

Strasbourg, 18/03/05

List of decisions

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

29th meeting, Strasbourg, 17-18 March 2005

List of items discussed and decisions taken

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 29th meeting in Strasbourg on 17 and 18 March 2005. The meeting was open by Ms Dascalopoulou-Livada, Chair of the CAHDI. The list of participants can be consulted in the meeting report (document CAHDI (2005) 9 prov.) and the agenda appears in Appendix I to the present report (the references of the documents submitted in the meeting appear in Appendix II to document CAHDI (2005) 9 prov.).

2. The Head of the Public Law Department, Mr Palmieri, informed the CAHDI about developments concerning the Council of Europe since the last meeting of the Committee.

3. The CAHDI was informed about the decisions of the Committee of Ministers concerning the CAHDI and the requests for CAHDI's opinion, in particular the follow-up given by the Committee of Ministers to the opinion of the CAHDI on Parliamentary Assembly Recommendation 1602 (2003) on immunities of the Members of the Parliamentary Assembly and to the list of possibly problematic reservations to international treaties applicable to the fight against terrorism adopted by the CAHDI at its last meeting (see item 4.b below).

Further to that, at the Committee of Minister's request, the CAHDI considered Parliamentary Assembly Recommendation 1690 (2005) – The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference, and adopted the comments in Appendix II.

4. In the context of its activity as *European Observatory of Reservations to International Treaties*, the CAHDI considered:

a) a list of outstanding declarations and reservations to international treaties and several delegations informed the Committee about the follow-up they envisaged to give to some of them.

b) reservations to international treaties applicable to the fight against terrorism in accordance with the decision of the Committee of Ministers of 21 September 2001 (CM/Del/Dec (2001) 765 bis, Item 2.1). In particular, the CAHDI considered the follow-up to the list of possibly problematic reservations adopted at the last meeting (document CAHDI (2004) 22). The CAHDI agreed to review this document in the light of the explanations given. The new version appears in document CAHDI (2004) 22 rev.

5. The CAHDI considered the analytical report on the Pilot-Project of the Council of Europe on State practice regarding Immunities of States presented to it by Mr Kohen of the Graduate Institute of International Studies, Mrs Breau of the British Institute of International and Comparative Law and Mr Wittich of the University of Vienna and discussed the follow-up to be given to this activity. The CAHDI welcomed the work done, agreed that it should be published as soon as possible, and asked delegations to submit any additional comments or contributions by 30 May 2005.
6. The CAHDI examined replies from delegations to a questionnaire on the structure and functioning of the Legal Adviser of the Ministry of Foreign Affairs in the member and observer states and agreed on the usefulness of pursuing the collection of information. The CAHDI agreed to pursue consideration of this item at its next meeting and invited delegations not having done so to submit their replies by 31 July 2005. Furthermore, the CAHDI agreed to the publication on its website of the replies already received.
7. The CAHDI examined replies from delegations to a questionnaire on the implementation at national level of UN sanctions and respect for human rights and agreed on the usefulness of pursuing the collection of information. The CAHDI agreed to pursue consideration of this item at its next meeting and invited delegations not having done so to submit their replies by 31 July 2005.
8. The CAHDI held an exchange of views with the President of the Court of Conciliation and Arbitration with the OSCE, Mr Badinter, and a member of its Bureau, Mr Ferrari-Bravo.
9. The CAHDI considered developments concerning the UN Convention on Jurisdictional Immunities and agreed to pursue consideration of this issue and its implications on the European Convention on State Immunities.
10. The CAHDI considered recent developments in the area of international humanitarian law, the functioning of the Tribunals established by UN Security Council Resolutions 827 (1993) and 955 (1994); and developments of the International Criminal Court (ICC) and was informed about the organisation by the Council of Europe of the 4th Multilateral Consultation on the implications for the member states of the Council of Europe of the ratification of the Rome Statute of the ICC in the course of 2006.
11. The Secretariat informed the members of the CAHDI about the Council of Europe activities against terrorism and in particular about the finalisation of two draft conventions, on the prevention of terrorism and on money laundering and the financing of terrorism. The CAHDI further discussed developments in other fora.
12. The CAHDI decided to hold its next meeting in Strasbourg from 19 to 20 September 2005 and adopted the preliminary draft agenda in Appendix III to the present report.

