient tool only if it were regularly updated and invited delegations that had not yet done so to submit their contributions.

8. The Chairperson also invited delegations that had not yet done so to submit their contributions to the document *"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 (2011) 12 prov).

9. The United Kingdom delegation informed the CAHDI of a judgment delivered on 29 July 2011 by the High Court of Justice (Queen's Bench Division) in the case *Khurts Bat v. The Investigating Judge of the German Federal Court*, and underlined that this was an interesting case in that it clarified the scope of immunities in three respects: the immunity of members of special missions, the immunity *ratione personae* of high level officials further to the International Court of Justice's judgment in the *Yerodia* case[1] and the scope of immunity *ratione materiae* of State officials in criminal proceedings.

10. This case was related to an extradition request by Germany with regard to the defendant, the Head of the Office of National Security of Mongolia, who was under a European Arrest Warrant. In 2003 the defendant, acting on behalf of his State's intelligence service, had allegedly abducted a Mongolian national in France and held him - against his will - at the Mongolian embassy in Germany before removing him to Mongolia by plane. In 2010, while visiting the United Kingdom under the pretence of an official reason, although he had no meetings with UK ministers or officials, the defendant had been arrested upon arrival. He had then invoked three types of immunity: (1) immunity on the grounds of a "special mission"; (2) immunity *rationae personae* on account of his rank (Yerodia), and/or (3) functional immunity as the acts of which he was accused were in fact official acts carried out on behalf of his State. Regarding the concept of a "special mission", the Court had held that, although members of such a mission can enjoy immunity, the defendant had not visited the United Kingdom in that capacity, as the UK authorities had not recognised his visit as constituting a "special mission". Concerning immunity *ratione personae*, the Court had considered that the defendant's status as a government official did not afford him the very broad immunities that the ICJ recognised as being enjoyed by a visiting minister of foreign affairs. Lastly, concerning the claim of functional immunity, the Court had held that such immunity did not protect a foreign government official against criminal prosecution where the acts had been perpetrated in the territory of the forum state. The Court had deemed that this exception from foreign government officials' immunity had a customary law nature. It reached this conclusion on the basis of states' established practice and on legal writings, in particular the works of Ambassador Kolodkin, Special Rapporteur to the International Law Commission (ILC) on immunity of State officials from foreign criminal jurisdiction, who considered this exception from functional immunity to be the only one recognised under customary international law.

[1] ICJ, *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), judgment, Reports 2002*, p. 3, www. http://www.icj-cij.org/.

11. The United States representative informed the CAHDI of a decision delivered on 8 September 2011 by the District Court for the District of Columbia (D.C. District Court) in the case *Giraldo v. Drummond*.[2] In this case the plaintiffs had introduced before the District Court of the Northern District of Alabama an action against the coalmining company Drummond on the basis of the Alien Tort Claims Act and the Torture Victims Protection Act whereby they sought to compel the testimony of the former Colombian President, Alvaro Uribe, concerning events that had occurred while he was in office. Following the latter's' refusal to appear, the plaintiffs had referred the matter to the District Court of Columbia to have him compelled to testify. In its Statement of Interest the US State Department had argued that the former Colombian President enjoyed residual immunity insofar as the plaintiffs were seeking information (i) relating to acts taken in his official capacity; or (ii) obtained by President Uribe in the performance of his duties. The plaintiffs maintained that the former Colombian President could be compelled to testify as the information sought related to illegal acts and such acts were not covered by immunities. The Court endorsed the State Department's contention considering that, although immunity could not be invoked with regard to information relating to acts taken outside official capacity or obtained by former President Uribe outside that capacity, comity and foreign relations interests required that all other reasonably available means to acquire such information be exhausted first. Accordingly, insofar as the plaintiffs were seeking information unrelated to former President Uribe's official duties, they first had to show that the information was both necessary and unavailable through other means.

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

12. Regarding the state of signatures and ratifications of the UN Convention on Jurisdictional Immunities of States and their Property (document CAHDI (2011) Inf. 9), the Chairperson informed the Committee that France had approved this convention on 12 August 2011. There were presently 12 States Parties and 28 signatory States. In view of this convention's importance it was desirable that it be ratified by the greatest possible number of states.

13. Japan's representative informed the CAHDI that Japan had deposited its instrument of acceptance of the Convention with the Secretary General of the United Nations on 11 May 2010. He also referred to the 50th Annual Session of the Asian-African Legal Consultative Organization (AALCO) that had been held in Colombo, Sri Lanka, from 27 June to 1 July 2011, at which Japan had brought the convention's importance to the attention of its partners in the Afro-Asian region.

14. The Italian delegation informed the Committee of the political will of the Italian authorities to ratify this convention in the very near future.

[2] Claudia Balcero Giraldo, et al., Plaintiffs, v. Drummond Company Inc., et al., Defendants, Case No. 1 :10-mc-00764 (JDB), proceedings discontinued on 8 September 2011.

7. Organisation and functions of the Office of the Legal Adviser of the Ministry of 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 settlement of disputes, and other questions of relevance to the Legal Adviser

b. Update of website entries

15. The CAHDI considered the issue of the organisation and functions of the Office of the Legal Adviser of the Ministry of Foreign Affairs on the basis of contributions to the relevant database by the Austrian, Georgian and Serbian delegations (document CAHDI (2010) Inf 10). Delegations were invited to submit or update their contributions at their earliest convenience.

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

16. The CAHDI took note of information transmitted by the Belgian delegation concerning a case pending before the Belgian Civil Court regarding a couple whose names had been deleted from the list drawn up by one of the Sanctions Committee of the United Nations Security Council but who were seeking compensation from the Belgian government for their inclusion on the list which had resulted in the freezing of their assets. The Belgian government had contended that it had committed no fault, that no damage had been substantiated and that, consequently, there was no cause-effect relation between the impugned act and the damage allegedly sustained.

17. Delegations were also asked to submit or update their contributions to the database on national implementation measures of UN sanctions and respect for human rights (document CAHDI (2011) Inf 10).

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

18. The CAHDI considered the issue of the European Union's accession to the European Convention on Human Rights (ECHR). It took note of the fact that, at its 8th and latest meeting, in June 2011, the Informal Group on Accession of the European Union to the Convention (CDDH-UE) had adopted a draft Accession Agreement (document CDDH-UE (2011) 16) with a draft explanatory report and draft amendments to the rules of the Committee of Ministers of the Council of Europe.

19. Mr Erik Wennerström, observer of the CAHDI to the CDDH-UE, informed the CAHDI about the Group's work since its sixth meeting. He began by underlining that this was a unique accession agreement in that it did not merely set out the conditions of accession but also listed amendments to be made to the mother Convention, in the same way as would a protocol to the ECHR. He then gave the Committee information on certain institutional questions (particularly regarding the election of a judge for the EU). Lastly, Mr Wennerstöm pointed out that the text set out in document CDDH-UE (2011) 16 had commanded broad support within the Group, although no official agreement had yet been reached. Mr Wennerström's statement is reproduced in **Appendix IV** to this report.

20. The Chairperson thanked Mr Wennerström and drew the Committee's attention to the fact that the draft agreement on European Union's accession to the Convention would be examined at an Extraordinary meeting of the Steering Committee on Human Rights (CDDH) on European Union accession to the European Convention on Human Rights with the Informal Group on Accession of the European Union to the Convention (CDDH-UE) and the European Commission, to be held in Strasbourg from 12 to 14 October 2011.

21. One delegation underlined the importance that, in its implementation, the Lisbon Treaty contributes to the reinforcement of the protection of human rights. It also pointed out that, when EU member states would appear before the European Court of Human Rights concerning human rights violations attributable to national measures adopted pursuant to EU legislation, prior intervention by the Court of Justice of the European Union would be necessary.

22. Another delegation supported EU accession to the ECHR, which reinforced protection of human rights in Europe, but drew attention to the fundamental importance of equal treatment of the parties to the Convention. This delegation wondered whether, with regard to execution of the Court's judgments, it would be possible to ensure equal treatment within the Committee of Ministers if the EU were able to take position on matters relevant to non-EU member States whereas it could not express positions on matters relevant to EU member States (Article 7, CDDH-UE (2011) 16).

23. Another delegation concurred with this viewpoint, underlining the importance of the question of equal treatment and stipulating that this question was related to the more general issue of the EU's position as an international organisation having its own internal rules.

24. While welcoming the work accomplished, some delegations informed the CAHDI that there were still some issues necessitating more thorough consideration (in particular the co-defendant mechanism). They pointed out that these difficulties could not be resolved at the level of the CDDH only.

25. Responding to delegations' observations, Mr Wennerström stated that the CDDH-UE had made efforts to guarantee equal treatment within the Committee of Ministers and drew attention, in this connection, to paragraph 2 of Article 7. Three situations could arise following EU accession: (1) where EU legislation requires EU member States to act in a co-ordinated manner - the draft accession agreement stated that in this case it would be necessary to introduce an amendment to the Committee of Ministers' decision-making procedures; (2) where there is no obligation under EU law to vote in a co-ordinated manner - in this situation the draft accession agreement provided for no requirement to vote in a co-ordinated manner; (3) where the Committee of Ministers supervises the fulfilment of obligations by a High Contracting Party other than the European Union or an EU member State - here too the draft accession agreement provided for no requirement that EU member States vote or express their position in a co-ordinated manner.

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

26. The United Kingdom delegation provided information to the CAHDI on the case of *Al-Jedda v. the United Kingdom*[3] concerning the internment of an Iraqi civilian for over three years (from 2004 to 2007) in a detention centre in Basra, Iraq, run by British military forces. The European Court of Human Rights had held that there had been a violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights.

27. This case raised two questions of principle under international law. The first was primacy of obligations deriving from the United Nations Charter: the UK government had contended that, on account of the use of the expression "all necessary measures", United Nations Security Council Resolution 1546 required the United Kingdom to incarcerate the applicant and, pursuant to Article 103 of the United Nations Charter, this obligation ruled out the application of the provisions of Article 5 of the ECHR. The Court had however underlined that the United Nations was created not only to maintain international peace and security but also, as mentioned in Article 1 of the Charter, to "achieve international cooperation in ... promoting and encouraging respect for human rights and for fundamental freedoms". Article 24(2) of the Charter required the Security Council, in discharging its duties with respect to its primary responsibility for the maintenance of international peace and security, to “act in accordance with the Purposes and Principles of the United Nations”.

[3] Application no. 27021/08

Against this background, the Court had considered that, in interpreting a resolution of the Security Council, there must be a presumption that the Security Council does not intend to impose any obligation on Member States that would breach fundamental principles of human rights. The Grand Chamber had said nothing as to what would happen where a clear obligation contained in a Security Council resolution was incompatible with a human rights obligation. The Court had found a violation of Article 5 of the ECHR without calling into question the principle laid down in Article 103 of the United Nations Charter.

28. The second question was whether the acts were attributable to the United Nations rather than to the United Kingdom. The UK Government had argued that, as in the cases of *Behrami* and *Saramati*,[4] the conduct of the British troops was attributable to the United Nations. The Court had rejected this argument and distinguished between the United Nations' role as regards security in Iraq and the role it assumed in the same field in Kosovo. It had considered that the United Nations Security Council had neither effective control nor ultimate authority and control over the acts and omissions of troops within the Multi-National Force and that Mr Al-Jedda's detention was not, therefore, attributable to the United Nations. The internment had taken place within a detention centre in Basra City, controlled exclusively by British forces. The Court had accordingly concluded, as had the majority of the House of Lords, that the internment of Mr Al-Jedda was attributable to the United Kingdom and that during his detention he fell within the jurisdiction of the United Kingdom for the purposes of Article 1 of the Convention.

29. The United Kingdom delegation then provided information to the CAHDI on the case of *Al-Skeini and Others v. the United Kingdom*.[5] In this case the Court had held that there had been a violation, by the United Kingdom, of the procedural obligation under Article 2 of the ECHR for lack of a full and independent investigation into the circumstances of the deaths of the relatives of five of the six applicants. They had apparently been killed outside British military bases and in the context of security operations conducted by British armed forces in Iraq. Concerning the extraterritorial applicability of the ECHR, the Court had found that, in the exceptional circumstances of the case, the United Kingdom exercised authority and control over the individuals killed in the course of these operations, such as to establish a jurisdictional link between them and the United Kingdom for the purposes of Article 1 of the Convention.

30. The Chairperson noted that the two cases presented by the United Kingdom delegation were particularly important and should be read in conjunction with the cases of *Bankovic* and *Behrami*.

11. Peaceful settlement of disputes

31. In the context of the CAHDI's consideration of issues relating to the peaceful settlement of disputes, the Chairperson invited delegations to submit to the Secretariat any relevant information for the updating of document CAHDI (2011) 7, containing information on the International Court of Justice's jurisdiction under international treaties and agreements. In this connection, she drew delegations' attention to the recent ratifications by Hungary and Germany of the Council of Europe Convention on the Prevention of Terrorism [CETS No. 196] and the signature by France of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism [CETS No. 198].

32. The Irish delegation informed the CAHDI that, in April 2011, the Irish government had decided in principle to recognise the compulsory jurisdiction of the International Court of Justice. It intended to file its declaration recognising the Court's compulsory jurisdiction at the end of 2011.

[4] Behrami v. France (application no. 71412/01); Saramati v. France, Germany and Norway (no. 78166/01)
[5] Application no. 55721/07

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

33. In the context 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 (documents CAHDI (2011) 8 and CAHDI (2011) 8 Add prov).

34. Concerning the ***declaration made by Thailand*** to the *United Nations Convention on the Law of the Sea*, a number of delegations voiced concern, considering that paragraph 1.4 of the declaration, dealing with freedom of navigation in the exclusive economic zone, was tantamount to a reservation.

35. Concerning the ***declaration made by China*** to the *International Convention for the Suppression of Acts of Nuclear Terrorism*, the Netherlands delegation wondered about the grounds for such a declaration, as a result of which the Convention applied to the Macao Special Administrative Region, but not to the Hong Kong Special Administrative Region of the People's Republic of China. The Netherlands had not yet determined its position.

36. Lastly, concerning the ***reservations entered by Pakistan*** to the *International Covenant on Civil and Political Rights* and to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Canada's representative informed the CAHDI of the objections Canada had entered against these reservations. The Chairperson noted that the time-limit for entering objections had now expired and the depositary had not as yet notified member States of any possible withdrawal of the reservations by Pakistan.

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

37. Mr Stephen Mathias, United Nations Assistant Secretary-General for Legal Affairs, informed the CAHDI of the work undertaken by the Office of Legal Affairs of the United Nations, mentioning three matters in particular.

38. Firstly, with regard to certain legal aspects of the "Arab Spring", Mr Mathias reported about the impact of recent events on the concept of the "responsibility to protect". So as to achieve the objectives set by the Heads of State and Government at the close of the 2005 World Summit, the United Nations Secretary General had identified the three pillars of the responsibility to protect (States' responsibility to protect their population; “international assistance and capacity-building” to assist States to protect their population; timely and decisive response). Mr Mathias considered that measures taken recently in Tunisia, Syria, Yemen and Egypt came under the second pillar. The Security Council resolutions on the situation in Libya had for their part put into effect the second and third pillars. He also referred to the question of the presentation of letters of credentials delivered by the Libyan National Transition Council to its representatives, as approved by the Credentials Committee of the General Assembly of the United Nations.

39. Secondly, on the subject of international criminal courts, Mr Mathias reported on recent developments, including the International Residual Mechanism for Criminal International Tribunals, which would be operational as from 1 July 2012 for the ICTR and as from 2013 for the ICTY. He referred to the key role played by the United Nations in establishing the International Criminal

Court and to the Organisation's responsibility to support the Court, also mentioning States' responsibilities and the complementarity principle.

