

Strasbourg, 19 September 2003

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

26th meeting, Strasbourg, 18-19 September 2003

List of items discussed and decisions taken

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 26th meeting in Strasbourg, 18-19 September 2003. The meeting was chaired by Ambassador Michel (Switzerland), Chairman of the CAHDI. The list of participants can be consulted in the meeting report (doc. CAHDI (2003) 14 prov) and the agenda appears in Appendix I.
2. The CAHDI was informed by the Head of the Public Law Department about recent developments concerning the Council of Europe.
3. In accordance with the request by the Committee of Ministers, the CAHDI adopted a preliminary opinion on Recommendation 1602 (2003) on Immunities of members of the Parliamentary Assembly as it appears in Appendix II and decided to revert to the matter at its next meeting in the light of further information.
4. In the context of its operation as *European Observatory of Reservations to International Treaties*, the CAHDI considered a list of outstanding declarations and reservations to international treaties and several delegations advised the Committee about the follow-up they envisaged to give some of the reservations and declarations considered. In the context of this activity, the CAHDI also considered 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).
5. The CAHDI considered the implementation of the *Pilot-Project on State practice regarding State immunities* and took note that a preliminary draft analytical report, elaborated by three Research Institutes, will be submitted to it at the next meeting. Moreover, it invited delegation to provide any complementary information as soon as possible.
6. The CAHDI considered the work of the 55th session of the International Law Commission (ILC) and the preparation of the forthcoming session of the Sixth Committee of the General Assembly of the United Nations.
7. The CAHDI considered developments concerning the International Criminal Court (ICC). In this context, Mr Walter Schwimmer, Secretary General of the Council of Europe made a statement reproduced in Appendix III. Further to that, the CAHDI had an exchange of views with Mr Philippe KIRSCH, President of the ICC whose statement is reproduced in Appendix V of document CAHDI (2003) 14 prov. Finally, the CAHDI also considered the conclusions of the third Multilateral Consultation on the Implications for Council of Europe member States of the Ratification of the Rome Statute of the ICC.
8. The CAHDI also had an exchange of views with Mr Jean-Paul Costa, Vice-Chair of the European Court of Human Rights (ECHR) on recent developments in the ECHR.
9. The CADHI considered developments concerning the implementation of international instruments protecting the victims of armed conflicts, and those concerning the implementation and the functioning of the Tribunals established by UN Security Council Resolutions 927 (1993) and 955 (1994).
10. The Secretariat informed the members of the CAHDI about developments concerning the work undertaken by the Council of Europe in the field of the fight against terrorism.
11. The CAHDI re-elected Ambassador Michel (Switzerland) and elected Mrs Dascalopoulou-Livada (Greece) respectively Chair and Vice-Chair for one year.

12. The CAHDI considered the requests for observer status of the International Committee of the Red Cross (ICRC) and the European Organization for Nuclear Research (CERN). Subject to approval by the Committee of Ministers, the CAHDI agreed to admit the ICRC as observer to the CAHDI for the whole duration of the Committee and decided to pursue consideration of the CERN's request at its next meeting.

13. The CAHDI decided to hold its next meeting in Strasbourg, from 18 to 19 March 2004 and adopted the preliminary draft agenda as it appears in Appendix IV.

APPENDIX I

AGENDA

A. INTRODUCTION

1. Opening of the meeting by the Chairman, Ambassador Nicolas Michel
2. Adoption of the agenda and approval of the report of the 25th meeting (Strasbourg, 17-18 March 2003)
3. Communication by the Head of the Public Law Department, Mr Giovanni Palmieri

B. ONGOING ACTIVITIES OF THE CAHDI

4. Decisions by the Committee of Ministers concerning the CAHDI and requests for CAHDI's opinion
5. The law and practice relating to reservations and interpretative declarations concerning international treaties : European Observatory of Reservations to international Treaties
 - a. Consideration 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

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

7. The work of the Sixth Committee of the General Assembly of United Nations and of the International Law Commission (ILC)
- 55th Session of the ILC
8. Developments concerning the International Criminal Court:
- Statement by the Secretary General of the Council of Europe, Mr Walter Schwimmer
- Exchange of views with the President of the International Criminal Court, Mr Philippe Kirsch
- Third Multilateral Consultation on the Implications for Council of Europe member States of the Ratification of the Rome Statute of the International Criminal Court (Strasbourg, 17 September 2003)
9. Development concerning the European Court of Human Rights (ECHR): Exchange of views with the Vice-President of the ECHR, Mr Jean-Paul Costa
10. Implementation of international instruments protecting the victims of armed conflicts
11. Implementation and functioning of the Tribunals established by United Nations Security Council Resolutions 827 (1993) and 955 (1995)
12. Fight against Terrorism - Information about work undertaken in the Council of Europe and other international Fora
13. Election of the Chair and the Vice-Chair