APPENDIX I

AGENDA OF THE 29TH MEETING OF THE CAHDI

A. INTRODUCTION

1. Opening of the meeting by Ms Dascalopoulou-Livada, Chair of the CAHDI
2. Adoption of the agenda and approval of the report of the 28th meeting (Lausanne, 13-14 September 2004)
3. Communication by the Head of Public Law Department, Mr Palmieri

B. ONGOING ACTIVITIES OF THE CAHDI

4. Decisions by the Committee of Ministers concerning the CAHDI and requests for CAHDI's opinion
5. Law and practice relating to reservations and interpretative declarations concerning international treaties: European Observatory of Reservations to International Treaties
 - a. List of outstanding reservations and declarations to international Treaties
 - b. Consideration of reservations and declarations to international Treaties applicable to the fight against terrorism
6. Pilot Project of the Council of Europe on State practice regarding State immunities – Presentation of the Analytical report and follow-up
7. Organisation and functions of the Office of the Legal Adviser of the Ministry of Foreign Affairs
8. National implementation measures of UN sanctions and respect for Human Rights

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

9. Exchange of views with the Bureau of the Court of Conciliation and Arbitration within the OSCE
10. Consideration of current issues in the area of international humanitarian law
11. Drafting of the new Convention on jurisdiction immunities of states and their property
12. Developments concerning the International Criminal Court (ICC)
13. Implementation and functioning of the Tribunals established by United Nations Security Council Resolutions 827 (1993) and 955 (1994)
14. Fight against Terrorism - Information about work undertaken in the Council of Europe and other international Fora

D. OTHER

15. Date, place and agenda of the 30th meeting of the CAHDI (proposed dates: 19-20 September)
16. Other business

APPENDIX II

COMMENTS BY THE COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI) ON PARLIAMENTARY ASSEMBLY RECOMMENDATION 1690 (2005) – THE CONFLICT OVER THE NAGORNO-KARABAKH REGION DEALT WITH BY THE OSCE MINSK CONFERENCE

In pursuance of the Deputies' Decision taken at their 915th meeting on 9 February 2005 (CM/Del/Dec(2005)913/3.1), members of the CAHDI considered Parliamentary Assembly Recommendation 1690 (2005) – The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference. In accordance with its specific terms of reference, the CAHDI concentrated on what it considered to be the public international law issues and, in particular, paragraph viii. which recommended that the Committee of Ministers:

viii. instruct its competent steering committee to analyse how far the European Convention for the Peaceful Settlement of Disputes reflects the current requirements of conflict settlement among member states of the Council of Europe and where it should be revised in order to provide an adequate instrument for the peaceful settlement of disputes between the member states of the Council of Europe;

The CAHDI recalls that in 1998 it undertook the examination of the functioning and operation of the conventions under its responsibility, including the above-mentioned convention. The CAHDI considered that Convention in particular at its 17th meeting (Vienna, 8-9 March 1999) and noted that:

75. The existence of the Convention and the threat by one Party to a dispute to have recourse to it no doubt facilitated friendly settlements. The Convention thus fairly frequently had a dissuasive effect (fleet in being). For this reason, given the present group of Contracting Parties and taking account of the extent of their acceptance, the Convention had helped to improve the possibilities for the legal settlement of disputes between member states of the Council of Europe.

76. However, a certain number of disputes that had arisen or were likely to arise remained outside the field of application of the Convention, mainly due to the fact that over half of the Council of Europe member states were not Parties to the Convention.

and the Chair concluded that through this Convention, a substantial number of disputes could be settled by the International Court of Justice without any particular problem.¹

The relevant paragraphs of the meeting report are enclosed.

At its 29th meeting, the CAHDI reconsidered the functioning and operation of the Convention and confirmed its prior position. The CAHDI therefore concludes in reply to the Recommendation of the Parliamentary Assembly that the Convention reflects the current requirements of conflict settlement among the member states of the Council of Europe and provides an adequate instrument for the peaceful settlement of disputes among themselves. The CAHDI therefore considers that the Convention does not need to be revised and suggests that the Committee of Ministers invite member states not having done so to become Parties to it.

¹ See documents CAHDI (1999) 5 and 15.