40. Lastly regarding recourse to equitable and transparent procedures in the framework of the UN sanctions regimes, Mr Mathias drew attention to the quality of the work carried out by Ms Prost, Ombudsperson of the Security Council's 1267 Committee and to the extension of her mandate by Security Council Resolution 1989 (2011). He hoped that the recent developments in the regime would have an impact on the case-law of regional and national courts dealing with petitions concerning the inclusion of individuals on the UN lists. He pointed out that, under Article 103 of the United Nations Charter, in the event of a conflict between the obligations of the members of the United Nations under the Charter and their obligations under any other international agreement, their obligations under the Charter would prevail, but he trusted in the EU member states' capacity to avoid any conflict between their obligations under Chapter VII and their regional obligations. Mr Mathias's presentation is reproduced in **Appendix V** to this report.

41. Delegations thanked Mr Mathias for his presentation and underlined the importance of the concepts of "responsibility to protect" and "complementarity".

42. The Danish delegation informed the Committee of a “Focal point project on responsibility to protect” with Ghana and Costa Rica. The project is an attempt to anchor the first and second pillars of the "responsibility to protect" in the States concerned and is being pursued in close co-operation with the United Nations and NGOs. The delegation also pointed out that the issue of complementarity was not confined to the International Criminal Court alone.

43. The Swedish delegation informed the CAHDI that the concept of "responsibility to protect" and in particular its prevention aspect, would be included on the agenda of the Informal Meeting of Legal Advisers of the United Nations to be held in New York during the International Law Week.

44. Several delegations raised the question of the Ombudsperson's mandate and resources.

45. The United States representative underlined that the most recent Security Council resolutions had reinforced the Ombudsperson's mandate. He informed the Committee of the creation, at national level, of a mechanism (the Atrocity Prevention Board) responsible for preventing mass atrocities and acts of genocide.

46. Lastly, on the subject of universal jurisdiction and in reply to a question from the Netherlands delegation, Mr Mathias informed the Committee that a working group on this topic had been set up, and the question would be on the agenda of the Sixth Committee at the 66th Session of the General Assembly of the United Nations.

47. The Chairperson thanked Mr Mathias for his intervention.

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

48. Referring to documents CAHDI (2011) Inf 7 and 8, the CAHDI took note of the exchange of views that had taken place on 8 July 2011 between the ILC, the Chair of the CAHDI and the Director of Legal Advice and Public International Law of the Council of Europe.

49. The 63rd session of the International Law Commission had been held in Geneva from 26 April to 3 June and 4 July to 12 August 2011. Ms Concepción Escobar Hernández, member of the ILC and Vice-Chairperson of the CAHDI, presented the recent activities undertaken by the ILC.

50. This year the ILC had completed its examination of three important topics. The Commission had adopted a set of eighteen "draft articles on the effects of armed conflicts on treaties with commentaries thereto" and had recommended that the General Assembly (1) take note of the draft articles in a resolution and (2) consider, at a later stage, the elaboration of a convention on the basis of the draft articles. The ILC had also adopted "draft articles on the responsibility of international organisations with commentaries thereto" and had recommended that the General Assembly (1) adopt the draft articles in a resolution and (2) consider, at a later stage, the elaboration of a convention on the basis of the draft articles. The Commission had lastly concluded its work on "Reservations to treaties". A working group had been set up to review all the guidelines constituting the Guide to Practice. On the basis of this group's recommendations, the Commission had adopted the "Guide to Practice on Reservations to Treaties" and had recommended that the General Assembly take note of it and ensure its widest possible dissemination. Appended to the Guide were "Conclusions on the reservations dialogue", which were the subject of the seventeenth report presented by the Special Rapporteur and which contained practical guidance on the ongoing review of reservations and objections. The Commission had also suggested that the General Assembly consider establishing a reservations assistance mechanism, which could consist of a limited number of experts and would meet, as needed, to consider problems related to reservations or objections. Ms Escobar Hernández informed the CAHDI that the guidelines would be debated at length in 2012 and the Sixth Committee's debate in 2011 would focus on the recommendations concerning the reservations dialogue and the assistance mechanism.

51. The ILC had continued examining a number of topics on its agenda. Regarding "Expulsion of aliens", the Commission had examined the Special Rapporteur's seventh report and had paid particular attention to the list of aliens' fundamental rights. The Commission had continued its work on "Protection of persons in the event of disasters", concerning which the fourth report of the Special Rapporteur addressed, *inter alia*, the importance of the affected state's consent to external assistance, the possible limitations to the State's right to withhold consent to assistance and the right of third actors, including international organisations and non-governmental organisations, to offer assistance. The ILC also examined the second and third reports on "Immunity of State officials from foreign criminal jurisdiction". The discussions had revealed a considerable divergence of views among members of the ILC on this issue. Lastly, the Commission had discussed the obligation to extradite or prosecute (*aut dedere aut judicare)* and in particular the link with the fight against impunity and other obligations of international law, and the treaty-based, customary or *jus cogens* nature of obligations in this field. The question of restructuring the topic had been raised, in particular by extending it to encompass universal jurisdiction.

52. Concerning its future activities, the Commission had decided to include five topics in its long-term programme of work: formation and evidence of customary international law, protection of the atmosphere, provisional application of treaties, the fair and equitable treatment standard in international investment law and protection of the environment in relation to armed conflicts. The ILC had requested States to make known their views on the proposed topics and any suggestions they might have for other possible topics.

53. The ILC had also launched a review of its structures, working methods and means of communication, with the aim, in particular, of improving its relations with the Sixth Committee of the General Assembly.

54. The Chairperson of the CAHDI thanked Ms Escobar Hernández for her presentation, which would be very useful to delegations with a view to preparing the "International Law Week" that would begin on 24 October 2011 in New York.

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

55. The Secretary General's priorities for 2011 included a proposal to analyse the relevance of Council of Europe conventions. The Chairperson reminded that, on 5 September 2011, the delegations to the CAHDI had received the “Preliminary Draft Report of the Secretary General on the Outline of Council of Europe Convention Review” (document SG/Inf(2011)21), on which the CAHDI had been asked not for an opinion but to hold an exchange of views, the outcome of which would be communicated to the Secretary General. So as to be as best prepared as possible for these discussions, delegations which so wished had been invited to submit their comments on this preliminary draft report.

56. The delegations thanked the Secretary General for his work on the preliminary draft report and some delegations, in particular the Austrian delegation, regarded it as an interesting starting point in that it highlighted certain issues that might be discussed at greater length. They nonetheless pointed out that, in view of the document's size and the importance of the questions it raised, they had not been able to examine it in detail within the set deadline.

57. The Netherlands delegation voiced its concern about the role the preliminary draft report proposed to give the Secretary General as the depositary of treaties and underlined the need to examine the appropriateness of this document in that it seemed to exceed the limits of the powers usually conferred on depositaries. The delegation was also concerned about what would become of the so-called obsolete treaties and the major role the document envisaged for non-member States of the Council of Europe.

58. The Hungarian delegation voiced concerns about the member States' role in this exercise and the risk of disagreement between them regarding the classification of conventions, drawing attention in particular to the difficulty of distinguishing a key convention from an inactive one.

59. The Danish delegation considered that the document needed a thorough analysis and noted in particular that the role given to non-member States could have far-reaching consequences, in particular if they were granted the right to vote.

60. The Spanish delegation drew attention to the "danger" of classifying treaties and pointed out that other committees within the Council of Europe were competent to deal with the relevance of conventions. The delegation considered that a limited number of ratifications was not enough to qualify a convention as inactive, as a convention with few ratifications could nonetheless be considered of vital importance by the States parties that had ratified it.

61. The Romanian delegation wondered about the consequences of such a classification of conventions and noted that some conventions were not included in the same category as their protocols.

62. The Polish delegation wondered about the ultimate goal of the participation of non-member States of the Council of Europe and the European Union in Council of Europe conventions. In this connection, it pointed out that, although these conventions were open to non-member States, only a small number of such States ratified them. In the Polish delegation's opinion that was perhaps due to the fact that the international community perceived these conventions as regional legal instruments.

63. The Greek delegation also considered that the question of the obsolete conventions was important and pointed out that limited participation in a convention was not a decisive criterion. It also pointed out – with regard to the issue of exceeding a depositary's powers – that the major role in these matters should lie with the States.

64. In response to the concerns voiced by certain delegations, Mr Manuel Lezertua, Director of Legal Advice and Public International Law and Jurisconsult, informed the Committee that the document had been referred to the CAHDI with tight deadlines as the aim had been first to consult the committees competent for the sectoral conventions. He nonetheless thought it would be possible for the Secretary General to request the Committee of Ministers to allow the CAHDI more time. He also pointed out that the decisions fell to the member States and the Secretary General's role in this procedure was merely to draw attention to certain issues.

65. The Turkish delegation noted that, apart from the political dimensions, the legal aspects must be discussed and it would be for the Committee of Ministers to request an opinion from the CAHDI.

66. In the light of the exchange of views on the preliminary draft report, the Chairperson noted that delegations were in agreement on the reply to be transmitted to the Secretary General. The results of the discussions in the CAHDI on the Preliminary Draft Report of the Secretary General on the Outline of Council of Europe Convention Review appear in **Appendix VI** to this report.

16. Consideration of current issues of international humanitarian law

Intervention by Mr Maurizio Moreno, President of the International Institute of Humanitarian Law, San Remo

67. Mr Maurizio Moreno presented to the CAHDI the work of the International Institute of Humanitarian Law of San Remo, an independent non-profit organisation principally tasked with promoting the development of international humanitarian law and related fields of law. He mentioned the challenges confronting international humanitarian law at present, in view of traditional war's transformation into international, internal and regional conflicts and of developments in methods of armed conflict and the use of guerrilla tactics. Other causes for concern were the spread of terrorism, the increasing number of occupation situations and growth in the number of stakeholders involved in conflicts. He stressed the importance of applying international humanitarian law, which was the last rampart in many situations. Mr Moreno's intervention is reproduced in **Appendix VII** to this report.

68. Several delegations stressed the importance of the work done by the Institute, which they regarded as a facilitator of debate on fundamental issues of international humanitarian law and a forum for training and education in this field. They also underlined that the Institute made it possible to forge links between the activities of legal advisers on the civilian side and judges and advocates on the military side.

69. NATO's representative noted that NATO maintained very fruitful longstanding links with the Institute in the field of training and on the development of international humanitarian law as an important forum for debate. He referred to the role played by the Institute in forging ties between lawyers from Ministries of Foreign Affairs and Defence Ministries.

70. The representative of the International Committee of the Red Cross (hereafter the ICRC) reported on the preparations for the 31st International Conference of the Red Cross and Red Crescent, taking place in Geneva from 28 November to 1 December 2011. The agenda for the conference included a review of work done on the monitoring of resolutions and of the implementation of commitments entered into at the 30th Conference, as well as discussion of current and emerging humanitarian needs. The conference would focus in particular on

strengthening legal protection for victims of armed conflicts, strengthening disaster law, strengthening local humanitarian action and access to health care. The representative of the ICRC referred in particular to the discussions taking place on draft resolutions on strengthening the legal protection of victims of armed conflicts and on threats to health care. The ICRC representative's statement is reproduced in **Appendix VIII** to this report.

17. Developments concerning the International Criminal Court (ICC)

71. The Chairperson informed the Committee of the recent accessions of Grenada, the Philippines and Tunisia to the Rome Statute of the ICC and of the Court's recent judicial activities. She also informed the Committee that, in February 2011, the Security Council had seized the Prosecutor of the situation in Libya. The Tenth Session of the Assembly of States Parties would be held in New York from 12 to 21 December 2011. The Chairperson announced that the election of six judges and of the Prosecutor was on the agenda for the Session.

72. The Greek delegation informed the CAHDI that, in April 2011, the Greek parliament had adopted legislation on implementation of the Rome Statute.

73. The Mexican and Polish delegations informed the CAHDI that their respective governments had proposed candidates for the elections to the ICC.

74. The representative of Japan pointed out that Japan was working to promote the universality of the Court, especially in Asia, a region where only sixteen States had ratified the Rome Convention. He informed the CAHDI about a seminar held in July, in which Asian and African experts had participated and at which Japan had presented the Court and its work.

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

75. The Chairperson informed the CAHDI of the continuing work on the ICTY and ICTR completion strategy. Pending the establishment of the residual mechanism, which would replace the tribunals, the mandates of the ICTY and ICTR prosecutors had been extended until 31 December 2014 respectively by UN Security Council Resolutions 2006(2011) and 2007(2011) of 14 September 2011.

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

Intervention by Ms Marta Requena, Head of the Public International Law and Anti-Terrorism Division and Counter-Terrorism Coordinator of the Council of Europe

76. Ms Requena provided the CAHDI with an overview of the Council of Europe's activities in the counter-terrorism field. She focused her presentation on activities of the Council of Europe conducted in co-operation with other international intergovernmental organisations or carried out through the Council of Europe's own committees, namely the Committee of Experts on Terrorism (CODEXTER) and the Group of Parties to the Council of Europe Convention on the Prevention of Terrorism [CETS No. 196].

77. Regarding co-operation with other international organisations, Ms Requena mentioned the Special Meeting of the United Nations Security Council's Counter-Terrorism Committee with International, Regional and Sub-regional Organisations, which had had as its theme the prevention of terrorism and which the Council of Europe had hosted in Strasbourg from 19 to 21 April 2011, the joint conference organised by Spain, the Council of Europe and the OAS/CICTE on "Victims of terrorism" (San Sebastian, Spain, 16 and 17 June 2011) and the Council of Europe's co-operation with the OSCE via the "Co-operation Group".

78. Regarding Council of Europe activities, the CAHDI was informed about the procedure to establish the monitoring mechanism of the Council of Europe Convention on the Prevention of Terrorism, the first meeting of the Group of Parties to that Convention and the future Conference on "Bringing terrorists to justice" to be held in the context of the Council of Europe's technical co-operation project. Ms Requena's statement is reproduced in **Appendix IX** to this report.

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

79. Mr Scharia informed the CAHDI about the longstanding, wide-ranging co-operation between the United Nations Security Council Counter-Terrorism Committee Executive Directorate (CTED) and the Council of Europe. He said that the Council of Europe's approach regarding prevention of terrorism had served as a guide for the United Nations in devising its own approach. Mr Scharia mentioned the recent adoption of Security Council Resolution 1963 (2010), which narrowed the gap between the approach adopted by the Global Counter-Terrorism Strategy and that of the Security Council.

80. Concerning the initiative on bringing terrorists to justice, Mr Scharia mentioned that the provisions of Resolution 1373 (2001) aimed at bringing terrorists to justice posed a major challenge for states' criminal justice systems. He informed the Committee that the CTED had held a seminar on this theme, with the participation of nineteen senior prosecutors at national level handling cases linked to the fight against terrorism (New York, 1-3 December 2010). One of the objectives had been to show the international community that different legal systems dealing with different forms of terrorism had succeeded in overcoming the challenges and finding solutions for effectively bringing terrorists to justice while nonetheless respecting the rule of law and human rights. The group of experts had highlighted the following issues: use of classified information, methods of investigation, international cooperation, witness protection, use of new technologies by terrorists and by bodies involved in fighting terrorism and, lastly, the links between terrorism and other forms of crime. A second seminar had been held in Ankara, Turkey, from 18 to 20 July 2011, at which the discussions had focused on the issue of use of intelligence in counter terrorism prosecutions. Mr Scharia's statement is reproduced in **Appendix X** to this report.

81. At the close of the discussion on this subject, Interpol's representative referred to the key issue of fighting terrorism while ensuring the necessary respect for human rights.

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.

82. The Chairperson recalled that, by letter of 22 June 2011, the Chairperson of the Steering Committee for Human Rights (CDDH) had sent the CAHDI a request for an opinion on the introduction of a simplified procedure for the amendment of certain provisions of the European Convention on Human Rights (ECHR). The CDDH wished in particular to know the CAHDI's views on the compatibility with public international law and with the member States' internal law of adopting a Statute for the Court in which certain provisions of the ECHR would be incorporated and which could also include other elements that were not present in the Convention.

83. A draft opinion of the CAHDI was presented by the Chairperson (document CAHDI (2011) 13 prov). The members of the Committee adopted this draft opinion, as set out in **Appendix XI** to this report.