D. OTHER

14. Date, place and agenda of the 27th meeting of the CAHDI
15. Other business

APPENDIX II

PRELIMINARY OPINION ON RECOMMENDATION 1602 (2003) ON IMMUNITIES OF MEMBERS OF THE PARLIAMENTARY ASSEMBLY

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 26th session in Strasbourg, 18-19 September 2003. The agenda included an item on « Decisions of the Committee of Ministers concerning the CAHDI and request for CAHDI's opinion».
2. In the framework of this item, pursuant to the Committee of Ministers' decision at their 837th meeting (Strasbourg, 16 April 2003), the CAHDI examined Parliamentary Assembly Recommendation 1602 (2003) on immunities of Members of the Parliamentary Assembly.
3. In accordance with its specific terms of reference, the CAHDI concentrated on what it considered to be issues of public international law.
4. The CAHDI considered that the issues dealt with by this Recommendation, in particular paragraphs 2 and 5.i required an in depth analysis which it could not carry out during the present meeting, and therefore it reserved its consideration of these issues and to return to them at its next meeting in the light of further information.
5. However, in order to meet the request of the Committee of Ministers, the CAHDI wished to provide it with the following preliminary considerations.
6. The CAHDI recalls the relevant provisions of the Vienna Convention on the Law of the Treaties, including Articles 31-33 and in particular Article 31 that provides that
 1. *A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*

[...]

 3. *There shall be taken into account, together with the context:*
 - (a) *any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;*
 - (b) *any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.*
7. Without prejudice to the further consideration of the substantive points referred to in paragraph 4 above, the CAHDI notes that, from a procedural point of view, the Committee of Ministers could, if considered appropriate, adopt unanimously a position concerning the interpretation of the General Agreement on Privileges and Immunities of the Council of Europe. The effect of such a position would have to be seen in the light of the above-mentioned provisions.
8. Concerning paragraph 5, iii of the Recommendation, the CAHDI stresses that, in accordance with Article 6, paragraph 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, at all stages when parliamentary immunity is waived the presumption of innocence must be maintained.

APPENDIX III

STATEMENT BY MR WALTER SCHWIMMER,
SECRETARY GENERAL OF THE COUNCIL OF EUROPE

Mr Chairman,
Ladies and Gentlemen,

I have decided to join you at your meeting, in the presence of the President of the International Criminal Court (ICC) in order to deliver a message of strong support for the ICC and what the ICC stands for.

The entry into force of the Rome Statute represents a decisive step towards achieving justice and ending impunity for the most serious crimes. Universal adherence to the Rome Statute is crucial for the efficiency of the ICC's operation.

The ICC is poised to become a truly independent and impartial arbiter of international justice and the rule of law at the international level, whose importance cannot be underestimated in the current international climate.

Therefore, any attempts to undermine the integrity of the ICC are not acceptable. Bilateral agreements under Article 98 of the Statute may only be acceptable if they respect the letter, object and purpose of the Statute.

Our Organisation consistently supported the early entry into force of the Rome Statute and welcomes the recent establishment of the ICC. We will continue to support this body in the confident expectation of its efficient functioning.

Our commitment to the ICC led us to organise a series of multilateral consultations between the governments of member States. These consultations had the purpose of:

- facilitating the entry into force of the Rome Statute,
- helping member States to make the necessary amendments to their legislation as required by the Rome Statute, and
- ensuring the proper functioning and efficiency of the ICC.

The third of these consultations took place yesterday and, as with prior consultations, at the close of the meeting, significant conclusions were adopted by participants.

38 of the 45 member States of the CoE are Parties to the Rome Statute and we will continue to encourage and assist the remaining States to ratify the Rome Statute and, where possible, our observer States also, as well as to promote the signature and ratification of the Protocol on Privileges and Immunities of the ICC which is key to the proper functioning of the ICC.

We will also continue to closely follow developments in relation to the ICC, particularly through your Committee, with the hope that the ICC, in the words of President Schieder of our Parliamentary Assembly, will deal a "blow to the impunity all too often associated with genocide, crimes against humanity and war crimes [and] hold those accused of these horrific crimes to account under the highest standards of international justice [...] thus strengthen[ing] the rule of law worldwide".

APPENDIX IV

PRELIMINARY DRAFT AGENDA OF THE 27th MEETING

A. INTRODUCTION

1. Opening of the meeting by the Chairman, Ambassador Nicolas Michel
2. Adoption of the agenda and approval of the report of the 26th meeting (Strasbourg, 18-19 September 2003)
3. Communication by the Director General of Legal Affairs, Mr Guy de Vel

B. ONGOING ACTIVITIES OF THE CAHDI

4. Decisions by the Committee of Ministers concerning the CAHDI and requests for CAHDI's opinion (Opinion on Recommendation 1602 (2003) on Immunities of members of the Parliamentary Assembly)
5. The law and practice relating to reservations and interpretative declarations concerning international treaties : European Observatory of Reservations to international Treaties
 - a. Consideration 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

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

7. National implementation measures of UN sanctions, and respect for Human Rights
8. Implementation of international instruments protecting the victims of armed conflicts
9. Implementation and functioning of the Tribunals established by United Nations Security Council Resolutions 827 (1993) and 955 (1994), and of the Rome Statute of the International Criminal Court
10. Fight against Terrorism - Information about work undertaken in the Council of Europe and other international Fora

D. OTHER

11. Date, place and agenda of the 28th meeting of the CAHDI
12. Request of observer status by the European Organization for Nuclear Research (CERN)
13. Other business