Annex

6. Consideration of conventions under the responsibility of the CAHDI: Examination of the European Convention for the Peaceful Settlement of Disputes (ETS 23)

73. The CAHDI began the examination of the European Convention for the Peaceful settlement of disputes (N° 23 in the European Treaty Series) on the basis of the document prepared by the Secretariat⁹.

74. The Chairman stated that the European Convention for the Peaceful settlement of the disputes had entered into force on 30 April 1958 and 13 member States were at present bound by it (Austria, Belgium, Denmark, Germany, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Sweden, Switzerland and the United Kingdom). In addition, it had been signed by 5 other member States (France, Greece, Iceland, Ireland and Turkey). The last ratification of the Convention was on 18 February 1980 (Liechtenstein) and the last signature dated back to 1958 (Turkey).

75. The existence of the Convention and the threat by one Party to a dispute to have recourse to it no doubt facilitated friendly settlements. The Convention thus fairly frequently had a dissuasive effect (*fleet in being*). For this reason, given the present group of Contracting Parties and taking account of the extent of their acceptance, the Convention had helped to improve the possibilities for the legal settlement of disputes between member States of the Council of Europe.

76. However, a certain number of disputes that had arisen or were likely to arise remained outside the field of application of the Convention, mainly due to the fact that over half of the Council of Europe member States were not Parties to the Convention.

77. The Slovakian Delegate informed the CAHDI that his country was examining the Convention with interest with a view to early accession to it.

78. The Netherlands Delegate pointed out that certain States which, in principle, were to accede to the Convention had not done so in practice and he wondered about the reasons for this state of affairs.

79. The Chairman concluded that through this Convention a substantial number of disputes could be settled by the International Court of Justice without any particular problem. He invited the Member States of the Council of Europe to consider the possibility of acceding to it.

⁹ See document CAHDI (99) 5. For an overview of the legal texts coming under the responsibility of the CAHDI see document CAHDI (99) 4.

APPENDIX III

AGENDA OF THE 30TH MEETING OF THE CAHDI

A. INTRODUCTION

1. Opening of the meeting by the Chair, Ms Dascalopoulou-Livada
2. Adoption of the agenda and approval of the report of the 29th meeting (Strasbourg, 17-18 March 2005)
3. Communication by the Director General of Legal Affairs, Mr de Vel

B. ONGOING ACTIVITIES OF THE CAHDI

4. Decisions by the Committee of Ministers concerning the CAHDI and requests for CAHDI's opinion
5. Law and practice relating to reservations and interpretative declarations concerning international treaties: European Observatory of Reservations to International Treaties:
 - a. List of outstanding reservations and declarations to international Treaties
 - b. Consideration of reservations and declarations to international Treaties applicable to the fight against terrorism
6. Pilot Project of the Council of Europe on State practice regarding State immunities
7. Organisation and functions of the Office of the Legal Adviser of the Ministry of Foreign Affairs
8. National implementation measures of UN sanctions, and respect for Human Rights

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

9. Exchange of views with the President of the Court of Justice of the European Communities (ECJ), Mr Skouris
10. The work of the Sixth Committee of the General Assembly of the United Nations and of the International Law Commission (ILC)
11. Peaceful settlement of disputes:
 - a. Compulsory jurisdiction of the International Court of Justice (ICJ) (Article 36 (2))
 - b. Jurisdiction of the ICJ under other agreements, including the European Convention on the Peaceful Settlement of Disputes
 - c. Overlapping jurisdiction of international courts and tribunals
12. UN Convention on Jurisdictional Immunities and European Convention on State Immunities
13. Consideration of current issues of international humanitarian law:
 - a. Presentation of the ICRC study on customary international humanitarian law
 - b. 2nd Protocol to the Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict
14. Developments concerning the International Criminal Court (ICC)

15. Implementation and functioning of the Tribunals established by United Nations Security Council Resolutions 827 (1993) and 955 (1994)
16. UN High-level Panel Report and response by the UN Secretary-General
17. Fight against Terrorism - Information about work undertaken in the Council of Europe and other international bodies

D. OTHER

18. Election of the Chair and Vice Chair
19. Date, place and agenda of the 31st meeting of the CAHDI
20. Other business