84. This opinion brought to the fore the main issues raised by the introduction of a simplified amendment procedure. The first question was the legal procedures which would make it possible to introduce the simplified procedures of amendment. This could be achieved either by adding a provision to the ECHR or by adopting a Statute for the Court. In both cases a protocol amending the ECHR would have to be adopted and ratified by the member States in accordance with their national law. The second question concerned the simplified procedure for amendment in its own right, in particular the nature of the provisions that might be amended and the procedure to be followed to that effect. The opinion mentioned the possibility that the CDDH might send the Committee, through the Committee of Ministers, a more precise request for an opinion and in particular a draft protocol.

85. Many delegations expressed satisfaction with this opinion, which struck a good balance between the need to introduce a more flexible amendment procedure and the need to guarantee compliance with treaty law and the States' wishes.

86. The representative of the CDDH drew attention to the needs, first, to abide by public international law and, second, not to go beyond the organisational aspects.

87. The Hungarian delegation informed the CAHDI that both options - adding a new provision to the ECHR or adopting a Statute for the Court - would mean going before the national parliament. Other delegations shared this view.

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

88. The CAHDI held an exchange of views on its draft terms of reference for 2012-2013 and adopted the terms of reference as set out in **Appendix XII** to this report. The Committee asked the Secretariat to submit these terms of reference to the Committee of Ministers for approval. The terms of reference provided that requests for CAHDI opinions would go through the Committee of Ministers (at its request or through its intermediary).

89. In addition, the CAHDI took note of the reform process undertaken by the Council of Europe and held an exchange of views on its priorities for 2012-2013 (document CM(2011)48 rev). The CAHDI's priorities are set out in **Appendix XIII** to this report, and the Committee asked the Secretariat to transmit them to the Committee of Ministers together with the CAHDI's terms of reference.

V. OTHER

21. Election of the Chair and the Vice-Chair

90. In accordance with the statutory regulations, the CAHDI re-elected Ms Edwige Belliard (France) and Ms Concepción Escobar Hernández (Spain) respectively as Chairperson and Vice-Chairperson of the Committee for a mandate of one year as from 1 January 2012.

22. Date, place and agenda of the 43rd meeting of the CAHDI

91. The CAHDI decided to hold its 43rd meeting in Strasbourg on 29 and 30 March 2012. It instructed the Secretariat, in consultation with the Chairperson, to prepare in due course the provisional agenda for this meeting.

23. Other business

92. The CAHDI concluded its 42nd meeting by adopting the abridged report as reproduced in **Appendix XIV** to this report.

APPENDIX I

LIST OF PARTICIPANTS

MEMBER STATES OF THE COUNCIL OF EUROPE / ETATS MEMBRES DU CONSEIL DE L'EUROPE

ALBANIA/ALBANIE

Ms Ledia HYSI
Director
Treaties and International Law Department
Ministry of Foreign Affairs

ANDORRA/ANDORRE

[Apologised / *Excusé*]

ARMENIA/ARMENIE

Mr Tigran GALSTYAN
Attaché
Legal Department
Ministry of Foreign Affairs

AUSTRIA/AUTRICHE

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

AZERBAIJAN/AZERBAIDJAN

Ms Turkan KHALILOVA
Department of International Law and Treaties
Ministry of Foreign Affairs

BELGIUM/BELGIQUE

M. Paul RIETJENS
Directeur général
Direction générale des Affaires juridiques
Service public fédéral des Affaires étrangères

M. Patrick DURAY
Conseiller Général
Directeur du Droit international public
Direction Générale des Affaires juridiques
Service public fédéral des Affaires étrangères

BOSNIA AND HERZEGOVINA/BOSNIE-HERZEGOVINE

Mme Gildzana TANOVIC
Conseillère
Service de la protection juridique du travail
Ministère des Affaires Etrangères

BULGARIA/BULGARIE

Mr Branimir ZAIMOV
Director
International and European Law Directorate
Ministry of Foreign Affairs

CROATIA/CROATIE

Ms Andreja METELKO-ZGOMBIĆ
Ambassador
Legal Adviser
Ministry of Foreign Affairs and European Integration

CYPRUS/CHYPRE

Ms Mary-Ann STAVRINIDES
Senior Counsel of the Republic
Law Office of the Republic

CZECH REPUBLIC/REPUBLIQUE TCHEQUE

Mr Milan DUFEK
Director
International Law Department
Ministry of Foreign Affairs

DENMARK/DANEMARK

Mr Thomas WINKLER
Ambassador
Under-Secretary for Legal Affairs
Ministry of Foreign Affairs

Mr Thomas KLOPPENBURG
Head of Section
Department of International Law
Ministry of Foreign Affairs

ESTONIA/ESTONIE

Ms Annely KOLK
Director General
Legal Department
Ministry of Foreign Affairs

FINLAND/FINLANDE

Ms Päivi KAUKORANTA
Director General
Legal Service
Ministry for Foreign Affairs

Ms Anu SAARELA
Director
Legal Service
Ministry for Foreign Affairs

FRANCE

Mme Edwige BELLIARD
(Chair/*Présidente*)
Directeur des affaires juridiques
Ministère des Affaires Etrangères

M. Claude CHAVANCE
Sous-directeur du droit international public
Ministère des Affaires Etrangères

Mme Céline FOLSCHE
Sous-direction du droit international public
Direction des Affaires Juridiques
Ministère des Affaires Etrangères

GEORGIA/GÉORGIE

Ms Tinatin GOLETIANI
Director of International Law Department
Ministry of Foreign Affairs

Mr Mamuka JGENTI
Ambassador
Permanent Representative of Georgia to the Council of Europe

GERMANY/ALLEMAGNE

Ms Susanne WASUM-RAINER
Legal Adviser
Director General for Legal Affairs
Federal Foreign Office

Mr Guido HILDNER
Head of Division 500
Federal Foreign Office

GREECE/GRECE

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

HUNGARY/HONGRIE

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

ICELAND/ISLANDE

Ms Sigridur EYSTEINSDÓTTIR
LL.M., Legal Officer
Office of the Legal Advisor
Ministry for Foreign Affairs

IRELAND/IRLANDE

Mr James KINGSTON
Legal Adviser
Department of Foreign Affairs and Trade

ITALY/ITALIE

Mr Giorgio MARRAPODI
Director General for Legal Affairs
Ministry of Foreign Affairs

Mr Enzo MARONGIU
Legal Service – Treaty Section
Ministry of Foreign Affairs

LATVIA/LETTONIE

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

LIECHTENSTEIN

Ms Isabel FROMMELT
Diplomatic Officer
Office for Foreign Affairs

LITHUANIA/LITHUANIE

Ms Sigute JAKSTONYTE
Ambassador at-Large
Legal and International Treaties Department
Ministry of Foreign Affairs

LUXEMBOURG

Mme Anne KAYSER-ATTUIL
Représentante Permanente adjointe
Représentation Permanente du Luxembourg
auprès du Conseil de l'Europe

MALTA/MALTE

[Apologised / *Excusé*]

MOLDOVA

Mr Emilian BRENICI
Head a.i. of the International Law Department
Ministry of Foreign Affairs and European Integration

MONACO

[Apologised / *Excusé*]

MONTENEGRO

Ms Bozidarka KRUNIC
International Law Department
Ministry of Foreign Affairs and European Integration

Ms Ivana MUCALICA
Second Secretary
International Law Department
Ministry of Foreign Affairs and European Integration

NETHERLANDS/PAYS-BAS

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

NORWAY/NORVÈGE

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

Ms Margit F. TVEITEN
Deputy Director General
Department for Legal Affairs
Ministry of Foreign Affairs

POLAND/POLOGNE

Mr Ryszard SARKOWICZ
Director
Legal and Treaty Department
Ministry of Foreign Affairs

Mr Zbigniew CZECH
Deputy Director
Legal and Treaty Department
Ministry of Foreign Affairs

Mr Piotr DOLATA
First Secretary
Legal and Treaty Department
Ministry for Foreign Affairs

PORTUGAL

Mme Teresa KOL DE ALVARENGA
Head of Directorate
International Law Directorate
Department of Legal Affairs
Ministry of Foreign Affairs

ROMANIA/ROUMANIE

Mr Ion GALEA
Director General for legal affairs
Ministry of Foreign Affairs of Romania

RUSSIAN FEDERATION/FEDERATION DE RUSSIE

Mr Igor PANEVKIN
Deputy Director
Legal Department
Ministry of Foreign Affairs

SAN-MARINO/SAINT-MARIN

[Apologised / *Excusé*]

SERBIA / SERBIE

Ms Vesna KNEŽEVIC PREDIĆ
Chief Legal Advisor
Ministry of Foreign Affairs

Ms Nataša KALEZIĆ
Counsellor
Ministry of Foreign Affairs

Ms Vanja RADONJIC-RAKIC
Deputy to the Permanent Representative
Permanent Representation of Serbia to the Council of Europe

SLOVAK REPUBLIC/REPUBLIQUE SLOVAQUE

Mr Igor BARTHO
Director General
Directorate for Legal and Consular Affairs
Ministry of Foreign Affairs

SLOVENIA/SLOVENIE

Mr Mihael ZUPANČIČ
Head of the International Law Department
Ministry of Foreign Affairs

SPAIN/ESPAGNE

Mme Concepción ESCOBAR HERNÁNDEZ (Vice-Chair/*Vice-Présidente*)
Chef du Bureau Juridique International
Ministère des Affaires Etrangères et de la Coopération

M. Maximiliano BERNAD ALVAREZ DE EULATE
Professeur de Droit international public et d'Institutions et droit de l'Union européenne
Université de Zaragoza

SWEDEN/SUEDE

Mr Anders RÖNQUIST
Director General for Legal Affairs
Ministry for Foreign Affairs

Ms Marie JACOBSSON
Principal Legal Adviser
Member of the International Law Commission
Department for International Law, Human Rights and Treaty Law
Ministry for Foreign Affairs

Mr Erik WENNERSTRÖM
Principal Legal Adviser on International Law
Department for International Law, Human Rights and Treaty Law
Ministry for Foreign Affairs

Ms Christine BJÖRK
Desk Officer
Department for International Law, Human Rights and Treaty Law
Ministry for Foreign Affairs

SWITZERLAND/SUISSE

M. Valentin ZELLWEGER
Ambassadeur
Directeur
Direction du droit international public
Jurisconsulte

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

Mr Goran STEVCEVSKI
Director
International Law Directorate
Ministry of Foreign Affairs

TURKEY/TURQUIE

Ms Deniz AKÇAY
Deputy to the Permanent Representative
Legal Adviser
Permanent Representation of Turkey to the Council of Europe

UKRAINE

Mr Volodymyr PUZYRKO
Director General for Treaties and Legal Affairs
Ministry of Foreign Affairs

UNITED KINGDOM/ROYAUME-UNI

Mr Iain MACLEOD
Legal Adviser
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

Mr Lucio GUSSETTI
Directeur
Conseiller juridique principal de la Commission europénne

Mme Sonja BOELAERT
Membre du Service juridique de la Commission européenne

Mme Luisella PAVAN-WOOLFE
Ambassadeur
Chef de la Délégation de l'Union Européenne auprès du Conseil de l'Europe
Représentation permanente de l'Union européenne auprès du Conseil de l'Europe

M. Luis Pablo TARIN MARTIN
Adjoint au Chef de la Délégation de l'Union européenne auprès du Conseil de l'Europe
Représentation permanente de l'Union européenne auprès du Conseil de l'Europe

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

Ms Emer FINNEGAN
Service juridique - Direction RELEX

STATES HAVING OBSERVERS STATUS WITH THE COUNCIL OF EUROPE / ETATS AYANT LE STATUT D'OBSERVATEURS AUPRES DU CONSEIL DE L'EUROPE

CANADA

Mr Alan KESSEL
Legal Adviser
Office of the Legal Advisor (JFM)
Department of Foreign Affairs and International Trade

HOLY SEE/SAINT-SIEGE

Rév. Frère Olivier POQUILLON
o.p.
Délégué Permanent de l'Ordre des Dominicains auprès des Nations Unies

JAPAN/JAPON

Mr Yasumasa NAGAMINE
Director General
International Legal Affairs Bureau
Ministry of Foreign Affairs

Ms Makiko AI
Official
International Legal Affairs Bureau
Ministry of Foreign Affairs

Mr Hideaki GUNJI
Consul (Attorney)
Consulate-General of Japan

MEXICO/MEXIQUE

Mr Rodrigo LABARDINI
Consultant Juridique Adjoint
Ministère des Affaires Etrangères

UNIITED STATES OF AMERICA/ETATS-UNIS D'AMERIQUE

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

Mr Richard VISEK
Deputy Legal Adviser
US Department of State

Mr Kenneth PROPP
Legal Counselor
United States Mission to the European Union

ISRAEL/ISRAËL

Mr Ehud KEINAN
Legal Adviser
Ministry of Foreign Affairs

AUSTRALIA/AUSTRALIE

[Apologised / *Excusé*]

UNITED NATIONS/NATIONS UNIES

Mr David SCHARIA
Legal Officer
Counter-Terrorism Committee Executive Directorate (CTED)

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 Councel
Office of Legal Affairs
ICPO-INTERPOL

Mr Gerhard KREUTZER
Legal Officer
Office of Legal Affairs
ICPO-INTERPOL
General Secretariat

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

Mr Peter OLSON
Legal Adviser
NATO HQ

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

M. Thomas GRADITZKY
Conseiller juridique

M. Jean François QUEGUINER
Chef de l'Unité des conseillers juridiques thématiques
Division juridique

SPECIAL GUESTS/INVITES SPECIAUX

Mr Stephen MATHIAS
Assistant Secretary General for Legal Affairs
United Nations

Mr Maurizio MORENO
International Institute of Humanitarian Law

COUNCIL OF EUROPE COMMITTEES / COMITES DU CONSEIL DE L'EUROPE

STEERING COMMITTEE FOR HUMAN RIGHTS / COMITE DIRECTEUR POUR LES DROITS DE L'HOMME (CDDH)

Ms Deniz AKÇAY
Representative of the CDDH
Deputy to the Permanent Representative
Legal Adviser
Permanent Representation of Turkey to the Council of Europe

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

Ms 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

Ms Hélène FESTER
Lawyer/Juriste
Public International Law and Anti-Terrorism Division
Division du droit international public et de la lutte contre le terrorisme

Ms Anna TSITSINA
Lawyer/Juriste
Public International Law and Anti-Terrorism Division
Division du droit international public et de la lutte contre le terrorisme

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

DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS / DIRECTION GÉNÉRALE DES DROITS DE L'HOMME ET DES AFFAIRES JURIDIQUES

CDDH SECRETARIAT / SECRETARIAT DU CDDH

Ms Virginie FLORES
Member of the Secretariat of the CDDH
Human Rights Intergovernmental Cooperation Division
Directorate General of Human Rights and Legal Affairs

INTERPRETERS / INTERPRETES

Mr Nicolas GUITTONNEAU
Ms Cynera JAFFREY

APPENDIX II

AGENDA

I. INTRODUCTION

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

2. Adoption of the agenda

3. Approval of the report of the 41st meeting

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

II. ONGOING ACTIVITIES OF THE CAHDI

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

6. Immunities of States and international organisations

    a. State practice and case-law

        - recent national developments and updates of the website entries

        - exchange of national practices on possibilities for the Ministry of Foreign Affairs to raise public international law issues in procedures pending before national tribunals and related to States' or international organisations' immunities

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

7. Organisation and functions of the Office of the Legal Adviser of the Ministry for Foreign Affairs

    a. Questions dealt with by offices of the Legal Adviser which are of wider interest and related to the drafting of implementing legislation 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

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

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)

10. Cases before the European Court of Human Rights 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

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

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

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

16. Consideration of current issues of international humanitarian law

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

17. Developments concerning the International Criminal Court (ICC)

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

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)

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

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

V. OTHER

21. Election of the Chair and Vice-Chair

22. Date, place and agenda of the 43rd meeting of the CAHDI (envisaged dates: Strasbourg, 29-30 March 2012)

23. 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 42nd MEETING OF THE COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW

Strasbourg, 22 September 2011

Madame la Présidente,
Mesdames et Messieurs,

Je suis ravi de vous accueillir une nouvelle fois à Strasbourg pour ce qui est déjà la 42ème réunion du CAHDI.

Comme le veut la coutume, je vais prendre quelques minutes pour faire, avec vous, un tour d'horizon de l'actualité de l'organisation, qui s'est considérablement chargée et accélérée depuis votre réunion de mars 2011.

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.

À présent, et depuis le mois de mai, c'est au tour de l'Ukraine de présider le Comité des Ministres pour la première fois depuis son adhésion au Conseil de l'Europe en 1995.

Dans le cadre de sa présidence, l'Ukraine s'attache aux priorités suivantes :

1. Protection des droits de l'enfant.

2. Droits de l'homme et prééminence du droit dans le contexte de la démocratie et de la stabilité en Europe.

3. Renforcement et développement de la démocratie locale.

S'agissant de la deuxième priorité de l'Ukraine – la protection des droits de l'homme – une attention particulière lors de la présidence sera accordée à la prévention des violations de droits et la présidence ukrainienne contribuera concrètement à cet objectif en organisant à Kiev, les 20 et 21 septembre, la conférence internationale sur « Le rôle de la prévention dans la promotion et la protection des droits de l'homme ».

Une nouveauté politique importante à souligner réside dans le souci de continuité qui anime dorénavant les présidences du Comité des Ministres. En effet, pour la première fois, l'Ukraine a consulté le Royaume-Uni et l'Albanie - Etats qui exerceront après elle la présidence de l'Organisation - inaugurant ainsi une nouvelle pratique dans le *modus operandi* de l'Organisation.

Les trois présidences successives du Comité des Ministres s'attacheront à faire avancer la **réforme de l'Organisation** qui comme vous le savez, détient une place importante depuis l'élection en 2009 de M. Thorbjørn Jagland, le Secrétaire Général du Conseil de l'Europe.

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Le Conseil de l'Europe est à présent dans la deuxième phase de la réforme de l'Organisation qui durera jusqu'à décembre 2011. Son but est de définir des priorités stratégiques pour la décennie à venir et les traduire en actions concrètes et efficientes grâce à de nouveaux outils et méthodes de travail.

Ainsi, la Direction de la planification politique a commencé à travailler début septembre au sein du Secrétariat et cette Direction est chargée d'aider le Secrétaire Général à définir sa stratégie à moyen et long termes en identifiant les défis et les évolutions à venir en Europe dans des domaines où le Conseil de l'Europe peut jouer un rôle moteur et novateur.

Par ailleurs, sur proposition des autorités turques, le Comité des Ministres a mis en place un groupe d'éminentes personnalités chargé de réfléchir aux défis paneuropéens à surmonter pour parvenir à vivre ensemble dans des sociétés de plus en plus complexes et en constante mutation. Les réflexions de ce groupe seront, s'il y a lieu, prises en compte dans le programme de réforme.

Je voudrais également citer certaines autres mesures principales de cette deuxième phase qui sont d'intérêt pour votre Comité. Il s'agit en particulier de :

- La mise en place du premier programme d'activité et budget bisannuel ;
- Le passage en revue des conventions du Conseil de l'Europe ;
- Le renforcement de la Cour européenne des Droits de l'Homme ;

Ces questions se reflètent dans les documents de votre réunion.

Lors de cette réunion le CAHDI sera amené à adopter son mandat pour les années 2012-2013 et à discuter – comme tous les autres comités de l'Organisation – ses priorités pour deux ans à venir.

Ceci constituera une contribution précieuse de votre Comité et d'autres comités intergouvernementaux dans l'action du Secrétaire Générale ayant pour but de définir des priorités stratégiques de l'Organisation et de les traduire en actions concrètes et efficientes dans le cadre du budget pour les années 2012-2013.

Par ailleurs, l'avis du CAHDI est particulièrement attendu sur l"*Avant-projet de Rapport du Secrétaire Général sur le passage en revue des Conventions du Conseil de l'Europe*", qui est présenté pour un échange de vues sous le point 15 de l'ordre du jour.

Tel qu'il est précisé dans ce document, les conventions doivent leurs effets juridiques à l'expression de la volonté des seuls Etats Parties, qui sont en premier lieu responsables de leur mise en œuvre.

À la lumière des observations qui en découleront, un projet de rapport sera transmis par le Secrétaire Général au Comité des Ministres le 30 septembre 2011. Cela sera suivi par des consultations supplémentaires avec les délégations.

À la lumière de celles-ci, le Secrétaire Général finalisera son rapport et soumettra sa version finale au Comité des Ministres sur le passage en revue des Conventions du Conseil de l'Europe.

En ce qui concerne le renforcement de la Cour européenne des Droits de l'Homme, une Conférence de haut niveau sur l'avenir de la Cour européenne des droits de l'homme s'est tenue à Izmir les 26 et 27 avril 2011. Elle a permis de faire le bilan des progrès accomplis depuis la Conférence d'Interlaken et de prendre des décisions cruciales pour des travaux futurs, ainsi que de réfléchir sur l'avenir de la Cour à long terme.

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Je tiens à présent à vous faire part des **avancements relatifs à certaines conventions récentes du Conseil de l'Europe**. Depuis ma dernière intervention devant votre Comité, l'activité du Bureau des Traités du Conseil de l'Europe a été marquée par l'ouverture à la signature de la Convention sur la prévention et la lutte contre la violence à l'égard des femmes et la violence domestique (STCE No. 210).

Cet instrument juridique dont la préparation a été discutée lors de la dernière réunion du CAHDI, a été ouvert à la signature le 11 mai 2011. A ce jour, cette Convention a été signée par 16 Etats membres du Conseil de l'Europe.

Par ailleurs, je tiens à vous informer d'une nouvelle activité normative au sein de notre Organisation.

En 2008, le Conseil de l'Europe et l'Organisation des Nations Unies ont décidé de réaliser une *Etude conjointe sur le trafic d'organes, de tissus et de cellules et la traite des êtres humains aux fins de prélèvement d'organes*.

Cette étude a recommandé "de préparer un instrument juridique international établissant une définition du trafic d'organes, de tissus et de cellules et énonçant des mesures à prendre pour prévenir ce trafic et protéger ses victimes, ainsi que des mesures de droit pénal destinées à le réprimer".

Le 6 juillet 2011 le Comité des Ministres a adopté le mandat du Comité d'experts sur le trafic d'organes, de tissus et de cellules humains (PC-TO) qui est chargé de préparer :

i) un projet de convention de droit pénal contre le trafic d'organes humains ;

et, si nécessaire,

ii) un projet de protocole additionnel au projet de convention de droit pénal précité relatif à la lutte contre le trafic de tissus et de cellules humains.

Le Comité examinera en particulier l'opportunité d'étendre le champ d'application des instruments proposés aux tissus et aux cellules. Si le Comité est d'avis qu'il est opportun, le trafic de tissus et de cellules fera l'objet d'un protocole additionnel.

Le Comité veillera à ce que le projet de convention et le projet éventuel de protocole additionnel apportent une valeur ajoutée, notamment lorsqu'ils portent sur les questions ci-après dans leur domaine respectif :

- criminalisation du trafic d'organes humains ;
- criminalisation du trafic de tissus et de cellules humains ;
- prévention du trafic d'organes humains ;
- prévention du trafic de tissus et de cellules humains ;
- assistance aux victimes ;
- coopération internationale.

Nous vous informerons en temps voulu du suivi donné à cet exercice fort important pour le Conseil de l'Europe.

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En tant que Jurisconsulte du Conseil de l'Europe, je voudrais également souligner l'importance que nous attachons à **la coopération avec d'autres organes ou organisations internationales.**

Lors de la réunion, Mme Belliard et moi-même vous présenterons les résultats de nos échanges de vues avec la Commission du Droit International des Nations Unies.

Pour finir, je voudrais souhaiter la bienvenue aux représentants d'autres organisations internationales, à nos partenaires de longue date, et aux invités spéciaux du CAHDI - M. Mathias, Sous-secrétaire général aux affaires juridiques des Nations Unies et M. Maurizio Moreno, Président de l'Institut International de Droit Humanitaire.

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 42ème réunion.

Je vous remercie de votre attention.

APPENDIX IV

PRESENTATION BY MR ERIK WENNERSTRÖM, OBSERVER OF THE CAHDI TO THE INFORMAL WORKING GROUP ON THE ACCESSION OF THE EUROPEAN UNION TO THE EUROPEAN CONVENTION IF HUMAN RIGHTS (CDDH – EU) CONCERNING THE EUROPEAN UNION'S ACCESSION TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS

At its 8th meeting in June this year, the CDDH informal working group on the accession of the European Union (EU) to the European Convention on Human Rights (ECHR) concluded its deliberations. The product of the deliberations are found in document CDDH-UE (2001) 16 and really consists of three documents:

- a draft accession agreement
- a draft explanatory report to the accession agreement, and
- draft amendments to the rules of the Committee of Ministers of the Council of Europe.

The last time I had the privilege of reporting in this issue to you, in my capacity as observer of CAHDI to the informal working group, the negotiations were in their 6th session. Let me therefore focus only on the central elements of the achievements since then.

First of all, this is a unique accession agreement in the sense that it not only contains the modalities of accession – normally an isolated event in the life of a treaty – but also modifications to the mother convention, very much like a protocol to the ECHR.

Art. 1 AA contains a modification to art. 59 (2) of ECHR that will act as a passerelle, lifting in the accession agreement into the ECHR, thereby permitting accession to take place with only minor modifications to the ECHR.

New art. 59(2b) would read: "…."

The second modification to the ECHR I would like to mention is created by art. 3 AA, adding a 4th para to art. 36 of ECHR, in order to create a co-respondent mechanism. With EU accession the Court will for the first time find itself in a situation where one High Contracting Party may have violated a right, on the basis of legislation enacted by another HCP. The co-respondent mechanism makes it possible for the Court to deal with both parties in such a way that responsibility is allocated where it rightly belongs.

The co-respondent mechanism is designed in such a way that the EU can be joined to proceedings when a complaint has been communicated not against the EU but one or more of its member States. The threshold permitting this to happen is that the member State could only have avoided violating the right by disregarding EU law.

Linked to the co-respondent mechanism, are the procedural means to guarantee the prior involvement of the EU Court of Justice in cases in which it has not been able to pronounce on compatibility of an EU act with fundamental rights. In cases where the European Union is a co-respondent, the Court of Justice of the European Union (CJEU) should have the opportunity to rule, if it has not yet done so, on the conformity of the act of the European Union at issue with the EU Charter on Fundamental rights. There is no certainty that the CJEU has had such an opportunity prior to a complaint being made in Strasbourg, as the CJEU cannot be seen as one of the domestic remedies the applicant must exhaust – the applicant does not control this remedy. For this purpose an internal EU accelerated procedure is identified and referred to in the accession agreement, in art. 3(5) AA.

The existing mechanism for 3rd party intervention may also in the future be the most appropriate way to involve the EU in a case, especially if the application is made against a state that is not an EU member State but still acts under the EU legal order through e.g. the Schengen, Dublin or EEA

arrangements. It should also be noted that the co-respondent mechanism is not likely to become a frequent feature of the Strasbourg system in the future. The working group has learned of only three cases over the past two decades that could, had they occurred after EU accession, have triggered this mechanism:

- Matthews v United Kingdom (App.24833/94) (art 3 prot 1 violation)
- Bosphorus Airlines v Ireland (App. 45036/98)(art 1 ptot 1 violation)
- Nederlandse Kokkelvisserij v the Netherlands (App. 13645/05)(art 6 violation)

Turning to the institutional issues, “equal footing” with the other High Contracting Parties requires a judge to be elected in respect of the EU, a judge that participates equally with the other judges in the work of the Court and have the same status and duties. Provisions are needed to permit a delegation of the European Parliament to participate, with the right to vote, in the sittings of the Parliamentary Assembly of the Council of Europe whenever it exercises its functions under Article 22 of the Convention. All this is provided for in art. 6 AA.

Provisions are likewise needed to permit the EU to participate in the Committee of Ministers of the Council of Europe when it exercises functions under the Convention. These provisions are contained in a combination of art. 7 AA and the proposed amendments to the rules of the Committee of Ministers. EU participation in the Committee of Ministers is a consequence of art. 26, 39, 46 and 47 ECHR conferring such functions on the Committee of Ministers with regard to all High Contracting Parties. It is furthermore suggested that such participating is warranted regarding Committee of Ministers decisions on the adoption of protocols to the ECHR, or other instruments that are ECHR related. The AA recognizes that when the Committee of Ministers supervises obligations of the EU or its member States linked to EU law, the EU and its member States may be required to vote in a co-ordinated manner. The sheer arithmetic of this suggests that the outcome of voting would be a foregone conclusion, which is why amendments to rule 18 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and the terms of friendly settlements are proposed. These amendments would have the effect that in such situations, decisions of the Committee of Ministers will be adopted if they are supported by a majority of the High Contracting Parties that are not the EU or its member States. This concerns in particular decisions related to referrals to the Court for interpretation of a judgment, infringement proceedings and the adoption of final resolutions.

The working group is informal and its members participate as experts, not national representatives. The texts presented in document 16 carry broad support in the group, which does not exclude dissenting views. It has been stressed that nothing is agreed until everything is agreed. The next steps will consequently be crucial.

The texts of document 16 have now been submitted to CDDH that will examine and ultimately decide on their adoption at the extraordinary meeting of the CDDH to be held from 11 to 14 October 2011. The texts are then submitted to the Committee of Ministers, that having obtained the opinion of the Council of Europe Parliamentary Assembly, will be in a position to adopt the texts and open the accession agreement for signature.

APPENDIX V

PRESENTATION OF MR STEPHEN MATHIAS, ASSISTANT SECRETARY-GENERAL FOR LEGAL AFFAIRS OF THE UNITED NATIONS

Madam Chairperson, chère Edwige,
Madam Secretary of the CAHDI,
Dear colleagues and friends from the Council of Europe Secretariat,
Dear colleagues and friends Legal Advisers,
Ladies and Gentlemen,

[Introduction]

I am very pleased to be back here in Strasbourg at the Council of Europe and for the opportunity to have an exchange of views with you - for the first time in my capacity as Assistant Secretary-General for Legal Affairs and Deputy to the Legal Counsel of the United Nations. Thank you very much for according me this prominent slot in your agenda. This, indeed, is a great honour.

Allow me to begin by conveying warm greetings and best wishes for your 42nd meeting from the Legal Counsel, Patricia O'Brien. She would have very much liked to be here personally but the ongoing General Debate of the 66th Session of the General Assembly requires her presence in New York. Patricia is very much looking forward to seeing you again at this year's informal meeting of the Legal Advisers of the Ministries of Foreign Affairs of the States Members of the United Nations in late October in New York.

During your meeting today and tomorrow, you will cover a wide range of topics that are of great importance not only for the Council of Europe but also for the United Nations. I look forward to listening to your discussions from my observer seat and intend to occasionally contribute some comments from a UN perspective. It's great to be an observer and I can tell you that in New York these days some observers get quite a bit of attention …

On that note, let me begin with some introductory remarks. I wish to address three topics:

(i) I will say a few words on some legal aspects of the "Arab Spring", as the ongoing developments in Northern Africa are sometimes referred to. Here I will focus on the concept of the "responsibility to protect" and on the issue of representation or "credentials";
(ii) secondly, I propose to share with you some thoughts on our UN-established and UN-backed international criminal courts and tribunals; and
(iii) lastly, I thought you might be interested to have a brief overview of where we are on the issue of "fair and clear procedures" for United Nations sanctions regimes.

As Legal Advisers in your respective Ministries of Foreign Affairs I know that you wield great influence on your respective countries' positions with regard to all of these issues.

[Arab Spring, R2P and representation]

I will begin with an analysis of some of the legal aspects of the "Arab Spring" my Office was confronted with.

From a legal point of view, the upheaval in Northern Africa and the Middle East brought about remarkable developments with regard to the concept of "responsibility to protect".

Let me recall that at the 2005 World Summit, the Heads of State and Government unanimously affirmed that "each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity". They also agreed that the international

community should assist States to exercise that responsibility, and committed themselves as necessary and appropriate to help States build capacity to protect their populations from the four crimes and violations, and to assist States under stress before crises and conflicts break out. They further declared that they were prepared to take collective action in a "timely and decisive manner through the Security Council, in accordance with the Charter, including Chapter VII" in cooperation with relevant regional organizations as appropriate when national authorities "manifestly fail to protect their populations" from the four specified crimes and violations

To this end, the Secretary-General has identified three pillars for advancing the World Summit's landmark decision in this area: Pillar One on the responsibility of States to protect their own population; Pillar Two on "International assistance and capacity-building" to assist States to protect their population; and Pillar Three on a "timely and decisive response" by the international community where States are not able or willing to protect their population.

The "Arab Spring" has been marked by appalling violence committed by Governments against their own citizens, and represents a clear failure by them to carry out their protection responsibilities under pillar one. Situations throughout the Arab world have highlighted the challenges involved in operationalizing R2P across the three pillars.

Measures have been taken under pillar two to assist national authorities to protect their populations in Egypt, Tunisia, Yemen and Syria.

Regarding Syria, the Special Advisers of the Secretary-General on the Prevention of Genocide and the Responsibility to Protect, together with the Secretary-General, have raised alarm at persistent reports of widespread and systematic human rights violations by Government security forces responding to anti-government protests across the country in which over 2700 people are said to have been killed. The Government has been reminded of its responsibility to protect its population and requested to cooperate in an international investigation into possible crimes against humanity.

With regard to Libya, efforts to operationalize R2P culminated in the Security Council's adoption of two resolutions (SCR 1970 and SCR 1973). These are the first fully-fledged "R2P resolutions". Resolutions 1970 and 1973 recognize the responsibility of the Libyan authorities to protect the Libyan population (pillar one). They identify the wide-spread and systematic attacks in Libya as "crimes against humanity", thus framing them within the "R2P crimes". The lead-up to resolution 1973 saw numerous "diplomatic, humanitarian and other peaceful means" taken by the Secretary-General, States and regional arrangements to protect civilians (pillar two).

In the words of paragraph 139 of the 2005 World Summit Outcome resolution, Member States have taken collective action in accordance with Chapter VII, through the Security Council (pillar three). This Security Council resolution and its authorization "to take all necessary measures ... to protect civilians and civilian areas under threat" is the most explicit and robust application of the R2P doctrine to date.

On 16 September 2011, the Security Council adopted resolution 2009 (2011). The Council mandated a civilian mission (UNSMIL) to assist Libya in establishing a democratic system of governance based on the rule of law. Targeted sanctions were lifted to support Libya's post-conflict economic and social recovery.

A second legal issue which the "Arab Spring" events in Libya triggered was the question of representation of a Member State in the United Nations. While the Membership of the "Libyan Arab Jamahiriya" as such was never in question, the representation of that State in the United Nations was bitterly contested throughout the 65th session of the General Assembly.

Libya's credentials signed by Qaddafi's Foreign Minister, Mr. Musa Kusa were accepted by the General Assembly for its 65th session on 23 December 2010 upon the recommendation of the Credentials Committee. Shortly after the protests against the Qaddafi Government turned violent,

the entire staff of the Libyan Mission in New York defected and joined the insurgency. Consequently, the entire Mission staff was "recalled" by the Qaddafi Government.

In turn, the "Transitional National Council of Libya" sought to reinstate the diplomats that had been recalled by the Qaddafi Government.

All communications were forwarded to the Credentials Committee which was unable to submit any recommendation to the General Assembly on the representation of the Libyan Arab Jamahiriya during the remainder of the 65th Session of the General Assembly. This resulted in a vacant Libyan seat in the UN.

On Friday last week, the General Assembly – on the recommendation of the Credentials Committee – approved the credentials of the Libyan Arab Jamahiriya issued by the President of the National Transitional Council of Libya appointing the Libyan Delegation for the 66th session of the General Assembly. The representatives of Libya will accordingly be allowed to sit in the Libyan seat in the General Assembly and in the subsidiary bodies of the General Assembly and perform official functions on behalf of Libya.

[UN-established or UN-backed international criminal courts and tribunals]

Let me now provide you with an update on our UN-established and UN-backed international criminal courts and tribunals. Time constraints will only allow me to give you a brief overview of all the activities that are currently under way. I will be happy to provide you with further details on any of those topics in the framework of our discussion.

[ICTY, ICTR and the Residual Mechanism]

The recent arrest and transfer of the last ICTY fugitives, Mladic and Hadzic, was a great success for the tribunal. We do not yet have specific trial schedules for these cases, but the ICTY will certainly continue its trial function at least through 2014. Any appeals in these two cases, as well as any appeal in the Karadzic case, are likely to be heard by the Residual Mechanism for the ICTY and ICTR.

The ICTR is scheduled to complete all trials by the end of this year or in early 2012, but it has 9 remaining fugitives at large. These include 3 "senior-level" indictees who are earmarked for trial by the Residual mechanism. The other 6 may be transferred to the jurisdiction of Rwanda for trial.

After four years of negotiations, the Security Council established the Residual Mechanism for the ICTY and ICTR in a Chapter VII resolution - 1966 (2010) of 22 December 2010. The Office of legal Affairs is now leading in the implementation of this resolution so that the Residual Mechanism can commence functioning on 1 July 2012.

[The Special Court for Sierra Leone and the Residual Special Court]

The Residual Special Court for Sierra Leone has been established through an agreement between the United Nations and the Government of Sierra Leone, which was signed in July 2010. It will commence functioning immediately the Special Court terminates following the conclusion of any appeal in the Charles Taylor case. Judgment in the Charles Taylor case is expected around October, and in the event of an appeal, it is expected that the proceedings would conclude around June 2012. This means that the Special Court is likely to be the first of the international criminal tribunals to complete its work, and its residual mechanism will be the first to start functioning. The Residual Special Court's functions will be similar to those of the ICTY and ICTR Residual Mechanism.

[Extraordinary Chambers in the Courts of Cambodia – ECCC]

As you know, the "Extraordinary Chambers in the Courts of Cambodia" (ECCC) are part of the national judicial system of Cambodia. It is a national court with participation by international judges, prosecutors and administrators. The ECCC is required under the Agreement between the UN and the Cambodian Government to function in accordance with international standards of justice, fairness and due process of law. This process of combining Cambodian law and procedure with international standards has been challenging, but has also had successes. Last July, the Court completed its first trial - convicting Kaing Guek Eav, alias Duch, of crimes against humanity, grave breaches of the Geneva Conventions, and serious offences under Cambodian national law. The trial in the second case, involving the four surviving senior leaders of the Khmer Rouge regime, had been due to start around now.

[Special Tribunal for Lebanon]

The Special Tribunal for Lebanon, which commenced functioning on 1 March 2009, is unusual among the UN-assisted Tribunal in that its mandate is concerned solely with the crime of terrorism under the Lebanese Criminal Code. Since March 2009, the Office of the Prosecutor has continued the investigation of the assassination of former Lebanese Prime Minister Rafiq Hariri on 14 February 2005, which was commenced by the United Nations International Independent Investigation Commission. On 17 February this year, the Prosecutor filed an indictment, which was confirmed by the Pre-Trial Judge on 28 June. It has since been transmitted to the Lebanese authorities with a request that they arrest and transfer the four accused. An international arrest warrant has also been issued through Interpol. We have no certainty, but our best estimate is that a trial might commence around summer 2012. The trial may well be a "trial in absentia". We therefore now need to look at the issue of renewing the mandate of the Special Tribunal, which runs in the first instance until the end of February 2012. The President is recommending a three-year extension.

[International Criminal Court]

For almost two decades, international criminal tribunals have contributed to the gradual erosion of impunity and the prosecution of those responsible in political and military leadership roles for commission of serious, large-scale crimes. These international judicial mechanisms have been at the heart of the revival and development of international criminal law and jurisprudence.

The ICC may be regarded as the centrepiece of the UN's system of international criminal justice.

The United Nations played a major role in the establishment of the ICC and supports it within the framework of the UN-ICC relationship agreement of 2004. The assistance the UN renders to the ICC is ongoing and ever increasing. The Secretary-General's commitment to accountability, international criminal justice and, in particular, the ICC is strong, principled and unwavering.

It is clear that the UN has a responsibility to support the ICC and to spearhead the international effort to bring justice for these crimes. And we take that responsibility seriously. However, we take every opportunity to emphasise the role of States. The principle of complementarity is essentially the duty of States first and foremost to prosecute international crimes. Only where national judicial systems are unable or unwilling to investigate or prosecute should international courts be involved.

The full potential of a proactive approach to complementarity is far from realized. National systems could assume a more prominent role in filling the impunity gap that currently exists in dealing with international crimes. The premise of the complementarity principle is that national systems are best placed to investigate and prosecute the statutory crimes of the Rome Statute. It is national systems which are closest to the victims and affected communities.

Despite the understandable challenges which the ICC is facing in consolidating itself as a vital and indispensable part of the community of international organizations, the ICC is the main hope in the quest to end impunity for international crimes where States are unable or unwilling to investigate and prosecute.

This Court provides the opportunity and the vehicle for our generation to significantly advance the cause of justice and, in so doing, to reduce and prevent unspeakable suffering.

[Fair and clear procedures for United Nations sanctions regimes]

This brings me to my last topic, "fair and clear procedures for United Nations sanctions regimes".

In the outcome document of the 2005 World Summit, the General Assembly at the level of Heads of State and Government called "upon the Security Council, with the support of the Secretary-General, to ensure that fair and clear procedures exist for placing individuals and entities on sanctions lists and for removing them, as well as for granting humanitarian exemptions".

This triggered a lot of activity on both the part of the Secretary-General and the Security Council.

In a letter to the Council then Secretary-General Kofi Annan identified four minimum standards that were, in his opinion, required to ensure that the procedures are fair and transparent.

The Security Council reacted by adopting a number of resolutions over the course of the following years, gradually and significantly improving its sanctions procedures.

Despite these developments, a growing number of complaints have been lodged in regional and national courts around the world, in which listed individuals and entities challenge their listing arguing the infringement of their fundamental human rights due to the lack of adequate procedures offered by Security Council sanctions regimes.

While it is not for me or for the UN Office of Legal Affairs to advise the EU Member States on how to address or reconcile the challenges arising for them from these cases, I would like to comment on the following two aspects.

First, in the context of the "second round" of the Kadi proceedings, I wish to refer to the General Court's decision of 30 September 2010 and its statement, obiter dictum, that, in its judgement the Office of the Ombudsperson could not be equated with the provision of an effective judicial procedure for review of decisions.

I believe that it is safe to say that Kim Prost - who briefed you at your last meeting in March - has had an excellent start and within a very short time managed to very positively impress everybody in the "sanctions community" both within the Secretariat and on the side of the Member States.

Ultimately, the impact of the Ombudsperson will largely depend on how her observations will be taken up and dealt with by the Committee.

On 17 June 2011, the Security Council adopted resolutions 1988 (2011) and 1989 (2011) as successor resolutions to resolution 1904 (2009).

Resolution 1989 (2011) concerns the sanctions measures against Al-Qaida and associated individuals and entities. Resolution 1988 (2011) concerns the sanctions measures against the Taliban and other individuals and groups associated with them. The existing sanctions measures are now to be applied across both sanctions regimes, but the Council's decision to split the Al-Qaida and Taliban sanctions into two separate regimes represents a significant political development, reflecting the evolving nature of the threat posed by Al-Qaida and the Taliban, as well as the challenging political and security dynamics in Afghanistan.

Resolution 1989 (2011) also extends the mandate of the Office of the Ombudsperson for an additional period of 18 months.

It will be interesting to see what wider impact the implementation of resolutions 1988 (2011) and 1989 (2011) will have on the jurisprudence of national and regional courts seized with relevant cases.

We will, of course, continue to follow these developments closely.

My second point in this regard is that, notwithstanding developments in the national and regional courts, it is important to recall that, in addition to their obligation, under Article 25 of the Charter, to carry out the decisions of the Security Council, all Member States of the United Nations are also obliged, pursuant to Article 48 thereof, to take the action required to carry out the decisions of the Security Council for the maintenance of international peace and security. In the event of a conflict between their obligations under the Charter and their obligations under any other international agreement, Article 103 provides that their obligations under the Charter shall prevail.

Ultimately, it is for Member States and in particular those in the Security Council to ensure respect not only for the mandatory measures and binding obligations under Chapter VII but also, consistent with the relevant Security Council resolutions and the UN Global Counter-Terrorism Strategy, to ensure respect for international human rights and humanitarian law in their efforts to combat terrorism and other violations of international law.

I am confident that the two objectives are mutually reinforcing and that the Member States of the European Union will continue to work, both within the EU and within the Security Council, to avoid a conflict between their obligations under the regional instruments and their obligations under Chapter VII of the Charter of the United Nations.

[Conclusion]

This brings me to the end of my introductory presentation. I apologize for being a bit longer than foreseen and I look forward to discussing with you.

Thank you very much.

APPENDIX VI

RESULTS OF THE DISCUSSIONS IN THE COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI) ON THE PRELIMINARY DRAFT REPORT OF THE SECRETARY GENERAL ON THE OUTLINE OF COUNCIL OF EUROPE CONVENTION REVIEW

1. The members of CAHDI generally noted the importance and appropriateness of the stocktaking exercise on conventions from the wider angle of the current reform in the Council of Europe. They welcomed the work of the Secretary-General in formulating the preliminary draft report, one of the benefits of which has been to highlight certain issues that could be the subject of more in-depth discussions.

2. The delegations noted that the study initiated by the Secretary-General raised major substantive questions on both the internal functioning of the Council of Europe and the means being envisaged of encouraging member States and non-member States to accede to the conventions in question.

3. Given the issues raised by this study, the CAHDI members pointed out that they had not been able to examine the preliminary draft report in detail in the allotted time, as it would necessitate consultations at the national level with the departments concerned because of the variety of the fields covered by the conventions in question.

4. On a preliminary non-exhaustive basis, the following points were mentioned:

- the necessity to devote time to a thorough analysis of the preliminary draft;

- the importance of distinguishing between the Council of Europe's role as a depository of the conventions and the role of the States concerned;

- the need to carefully examine the proposed categorisation of the existing conventions. It was noted that the distinction between "key conventions" and "active conventions" was unclear;

- the difficulties of drawing up, for each category, an exhaustive list of conventions which would reach a consensus;

- the need for examining the reasons why few or no Council of Europe member States had ratified certain conventions;

- the doubts as to the appropriateness of some of the proposed measures, in particular for conventions which could be considered as obsolete conventions;

- the concerns about the resource implications of the measures envisaged.

5. Given the importance of the exercise of the Convention review, delegations stated that they were ready to transmit to the Committee of Ministers a more thorough analysis of the preliminary draft report at the end of the next CAHDI meeting in March 2012.

APPENDIX VII

French only

INTERVENTION BY MR MAURIZIO MORENO, PRESIDENT, INTERNATIONAL INSTITUTE OF HUMANITARIAN LAW

C'est pour moi un grand honneur de participer aujourd'hui à cette réunion du CAHDI.

L'Institut de Sanremo entretient dès sa création en 1970 une coopération très fructueuse avec le Conseil de l'Europe, dont il partage les valeurs et les objectifs, sa mission première étant la promotion du droit international humanitaire, des droits de l'homme et des disciplines qui s'y rattachent.

Que pouvons-nous dire des problèmes actuels du droit international humanitaire ?

Dans un monde qui change, à un rythme, avec une rapidité qui n'ont pas de précédent, le droit international humanitaire est certainement confronté aujourd'hui à des sérieux défis. C'est en effet un ensemble de règles, dont la dernière codification – les Conventions de Genève de 1949, les Protocoles additionnels de 1977 – remonte à une phase des rapports entre les Etats désormais révolue.

La fin de la guerre froide, le démantèlement des blocs, la globalisation, ont modifié profondément les relations interétatiques, l'équilibre des forces, sans pour autant éliminer les tensions et les conflits armés. Les guerres classiques se font de plus en plus rares, mais les conflits ne cessent de se multiplier: conflits internes, à l'intérieur d'un même Pays, conflits internationaux, conflits à l'échelle régionale. La violence se manifeste aux quatre coins du monde sous de nouvelles formes cruelles et effarées, dont les conséquences tragiques sont de plus en plus souvent supportées par des populations innocentes.

Nous assistons aujourd'hui à la transformation à la fois des raisons, des stratégies, des outils de la guerre. La lutte contre le terrorisme, l'emploi de nouvelles armes, la multiplication des acteurs, ont contribué à modifier d'une façon substantielle les caractéristiques conventionnelles du combat, en désacralisant les canons de la guerre codifiés par la coutume et les traités internationaux.

Les conflits de nos jours sont de plus en plus des conflits asymétriques. Par ailleurs personne ne saurait remettre en discussion la fonction, les principes fondamentaux, les règles de base du droit international humanitaire; une branche du droit international qui a sa propre autonomie et spécificité, qui demeure dans tout affrontement armé le dernier rempart contre les excès et les abus du recours à force.

Les images propagées par les médias rendent aujourd'hui le monde témoin direct des violations flagrantes du droit international humanitaire, voire des droits de l'homme, qui continuent à se produire dans les situations de crise en cours.

Violations graves, violations moins graves – que quelque fois la presse amplifie dans la recherche de l'effet médiatique – qui entrainent toutefois toujours des violences inutiles, que l'on pourrait éviter. Crimes contre l'humanité pouvant s'inscrire dans un dessin politique aberrant (il suffit de penser aux opérations de nettoyage ethnique auxquelles nous avons assisté dans certaines régions d'Afrique comme dans les Balkans), mais aussi plus couramment actes de torture et autre pratiques de guerre exécrables, atteintes à la dignité humaine, qui découlent de l'ignorance, de la méconnaissance, d'un engagement insuffisant sur le plan de la diffusion des règles destinées à assurer la protection des victimes d'un conflit.

Le droit international humanitaire a peut-être des lacunes, certaines de ses règles peuvent susciter, sur le plan de l'application, des interrogations. Et l'on a souvent l'impression d'être

confronté à un système de normes précaire, dont l'application et le respect dépendent finalement du sens de la responsabilité et de la bonne volonté des Etats et de tous ceux qui sont appelées à l'appliquer. L'obligation juridique a été en effet longtemps dépourvue de sanctions immédiates et effectives, et ce n'est que récemment, avec la création de la Cour Pénale Internationale, qu'une nouvelle perspective se dégage quant' à la poursuite ponctuelle des crimes de guerre et contre l'humanité.

Mais le cadre existe. Il se fonde sur des principes universels qui sont à la fois juridiques et éthiques. Comme chaque droit, le droit humanitaire est un droit vivant: il nécessite parfois d'éclaircissements: certaines normes méritent peut-être d'être adaptées aux réalités nouvelles. Son évolution est en perspective sans doute à prendre en compte. Le premier impératif est toutefois aujourd'hui la mise en œuvre. La diffusion, l'enseignement, la formation jouent un rôle essentiel et représentent la condition préalable de son application et de son développement.

La tâche est complexe. Le public auprès duquel il est nécessaire de diffuser le droit international humanitaire n'est pas seulement celui des forces armées. Les conflits sont aujourd'hui l'affaire d'un nombre croissant d'acteurs. La diffusion, l'information, la formation méritent donc d'être adressées aussi à d'autres instances: les sociétés nationales de la Croix-Rouge et du Croissant-Rouge, les forces de police et les organisations non gouvernementales qui œuvrent dans les situations de conflits, les milieux politiques concernés, les universités, les écoles, les professions médicales, les médias, la société civile dans son ensemble.

C'est à cette activité de formation et sensibilisation dans le sens plus large que l'Institut de Sanremo se consacre depuis plus que quarante ans, en s'efforçant de semer parmi des militaires et des civils venant des cinq continents les graines de la culture du droit humanitaire, d'approfondir les modalités de sa mise en oeuvre dans un environnement sécuritaire qui change.

Il s'agit d'un effort poursuivi dans le temps, de longue haleine, d'un travail discret et quelquefois ingrat, que la communauté internationale témoigne toutefois d'apprécier.

L'activité de l'Institut s'exerce sur des plans différents: l'enseignement, la recherche, l'examen de thèmes d'actualité spécifiques dans le cadre de rencontres informelles entre experts.

Au fil des ans, l'attention de l'Institut s'est élargie du droit international humanitaire aux droits de l'homme, au droit des réfugiés, au droit des migrations et des personnes déplacées.

Quelques deux milles personnes passent chaque année à la Villa Ormond, le siège de l'Institut, en y trouvant un forum pour des échanges d'opinions constructives, le développement d'approches nouvelles, une diplomatie humanitaire dynamique, dans cette atmosphère unique qui est connue dans le monde entier comme «l'esprit de Sanremo».

Depuis quelques jour l'Institut, dont je viens d'assumer la présidence pour un nouvel mandat, a un nouveau Conseil dont font partie des personnalités éminentes de différents Pays, prêtes à donner une nouvelle impulsion à ses activités.

Neutralité, indépendance, engagement sont les principes inspirateurs de l'action de notre Institution, qui a su établir une collaboration féconde avec les Organisations Internationales à vocation humanitaire les plus importantes, notamment le Comité International de la Croix-Rouge (CICR), le Haut Commissariat des Nations Unies pour les Réfugiés (UNHCR) et l'Organisation Internationale pour les Migrations (OIM). L'Institut jouit d'un statut consultatif auprès des Nations Unies (ECOSOC) et du Conseil de l'Europe. Il entretient des relations opérationnelles avec l'Organisation Internationale de la Francophonie, la Fédération Internationale des Sociétés de la Croix-Rouge et du Croissant-Rouge. Dans les années plus récentes, des rapports de coopération prometteurs ont été établis avec l'UE, l'OTAN et l'UA, compte tenu du rôle que ces Organisations Régionales sont appelées à jouer dans la gestion des conflits armés et des opérations de soutien de la paix.

Dans le domaine de la formation, l'Institut, par son expérience spécifique, a désormais acquis la renommée internationale d'un centre d'excellence, et apporte une contribution importante à la mise en œuvre et à la dissémination du droit international humanitaire et des disciplines qui s'y relient.

Des accords de partenariat ont été conclus dans les deux dernières années avec un certain nombre d'institutions académiques et de centres de recherche prestigieux. Notamment l'Ecole de l'OTAN d'Oberammergau, le CASD (*Centro Alti Studi Difesa*) de Rome, le COESPU (*Centre of Excellence for Stability Policy Units*) de Vicenza, l'ISPI (*Istituto per gli Studi di Politica Internazionale*) de Milan, le «*Post Conflict Operations Study Center* » de Turin, l'IILA (*Istituto Italo-Latino Americano*) de Rome, le «*UN Staff College*» de Turin, du «*Cairo Regional Center for Training on Conflict Resolution and Peacekeeping in Africa*» du Caire.

Les cours sont dispensés à Sanremo en plusieurs langues: anglais, français, italien, chinois, arabe, russe, et sont fréquentés de plus en plus non seulement par du personnel militaire mais aussi par des membres de la société civile.

Les problèmes actuels du droit international humanitaire font l'objet d'une attention suivie. Des séminaires et des tables rondes ont été consacrés tout dernièrement à des questions de très grande actualité telles que l'application du droit international humanitaire dans les opérations de maintien de la paix, la responsabilité de protéger, la protection de la population civile, le recours aux boucliers humains, le régime des compagnies militaires et de sécurité privées et des acteurs non-étatiques, la piraterie, et tout dernièrement l'impact sur l'application du droit international humanitaire de nouvelles technologies d'armements, des drones, des robots, de la guerre informatique. Les actes de ces rencontres sont régulièrement publiés. Parmi les dernières publications de l'Institut, je tiens à signaler le Manuel sur les Règles d'Engagement, qui en deux ans a été traduit en huit langues.

Depuis quelques années, l'Institut a multiplié les efforts visant à promouvoir la diffusion du droit international humanitaire dans les Pays et dans les régions où persistent des situations de conflictualité et post-conflictualité. Des cours spécifiques ont été organisés en Irak, en Bosnie, au Kosovo, en Serbie et en Egypte à l'intention du personnel employé dans les opérations de paix de l'Union Africaine.

Où va le droit international humanitaire ? Ainsi que je l'ai remarqué, des progrès significatifs ont été effectués sur le plan des mécanismes de répression et de sanction des crimes de guerre, notamment avec l'adoption du Statut de Rome et l'institution d'une Cour Pénale Internationale. La notion de responsabilité de protéger s'est consolidée sur le plan juridique est peut-être désormais considérée comme une «emerging norm», même si la pratique des Etats ne nous permets pas encore de la considérer une règle juridique acquise et ayant une valeur universelle.

Je crois que beaucoup reste à faire, la multiplication des acteurs non-étatiques dans les conflits pose le problème du respect de leur part des normes existantes; nous sommes confrontés à des situations d'occupation et de conflit latent où il est difficile de tracer la limite entre guerre et paix et d'identifier le régime juridique applicable; le recours croissant à des tactiques de guérilla odieuses quel que l'emploi de boucliers humains et le terrorisme, sont parmi les défis que l'on ne peut ignorer si l'on veut garantir une protection efficace des populations civiles.

Le droit international humanitaire a aujourd'hui certainement besoin d'être plus rigoureusement et amplement appliqué, mieux interprété et en ce qui concerne quelques aspects, développé.

S'agit-il de mettre main aux Conventions de Genève, de s'engager sur la voie de la négociation d'un accord ultérieur, d'un quatrième Protocol additionnel ? Est-ce que les conditions sont mûres ? Le CICR s'est posé la question, un certain nombre de Gouvernements y on réflechi.
L'Institut de Sanremo, pour sa part, n'a pas esquivé le problème et – par ses séminaires, par des rencontres informelles – a essayé de donner une contribution active et responsable à

l'éclaircissement et à l'approfondissement de certains sujets plus urgentes et sensibles. Le débat continue et a sans doute permis d'enregistrer quelques progrès. Nous pensons toutefois que les conditions ne sont pas remplies pour essayer de ré-écrire des accords, des protocoles, des règles qui ont fait leurs preuves, le risque étant de voir avancer des interprétations restrictives et de faire des pas en arrière. L'Institut est donc partisan d'une approche flexible et pragmatique qui puisse favoriser – à travers l'intensification du dialogue et du débat entre experts – avec une meilleure interprétation et mise en œuvre des accords existants, une évolution et une mise à jour progressive à travers la consolidation de la pratique et de coutume.

Dans le cadre de ce processus, l'Institut est prêt à jouer pleinement son rôle de centre de débats informels et de réflexions constructives.

APPENDIX VIII

French only

PRESENTATION BY THE INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC) REGARDING THE CONSIDERATION OF CURRENT ISSUES OF INTERNATIONAL HUMANITARIAN LAW

Je vous remercie Madame la Présidente,

Mon intervention va porter sur la préparation de la 31ème Conférence internationale de la Croix-Rouge et du Croissant-Rouge qui se tiendra à Genève du 28 novembre au 1er décembre prochain – et plus précisément sur la négociation en cours des différentes résolutions liées au droit international humanitaire que le CICR va soumettre pour adoption à la Conférence.

Renforcement de la protection juridique des victimes de conflits armés

Le CICR est engagé depuis plus d'une année maintenant dans un dialogue avec les Etats sur le renforcement de la protection juridique des victimes de conflits armés. Nous considérons ce dialogue comme indispensable pour assurer que le droit international humanitaire reste pertinent et continue de répondre efficacement aux problèmes humanitaires découlant des conflits armés internationaux et non internationaux.

En septembre de l'année passée, le Président du CICR – Mr. Jakob Kellenberger – a invité les représentants des Missions permanentes à Genève pour leur présenter les conclusions de l'étude interne relative au renforcement de la protection juridique des victimes de conflits armés. A cette occasion, il a indiqué que le CICR allait conduire des consultations formelles avec un groupe d'Etats représentant les différentes régions du monde afin de déterminer dans quelle mesure ces derniers partageaient l'analyse juridique du CICR et étaient prêts à s'engager dans des discussions sur le renforcement du droit dans les quatre domaines identifiés par cette étude. Le processus de consultation était toutefois ouvert, le CICR ayant clairement indiqué sa disponibilité à discuter de ce sujet avec tous les Etats en exprimant le souhait.

Le résultat de ces consultations a été annoncé le 12 mai dernier par le Président du CICR dans un deuxième discours prononcé devant les représentants des missions permanentes à Genève. Le Président a alors indiqué que les activités futures du CICR sur le renforcement du droit international humanitaire serait centrées sur les deux sujets qui ont attiré le plus d'intérêt de la part des Etats – à savoir la protection des personnes privées de liberté en situation de conflit et les mécanismes de contrôle du respect du droit international humanitaire.

Le dialogue avec les Etats (et les Sociétés nationales de la Croix-Rouge et du Croissant-Rouge) s'est poursuivi pendant l'été. Le 18 juillet dernier le CICR a envoyé à tous les participants à la Conférence internationale un document indiquant les éléments que pourraient contenir une résolution sur le renforcement de la protection juridique des victimes de conflit armé. Ce document avait pour objectif de permettre aux participants de donner leur point de vue sur le possible contenu d'une résolution avant même d'entamer sa rédaction. Sur la base des observations reçues, le CICR a élaboré un projet de résolution qui a été envoyé aux Etats début septembre avec une invitation à faire des commentaires avant le 25 septembre – c'est-à-dire avant la fin de cette semaine.

Une nouvelle version du projet de résolution sera envoyée le 12 octobre prochain avec les documents officiels de la Conférence. Cette nouvelle version qui servira de base de discussion lors de la Conférence internationale sera donc le fruit d'un dialogue approfondi et ouvert avec les Etats. Nous accomplirons tous les efforts possibles pour assurer que ce projet de résolution reflète un bon équilibre entre les différents commentaires reçus et espérons qu'il pourra être adopté par

consensus. En attendant, nous restons naturellement à la disposition des Etats qui souhaitent poursuivre un dialogue sur le texte de ce projet de résolution.

Pour faciliter la discussion, le CICR va également soumettre à la Conférence internationale un rapport résumant les principales conclusions de son étude interne en la matière ainsi que le résultat des consultations formelles menées avec les Etats sur ce thème. Ce rapport qui n'engagera que le CICR doit permettre à tous les participants intéressés – y inclus ceux qui n'ont pas participé aux consultations initiales – d'exprimer leur opinion lors de la Conférence en toute connaissance de cause.

Le débat organisé lors de la Conférence donnera aux participants une opportunité d'indiquer si – et dans quelle mesure – ils partagent les analyses juridiques du CICR et en particulier s'ils sont d'accord avec les thèmes identifiés comme prioritaires pour un renforcement du droit. Ce débat pourra également permettre aux participants d'exprimer leur opinion sur la manière la plus constructive de poursuivre un dialogue sur le renforcement du DIH.

A ce sujet, il me semble important de réitérer ici que l'objectif du CICR est de poursuivre un dialogue approfondi avec les Etats sur les deux thèmes identifiés comme prioritaires au terme des consultations mais sans aucunement préjuger des possibles résultats de ce dialogue. Au contraire, le projet de résolution indique clairement que le renforcement du DIH doit être un processus ouvert, incluant différentes options telles que la réaffirmation, la clarification ou le développement du droit. L'option la plus adaptée pour renforcer le droit dans chacun de ces deux domaines devrait donc être décidé à un stade ultérieur en fonction des recherches et des discussions ultérieures qui seront menées avec les Etats.

Le plan d'action quadriennal en DIH

Le plan d'action – qui sera adopté en annexe d'une résolution – a pour objectif d'améliorer la protection des victimes de conflits armés grâce à une meilleure mise en œuvre des règles existantes du DIH. Ces règles figurent principalement mais pas exclusivement dans les quatre Conventions de Genève de 1949 et leurs Protocoles additionnels. En rédigeant le plan d'action, le CICR a tenu compte du fait que tous les Etats n'étaient pas nécessairement liés par les mêmes obligations conventionnelles.

Ce plan d'action est structuré autour d'objectifs et d'actions spécifiques liés à ces objectifs que les Etats et les composantes du Mouvement sont invités à mettre en œuvre en fonction de leurs pouvoirs, mandats et capacités respectives. Ces objectifs et actions spécifiques incluent des mesures visant à prévenir les violations du DIH (comme la diffusion du DIH ou la ratification des instruments pertinents), des mesures de protection et d'assistance des victimes de conflits armés pendant les hostilités ainsi que des mesures visant à répondre aux conséquences directes des violations du DIH. De telles mesures reflètent les obligations des Etats de respecter et de faire respecter le DIH ; elles ont aussi été rédigées en tenant compte du mandat respectif des différentes composantes de la Croix Rouge et du Croissant Rouge tels qu'ils figurent dans les Statuts du Mouvement.

Les commentaires que nous avons reçus dans le cadre des consultations actuelles sur le plan d'action indiquent en général un support des Etats sur le texte du projet de résolution et sur les objectifs qui ont été identifiés. Certains Etats ont souligné que les objectifs étaient ambitieux et que les actions spécifiques devaient rester réalistes et réalisables dans la période de quatre ans. Le CICR est également conscient du fait que le plan d'action ne doit pas dupliquer le travail entrepris dans d'autres fora internationaux ou par d'autres acteurs humanitaires. Il nous semble néanmoins qu'avec une mise en œuvre du plan d'action, les participants à la Conférence internationale pourront compléter utilement les travaux entrepris par d'autres sur les objectifs posés et propose que cette volonté de complémentarité soit explicitement mentionnée dans le texte de la résolution.

Pour conclure sur le plan d'action, j'aimerai rappeler que des commentaires sur le projet de texte peuvent être soumis jusqu'au 25 septembre. Le CICR incorporera dans toute la mesure du possible les observations reçues dans un nouveau projet de plan d'action qui sera envoyé aux participants le 12 octobre 2011 avec les autres documents officiels de la Conférence.

Le projet sur les soins de santé en danger

Le projet sur les soins de santé en danger a été lancé cette année par le CICR. Il s'appuie sur le constat – tiré de l'experience opérationnelle du CICR – que la violence dirigée contre les blessés et les malades ainsi que contre le personnel, les unités et les moyens de transport sanitaires reste un problème humanitaire fondamental mais trop souvent ignoré. En tenant d'attirer l'attention et de mobiliser autour de cette problématique, le CICR cherche à préserver la fourniture de soins de santé efficaces et impartiaux dans les conflits armés ainsi que dans ce que le CICR appelle les « autres situations de violence ».

Au cours du processus de consultation sur le projet de résolution, certains Etats ont exprimé des réserves par rapport au champ d'application du projet au motif précisément qu'il s'étend à ces autres situations de violence. A cet égard, il est probablement utile de réitérer que le CICR opère traditionnellement non seulement dans les situations de conflits armés, mais également dans les autres situations de violence pour autant que des conséquences humanitaires clairement établies justifient son action et que les autorités concernées aient donné leur consentement au déploiement de ses activités. Ce droit d'initiative dont le DIDR fait usage dans les autres situations de violence est explicitement reconnu à l'article 5(2)(d) et 5(3) des Statuts du Mouvement. Une description plus détaillée de cette notion « d'autres situations de violence » sera proposée dans le rapport sur les soins de santé en danger qui sera soumis à la Conférence.

J'aimerais insister sur le fait que cette initiative ne vise pas le développement du droit mais devrait permettre d'améliorer le respect du droit international humanitaire (en situation de conflit armé) et des droits de l'homme (dans les autres situations de violence). Si les règles des droits de l'homme concernant la protection des soins de santé sont beaucoup plus générales que celles que l'on trouve dans le DIH, le CICR a identifié quelques règles communes aux deux corps de droit. Cette analyse figurera également dans le rapport mentionné précédemment.

Conclusion

Pour conclure, Madame la Présidente, j'aimerai rappeler que la Commission sur le droit international humanitaire discutera – sous la présidence de Madame Liesbeth Lijnzaad – un des thèmes abordés dans le cadre du troisième rapport préparé par le CICR sur les DIH et les défis posés par les conflits armés contemporains. Ce thème sera celui de l'assistance / l'accès humanitaire.

Enfin, permettez-moi de rappeler que les participants à la Conférence internationale seront à nouveau invités à émettre des engagements. Ceux-ci peuvent se rapporter à des questions spécifiquement traités dans le cadre de la Conférence – comme par exemple le projet sur les soins de santé en danger ou des actions spécifiques du plan d'action en droit international humanitaire – mais aussi plus largement sur la diffusion ou la mise en œuvre nationale du DIH. Des modèles ou propositions d'engagement sont déjà disponibles et d'autres le seront dans les prochains jours.

APPENDIX IX

PRESENTATION BY MS MARTA REQUENA, SECRETARY OF THE CAHDI AND HEAD OF THE PUBLIC INTERNATIONAL LAW AND ANTI-TERRORISM DIVISION REGARDING COUNCIL OF EUROPE ACTION IN THE FIGHT AGAINST TERRORISM

I would like to take this opportunity to brief you shortly about most important developments in the CoE action against terrorism which took place since the last CAHDI meeting in March 2011. Allow me to provide you with this overview focusing

- on the one hand of the Council of Europe activities carried out together with other international intergovernmental international organizations; and

- on the other hand the Council of Europe activities carried out by its own committees, mainly the CODEXTER and the Group of the Parties to the *Council of Europe Convention on the Prevention of Terrorism*.

I. COOPERATION WITH OTHER INTERNATIONAL ORGANISATIONS

Unites Nations

The Council of Europe hosted, here in Strasbourg, in April (19-21 April 2011) the **"Special Meeting of the United Nations Security Council Counter-Terrorism Committee with international, regional and sub-regional organisations".**

Previous special meetings of the CTC were held in New York, Washington D.C., Vienna, Almaty and Nairobi. These events served to enhance cooperation among the many actors engaged in assisting States in their efforts to build capacity against terrorism.

This was the first time in its history that the Council of Europe hosted a meeting of a committee of the Security Council and a unique opportunity to disseminate information and raise awareness on many activities and actions that the Council of Europe is taken to prevent and combat terrorism and to protect its victims.

Indeed it was a golden opportunity to reaffirm the Council of Europe's leading role in the development of the international prevention of terrorism as this Special Meeting was devoted to the theme of "Prevention of Terrorism". As you are aware, the Council of Europe's contribution in this area is widely recognised internationally as the *Council of Europe Convention on the Prevention of Terrorism* - which was drafted by the CODEXTER - was the first international legally binding instrument on this subject. This Convention has served as inspiration for other international texts such as United Nations Security Council Resolution 1624 (2005) and the revised European Union Framework Decision on combating terrorism as well as the recent United Nations Security Council Resolution 1963 (2010).

European Union

In relation to our cooperation with the European Union I would like to mention that both Organisations signed in May 2007 a *Memorandum of Understanding* where explicitly appears the need "to develop appropriate forms of cooperation in response to the challenges facing European society, and to enhance the security of individuals, particularly as regards combating terrorism". Therefore, we were particularly grateful that the Hungarian Presidency of the Council of the EU invited the Council of Europe to the meeting of the European Union Working Party on Terrorism (COTER) on 25 May 2011 in Brussels. The Vice-Chair of the CODEXTER and me as CoE Counter-Terrorism Coordinator participated in this meeting and gave an overview of the CoE action against terrorism. This was an important occasion to strength the cooperation between both organisations as well as an opportunity to explore ways to join forces and to coordinate actions in

our common fight against terrorism. Taking into account their common origins, values, membership and symbols the cooperation between the European Union and the Council of Europe should be really close and unique. Our 27 common member States must perceive that this cooperation is a reality, and in particular in a very sensitive political issue like the fight against terrorism.

Organisation of American States (OAS)

The Council of Europe cooperation in the field of terrorism was also extended to the OAS. Indeed on 16-17 June 2011 the Council of Europe Counter Terrorism Task Force also organised a joint Conference with the Counter Terrorism Committee of the Organisation of American States and the Spanish authorities.

This conference was devoted to "Victims of Terrorism" taking into account on the one hand the extensive legal acquis of that Council of Europe in this field and on the other hand the vary wide range of legal instruments and policies that Spain has developed in relation to the victims of terrorism during almost 40 years suffering terrorists attacks. Numerous American States are currently preparing and adopting new legislation concerning victims of terrorism. The results of this Conference will also be very useful for the follow-up of Article 13 of the CoE Convention on the Prevention of Terrorism, devoted to the victims of terrorism.

I would also like to take this opportunity to thank Spanish authorities for their generous contribution and for hosting this joint Conference.

OSCE

The CoE and the OSCE has already set up a "Co-ordination Group" on the issue of terrorism which will hold its 14th meeting on 21 October in Vienna. The co-operation between the OSCE and the Council of Europe in the area of the fight against terrorism was further enhanced and developed with an aim to amplify the political message as well as legal and operational action against terrorism.

Recent years of co-operation between the OSCE and the Council of Europe on the fight against terrorism also revealed an expansion of co-operation into new areas such as the promotion of public-private partnerships (PPPs) in the fight against terrorism, the role of the media in preventing and combating terrorism, countering terrorist use of the Internet and enhancing cyber security.

II. COUNCIL OF EUROPE ACTIVITIES

The Council of Europe own activities in the field of terrorism are at present mainly devoted to monitor the implementation of the *Council of Europe Convention on the Prevention of Terrorism* by its 28 Parties. (In this respect we welcomed particularly the ratification by Germany on 10 June 2011). To this aim, it has been set up a two pillars monitoring mechanism: The Group of Parties and the CODEXTER.

The First meeting of the Group of Parties to the *Council of Europe Convention on the Prevention of Terrorism* [CETS No. 196], took place in San Sebastian (Spain) on 13 June 2011. Mr Vladimir SALOV (Russian Federation) and Mr Iñigo FEBREL BENLLOCH (Spain) respectively as Chair and Vice-Chair to the Group of Parties. During this meeting the Group of the Parties also preliminary adopted its draft Rules of Procedure for ùmonitoring the implementation of the Convention. in accordance with the principles of sound management and in order to optimise financial and human resources available the group decided to hold its 2nd meeting on the day prior to the next meeting of the CODEXTER.

The Council of Europe Committee of Experts on Terrorism (CODEXTER) constitutes a unique forum for exchanging information and best practices between governments, law enforcement authorities, prosecutors, judges and other international organisations. The CODEXTER is also co-

ordinating the Council of Europe counter-terrorism action and it is acting as the second pillar of the monitoring mechanism of the *Council of Europe Convention on the Prevention of Terrorism* and will prepare reports on the implementation of specific provisions od the Convention.

The CoE also underlined the usefulness of technical cooperation activities in the area of fight against terrorism, and the importance of this activity in addition to standard setting, evaluation and coordination activities in this area. The Council of Europe Technical Cooperation Assistance Project *"Bringing terrorists to justice: promoting the implementation of European standards and documenting good practices"*, which has been developed by the Council of Europe Counter Terrorism Task Force will continue with its second event in Kiev on 25 and 26 October 2011 .

I will conclude my brief overview of the recent counter-terrorism developments at this point and I remain at your disposal for any further information on this matter.

APPENDIX X

PRESENTATION BY MR DAVID SCHARIA, UNITED NATIONS SECURITY COUNCIL COUNTER-TERRORISM COMMITTEE EXECUTIVE DIRECTORATE (CTED)

Madam Chair,

Let me first thank you for inviting CTED to participate in this meeting and for allowing us to brief you on some of our current activities and on our cooperation with the Council of Europe.

CTED and the Council of Europe have long established relations and extensive cooperation. Our respective mandates complement each other and the level of cooperation and trust among our entities is very high.

It is reflected in the Council of Europe participation in all CTC country assessment missions in Europe, in CTED's participation in Monevyal and Codexter and in TA programs the Council of Europe has undertaken and developed in cooperation with CTED.

However, in this short intervention I would like to focus on two areas where the cooperation with the Council of Europe has yielded very important outcomes for both entities.

The first one is the area of prevention of terrorism where the Council of Europe led the international community by developing the Council of Europe Prevention Convention. The deep approach of the Council of Europe to how prevention of terrorism could be achieved which includes both soft and hard measures and most importantly a balanced approach that respects human rights paved the way for the UN to develop and design its own approach to prevention of terrorism.

It began with resolution 1624 and the adoption which was followed by the adoption of the global strategy and has culminated in the recent adoption of resolution 1963 and the convening of the SM here in STRS.

Resolution 1963 contains several important elements in the development of the UN approach to CT. First, it puts much focus on prevention. It addresses what the UN Global Counter-Terrorism Strategy calls 'the conditions conducive to terrorism' – unresolved conflict, ethnic, national and religious discrimination, violations of human rights, and lack of good governance to mention just a few examples – that can be exploited by terrorist recruiters to attract individuals to their cause.

It encompasses building cultures of tolerance and understanding in countries so that communities work together and can resolve their differences in a spirit of respect and compromise.

The resolution closes the gap that existed between the Global Strategy and SC resolutions on Terrorism.

It contains elements which the SCCTC never dealt with before. Among them the role of victims, the important role CS could play in preventing terrorism, Media and internet.

The CTC currently develops its approach to these topics – not without some disagreement among its members. It is expected that the coming months and years will allow the CTC to crystalize its approach to these topics most probably in an incremental way.

In this respect the special meeting was an excellent opportunity to discuss these new topics. Representatives of international regional and subregional organizations met and shared good practices and challenges in prevention. Clearly, there could not have been a better location to have this meeting than here in Strasbourg.

We were very pleased with the way the meeting was handled by the Council of Europe Secretariat and this is another good opportunity to thank you for hosting this meeting. We were also pleased with the good turn out and with the level of discussions – it allowed the CTC to develop its approach and to direct the attention of international and regional players to the importance that it attaches to prevention of terrorism.

The second initiative CTED is currently heavily engaged carries the title of "bringing terrorists to justice". CTC assessments of countries implementation of the resolution over the ten years of its existence revealed that the requirement in resolution 1373 to bring terrorists to justice poses a major challenge for States' criminal justice systems.

The prosecution of counter-terrorism cases relies on specific skills and expertise, and States' investigative, prosecutorial and judicial authorities have been forced to develop ways to deal with the increasing complexity of such cases, which often pose unusual and challenging case-management issues. CTED's country visits have also demonstrated that, despite these challenges, it is possible for States to accomplish this objective while adhering to rule of law principles.

This was the basis for the Committee's decision to organize an innovative seminar on Bringing Terrorists to Justice at United Nations Headquarters in New York. The seminar had two main objectives, To build upon States' successes in order to show the broader international community that different legal systems, dealing with different kinds of terrorism, have been able to meet the related challenges and find solutions allowing them to bring terrorists to justice effectively while respecting the rule of law and human rights;

(ii) To enable the Committee and CTED to build upon the experience and good practices developed and employed by counter-terrorism prosecutors by sharing and promoting them in its dialogue with international, regional and subregional organizations and Member States.

5. The seminar was attended by 19 prominent national counter-terrorism prosecutors who had personally handled the prosecution of some of the most heinous terrorist attacks carried out in recent history (Pause: Mumbai, Ankara, argentine, HLF, Kenya, Bali, Madrid). We benefited from the support of the US, Turkey and France.

Among the global challenges identified by the prosecutors were the use of classified information, investigation methods, international cooperation, protection of witnesses, the use of sophisticated technology by terrorists and by counter-terrorism agencies, and links between terrorism and other forms of criminality.

The seminar huge success led CTED to propose a series of follow-up activities. With the support of the US and Turkey we organized a seminar in Turkey bringing back many of the same participants and introducing few new ones including the prosecutors who handle the attack in the Moscow airport, AQ attacks in Saudi Arabia and more. The Ankara seminar was dedicated to one challenge "the use of intelligence in counter terrorism prosecutions".

The discussions in this seminar raised few more concrete challenges. Among them:
The increasing reliance of prosecutorial agencies on cooperation with the military including the military intelligence– examples (Afghanistan), the complex and delicate relations with the intelligence community, the need to bridge gaps between civil and common law systems and the need to simplify the submission of evidence collected in one state at a different state including in particular use of intelligence gathered by a state different than the one where the proceedings take place.

In all these challenges, we found good practices, creativity and original thinking in the solutions these prosecutors found to these challenges but we also felt that they describe challenges that will need global or cross-regional approaches and more innovative thinking.

I should mention that in both activities we benefited from the participation and highly values contribution of the Council of Europe which provided participants with information on the good practices it developed in these areas and the jurisprudence of the ECHR.

During the Ankara seminar participants expressed a wish that this forum will play two more roles. One is a kind of a global think-tank supporting the international community in identifying challenges and good practices in the prosecution of terrorism.

Participants also expressed a wish that this informal network of prominent prosecutors who are able to contact each other directly and assist each others whenever prosecutorial cooperation is needed will be supported and developed We are happy to work with these unique group of high level practitioners on these aims and our donors (the US and Turkey) have supported this very interesting development of this series and we are working with them on developing a long term project.

Thank you for your kind attention.

APPENDIX XI

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

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

1. On 22 June 2011, the Steering Committee for Human Rights (CDDH) addressed a request to the Committee of Legal Advisers on Public International Law (CAHDI) for an opinion on the introduction of a simplified procedure for the amendment of certain provisions of the European Convention on Human Rights (ECHR).

2. In particular, the CDDH wished to obtain the opinion of the CAHDI on the compatibility, with public international law and the national law of the Member States, of the adoption of a Statute of the Court containing certain provisions of the ECHR, as well as other items which do not currently appear in the Convention.

3. During this exchange of views, the delegations examined the main questions posed by the introduction of a simplified procedure for amendment.

4. The first question was that of the legal procedures which would make it possible to introduce the simplified procedure of amendment.

- One solution would be to introduce to the Convention a provision establishing the simplified procedure for amendment and mentioning the provisions of the ECHR which are covered by the procedure. This solution would require the adoption of a Protocol of Amendment to the Convention, which would have to be ratified by the Member States.

- Another solution would be to adopt a Statute of the Court containing a final provision establishing the simplified procedure for amendment. This Statute would include provisions withdrawn beforehand from the Convention, in addition to new provisions. This solution would also require the adoption of a Protocol of Amendment to the Convention, which would have to be the subject of a ratification procedure by the Member States.

Thus, whatever the chosen solution, the delegations highlighted the need to proceed by means of a Protocol of Amendment to the Convention, which would have the status of an international agreement and be the subject, in each Member State, of a ratification procedure in accordance with the rules of internal law.

5. The second question concerned the simplified procedure for amendment in its own right.

- With regard to the nature of the provisions likely to be amended by means of the simplified procedure, it is necessary to limit them to ensure that the procedure is compatible with the constitutional requirements of the Member States. Thus, only provisions relating to organisational questions and without any impact on the rights and obligations of States and applicants should be included and presented in a clear and exhaustive list. This is the condition for it to be possible to implement the simplified procedure for amendment without it being necessary for States to apply the ratification procedure, requiring parliamentary authorisation, for each amendment.

Thus, by way of example, Article 35 of the Convention on the exhaustion of all domestic remedies is a provision which could not be subject to amendment by means of a simplified procedure, as modification of the Article would have consequences for the rights and obligations of applicants. However, a provision such as paragraph 2 of Article 24, which provides that the Court should be

assisted by rapporteurs, is essentially organisational and could therefore be the subject of a simplified procedure.

- In terms of the choice of a simplified procedure for amendment, it is clear that unanimous adoption of amendments would be more acceptable than a qualified or non-qualified majority for certain Member States, given their constitutional requirements. This adoption could be express or tacit, using an "opt-out" procedure (six-month period, for example, in which to object to the adoption of an amendment, at the end of which, in the absence of any objection, the amendment would come into force for all Member States).

6. Lastly, the CAHDI delegations insisted on the fact that these replies in no way prejudge the need or not, for certain Member States, to transcribe the provisions thus adopted into national law.

7. As things stand, the delegations considered themselves unable to conduct a more in-depth analysis of the question. Only in the light of a given draft proposal, transmitted to the CAHDI by the Committee of Ministers, could a more precise opinion be formulated.

APPENDIX XII

TERMS OF REFERENCE OF THE CAHDI FOR 2012-2013

1. Committee name	**Committee of Legal Advisers on Public International Law (CAHDI)**
2. Committee type	Ad hoc committee
3. Source of terms of reference	Committee of Ministers

4. Terms of reference

Having regard to:

the Resolution Res(2005)47 on committees and subordinate bodies, their terms of reference and working methods, adopted by the Committee of Ministers on 14 December 2005;

the need for the development of legal and judicial systems and of law enforcement systems respectful of the rule of law and human rights, as reflected in the Action Plan adopted by the Third Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005), namely in Chapter I – Promoting common fundamental values: human rights, rule of law and democracy;

conclusions and decisions of the Committee of Ministers (CM/Del/Concl(91)455/24, Appendix 5, extended by CM/Del/Dec(2004)904, item 10.1, para. 4 and Appendix 11).

Within the framework of the Programme and Budget 2012-2013, under Programme Rule of Law: Common standards and policies – Development and implementation of common standards and policies, the Committee is instructed to:

- examine questions related to public international law;

- conduct exchanges and co-ordinate views of member states;

- provide opinions at the request of the Committee of Ministers or at the request of other Steering Committees or Ad hoc Committees, transmitted via the Committee of Ministers.

5. Composition of the Committee

A. Members

Governments of member states are entitled to appoint representatives, experts in the field of public international law, of the highest possible rank, preferably chosen among the Legal Advisers to the Ministries of Foreign Affairs.

The Council of Europe budget will bear the travel and subsistence expenses on one representative from each member state (two in the case of the state whose representative has been elected Chair)

B. Other Participants

i. The European Commission and the Secretariat General of the Council of the European Union may send representatives to meetings of the Committee, without the right to vote or defrayal of expenses.

ii. The states with observer status with the Council of Europe (Canada, Holy See, Japan, Mexico, United States of America) may send representatives to meetings of the Committee,

without the right to vote or defrayal of expenses.

iii. The following intergovernmental organisations may send representatives to meetings of the Committee, without the right to vote or defrayal of expenses:

- The Hague Conference on Private International Law;
- North Atlantic Treaty Organisation (NATO);[1]
- The Organisation for Economic Co-operation and Development;
- The United Nations and its specialised agencies;[2]
- European Organisation for Nuclear Research (CERN);[3]
- International Criminal Police Organisation (INTERPOL).

C. Observers

The following non-member states and non-governmental organisations may send representatives to meetings of the Committee, without the right to vote or defrayal of expenses:

- Australia;
- Israel;[4]
- New Zealand;
- International Committee of Red Cross (ICRC).[5]

6. Working structures and methods

The CAHDI may set up working parties and have recourse to consultant experts.

7. Duration

The present terms of reference expire on 31 December 2013.

-- Notes ----------

Note 1 See CM/Del/Dec/Act(93)488/29 and CM/Del/Concl(92)480/3.
Note 2 For specific items at the request of the Committee.
Note 3 For specific items at the CERN's request and subject to the Chair's approval.
Note 4 Admitted as observer "for the whole duration of the Committee" by the CAHDI, March 1998. The same is valid for subordinated committees. Decision confirmed by the Committee of Ministers (CM/Del/Dec(99)670/10.2 and CM(99)57, para.D15). See CM/Del/Dec(2000)735/2.1a, para. 4 and SG/Inf(2000)48, para. 34. See CM/Del/Dec(2001)742/10.1 and Appendix 8, see CM/Del/Dec(2002)816/10.1 and Appendix 7.
Note 5 Admitted as observer for the whole duration of the Committee, see CM/Del/Dec(2003)861/10.1, para. 2 and CM(2003)146, para; 12; see CM/Del/Dec(2004)883/10.1, para. 1 and Appendix 16.

Decision References

29/11/2006 CM/Del/Dec(2006)981, Item 10.1b -- CM/Del/Dec(2006)981/10.1, Appendix 3 valid until 31/12/2008

APPENDIX XIII

CAHDI PRIORITIES FOR 2012-2013

For 2012-2013, the Committee of Legal Advisers on Public International Law (CAHDI) establish the following priorities:

Examine topical questions of public international law ;

Respond to requests for opinion or exchanges of views requested or transmitted by the Committee of Ministers ;

Continue its active role as the European Observatory of Reservations to International Treaties ;

Deepen exchanges of views on the work of the International Law Commission and of the Sixth Committee ;

Continue to update and improve databases managed by the Committee which are related to States practice on immunities of States; organisation and functions of the Office of the Legal Adviser of the Ministry for Foreign Affairs and implementation of United Nations sanctions ;

Review recent developments regarding international disputes, namely cases before the European Court of Human Rights involving issues of public international law ;

Maintain contacts with lawyers and legal services of other entities or international organisations.

APPENDIX XIV

LIST OF ITEMS DISCUSSED AND DECISIONS TAKEN ABRIDGED REPORT

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 42nd meeting in Strasbourg on 22 and 23 of September 2011 with Ms Edwige Belliard (France) in the Chair. The list of participants is set out in Appendix I of the meeting report[6].

2. The CAHDI adopted its agenda as set out in **Appendix I** of the present report. It also adopted the report of its 41st meeting (Strasbourg, 17-18 March 2011), and authorised the Secretariat to publish it on the CAHDI's website.

3. The CAHDI took note of the developments concerning the Council of Europe since the last meeting of the Committee, as presented by Mr Manuel Lezertua, Jurisconsult and Director of Legal Advice and Public International Law (DLAPIL). The intervention on this matter is set out in Appendix III of the meeting report. The CAHDI took note in particular of the progress of the work concerning the reform of the Organisation, the developments concerning the Council of Europe Treaty Series and the information relating to certain recent conventions of the Council of Europe.

4. The CAHDI considered the decisions of the Committee of Ministers relevant to its work, and in particular the decisions regarding the follow-up given by the Committee of Ministers to the opinions of the CAHDI on Recommendation 1913 (2010) of the Parliamentary Assembly on "The necessity to take additional international legal steps to deal with sea piracy" and Recommendation 1920 (2010) of the Parliamentary Assembly on "Reinforcing the effectiveness of Council of Europe treaty law".

5. The CAHDI considered national practices and case-law regarding State immunities on the basis of information provided by the delegations and invited delegations to submit or update their contributions to the relevant CAHDI database. The Committee also took stock of the state of ratifications of the United Nations Convention on Jurisdictional Immunities of States and Their Property by the member and observer States of the Council of Europe.

Furthermore, the CAHDI agreed to maintain on the agenda of its forthcoming meeting the exchange of views 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.

6. The CAHDI further considered the issue of organisation and functions of the Office of the Legal Adviser of the Ministry for Foreign Affairs on the basis of contributions from delegations. The delegations were invited to submit or to update their contributions to the relevant database at their earliest convenience.

7. The CAHDI further took note of the information regarding cases that have been submitted to national tribunals by persons or entities removed from the lists established by the UN Security Council Sanctions Committees. The delegations were also invited to submit or to update their contributions to the database on national implementation measures of UN sanctions and respect for human rights.

8. The CAHDI considered the issue of the accession of the European Union to the European Convention on Human Rights. In this respect, the Committee thanked 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 – UE) for his presentation on the progress of the work undertaken by this Group. The CAHDI took note that the Draft legal instruments on the

[6] Document CAHDI (2011) 17 prov

Accession of the European Union to the European Convention on Human Rights 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 at the 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.

9. The CAHDI took note of cases brought before the European Court of Human Rights (ECtHR) involving issues of public international law and further invited delegations to keep the Committee informed of any judgments or decisions, pending cases or relevant forthcoming events.

10. In the context of its consideration of issues relating to the peaceful settlement of disputes, the CAHDI invited the delegations to submit to the Secretariat any relevant information for the update of the document CAHDI (2011) 7 containing information on the International Court of Justice's jurisdiction under international treaties and agreements.

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.

12. The CAHDI further held an exchange of views with Mr Stephen Mathias, Assistant Secretary-General for Legal Affairs of the United Nations. The exchange of views concerned, *inter alia*, the legal aspects of the "Arab Spring", as well as the concept of the "responsibility to protect", the issue of credentials of Libya, the state of play of the UN-established and UN-backed international criminal courts and tribunals and finally the issue of "fair and clear procedures" for United Nations sanctions regimes.

13. The CAHDI took note of the report of the International Law Commission (ILC) on the work of its 63rd Session. In this regard, Ms Concepción Escobar Hernández, Member of the ILC and Vice-Chair of the CAHDI, presented recent activities of the ILC. The Committee was also informed of the results of the exchange of views between the ILC, the Chair of the CAHDI and the Director of DLAPIL, which took place on 8 July 2011 in Geneva.

14. The Committee recalled that the Council of Europe is currently analysing the relevance of its Conventions and that this initiative is one of the priorities of the Secretary General in 2011. The CAHDI took note that the Committee was asked to forward to the Secretary General the outcome of its discussions on the Preliminary Draft Report of the Secretary General on the Outline of Council of Europe Convention review (document SG/Inf(2011)21) with a view to present the above-mentioned draft report to the Committee of Ministers on 30 September 2011 by the Secretary General.

In this regard, the CAHDI held an exchange of views on the Preliminary Draft Report of the Secretary General on the Outline of Council of Europe Convention review. The results of these discussions are set out in **Appendix II** of the present report.

15. With regard to consideration of current issues of international humanitarian law, the CAHDI held an exchange of views with Mr Maurizio Moreno, President of the International Institute of Humanitarian Law and took note of information provided by the delegations.

16. On the basis of contributions from delegations, the CAHDI took stock of recent developments concerning the International Criminal Court (ICC) and developments concerning the implementation and functioning of other international criminal tribunals.

17. Likewise, based on contributions of Ms Marta Requena, Council of Europe Counter Terrorism Coordinator, and Mr David Scharia from United Nations Security Council Counter-Terrorism Committee Executive Directorate (CTED), the CAHDI took note of information on work

undertaken by the Council of Europe and other international fora in the area of the fight against terrorism. These contributions concerned, in particular, the outcomes of 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.

18. As far as topical issues of international law are concerned, the CAHDI examined the 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. Following this examination, the CAHDI adopted its opinion as set out in **Appendix III** to the present report.

19. The CAHDI held an exchange of views on the CAHDI's Draft Terms of Reference for 2012-2013 and adopted the Terms of Reference as set out in **Appendix IV** to the present report. The Committee asked the Secretariat to submit the said Terms of Reference to the Committee of Ministers for approval.

20. Moreover, the CAHDI took note of the reform process undertaken by the Council of Europe, and in particular the CAHDI held an exchange of views on the CAHDI's priorities for 2012-2013, in light of the Organisation's priorities for 2012-2013 (document CM(2011)48 rev). The priorities of the CAHDI for 2012-2013 are set out in **Appendix V** to the present report and the Committee asked the Secretariat to transmit them to the Committee of Ministers together with the CAHDI's Terms of Reference.

21. In accordance with the statutory regulations, the CAHDI re-elected Ms Edwige Belliard (France), and Ms Concepción Escobar Hernández (Spain), respectively as Chair and Vice-Chair of the Committee for a mandate of one year, as of 1 January 2012.

22. The CAHDI decided to hold its 43rd meeting in Strasbourg on 29-30 March 2012. It instructed the Secretariat, in liaison with the Chair of the Committee, to prepare in due course the provisional agenda of the meeting.