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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW

(CAHDI)

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

42nd meeting
Strasbourg, 22-23 September 2011

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TABLE OF CONTENTS

1. CAHDI

1.a CM/Del/Dec(2011)1114/10.1E / 27 May 2011

Committee of Legal Advisers on Public International Law (CAHDI) – Abridged report of the 41st meeting (Strasbourg, 17-18 March 2011)
(CM(2011)45)

Decision

"The Deputies took note of the abridged report of the 41st meeting of the Committee of Legal Advisers on Public International Law (CAHDI), as it appears in document CM(2011)45."

1.b CM/Del/Dec(2011)1114/10.4E / 27 May 2011

"Reinforcing the effectiveness of Council of Europe treaty law" – Parliamentary Assembly Recommendation 1920 (2010)
(Parliamentary Assembly Rec_1920 (2010) and CM/AS(2011)Rec1920 prov2)

Decision

"The Deputies adopted the reply to Parliamentary Assembly Recommendation 1920 (2010) on "Reinforcing the effectiveness of Council of Europe treaty law", as it appears at Appendix 9 to the present volume of Decisions[1]."

1.c CM/Del/Dec(2011)1118/10.7E / 08 July 2011

"The necessity to take additional international legal steps to deal with sea piracy" – Parliamentary Assembly Recommendation 1913 (2010)
(Parliamentary Assembly Rec_1913 (2010) and CM/AS(2011)Rec1913 prov4)

Decision

"The Deputies adopted the reply to Parliamentary Assembly Recommendation 1913 (2010) on "The necessity to take additional international legal steps to deal with sea piracy", as it appears at Appendix 51 to the present volume of Decisions[2]."

1.d Ministers' Deputies – Decisions - CM/Del/Dec(2011)1118 / 8 July 2011 - 1118th meeting, 6 July 2011- Decisions adopted

10.1 Exchange of views with the Chair of the Committee of Legal Advisers on Public International Law (CAHDI)[3].

[1] The reply of the Committee of Ministers appears as **Appendix I** to the present document.
[2] The reply of the Committee of Ministers appears as **Appendix II** to the present document.
[3] There was no decision adopted under this item. The speech of the Chair of the CAHDI has been distributed in document DD(2011)550F and appears as **Appendix III** to the present document.

2. TREATY LAW

2.a CM/Del/Dec(2011)1111/10.4E / 11 April 2011

Draft Council of Europe Convention on preventing and combating violence against women and domestic violence
(CM(2011)49 final, CM(2011)49 add final, Parliamentary Assembly Opinion No. 280 (2011) and DD(2011)232)

Decisions

"The Deputies

1. took note of Parliamentary Assembly Opinion No. 280 (2011) on the "Draft Council of Europe Convention on preventing and combating violence against women and domestic violence";[4]

2. adopted, without a vote, the Council of Europe Convention on preventing and combating violence against women and domestic violence, as it appears at Appendix 10 to the present volume of Decisions[5], and took note of its Explanatory Report, as it appears in document CM(2011)49 addprov2;

3. agreed to open the Convention for signature at the 121st Session of the Committee of Ministers (Istanbul, 10-11 May 2011)."

2.b CM/Del/Dec(2011)1117/10.2E / 05 July 2011

Council of Europe Convention on the counterfeiting of medical products and similar crimes involving threats to public health: opening for signature
(CM(2010)30 final and CM/Del/Dec(2010)1101/10.9)

Decision

"The Deputies decided to open the Council of Europe Convention on the counterfeiting of medical products and similar crimes involving threats to public health[6] for signature on 28 October 2011, on the occasion of a high-level thematic conference to be organised in Moscow."

2.c CM/Del/Dec(2011)1111/10.1E / 11 April 2011

Council of Europe Convention on the Transfer of Sentenced Persons (ETS No. 112) – Request by the Philippines to be invited to accede
(GR-J(2011)5)

Decisions

"The Deputies

1. took note of the request of the Philippines to be invited to accede to the Convention on the Transfer of Sentenced Persons (ETS No. 112) and noted that the Committee of Ministers agreed in principle to granting this request;

[4] The Opinion No. 280 (2011) of the Parliamentary Assembly appears as **Appendix IV** to the present document.
[5] The Council of Europe Convention on preventing and combating violence against women and domestic violence is available on the website of the Council of Europe Treaty Office: www.conventions.coe.int.
[6] The Council of Europe Convention on the counterfeiting of medical products and similar crimes involving threats to public health is available on the website of the Council of Europe Treaty Office: www.conventions.coe.int.

2. instructed the Secretariat to consult the non-member states which are Contracting States to the Convention, i.e. Australia, the Bahamas, Bolivia, Canada, Chile, Costa Rica, Ecuador, Honduras, Israel, Japan, Korea, Mauritius, Mexico, Panama, Tonga, Trinidad and Tobago, the United States of America and Venezuela, and set 10 June 2011 as the deadline for a reply;

3. agreed that, if there was no objection from the non-member states consulted, the decision to invite the Philippines to accede to the Convention on the Transfer of Sentenced Persons (ETS No. 112) would be regarded as adopted on 15 June 2011 (1116th meeting of the Ministers' Deputies);

4. agreed to resume consideration of this item if the non-member states consulted raised an objection concerning the accession of the Philippines to the Convention."

2.d CM/Del/Dec(2011)1118/10.3E / 08 July 2011

Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) – Request by Uruguay to be invited to accede
(GR-J(2011)10)

Decision

"The Deputies invited Uruguay to accede to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and to its Additional Protocol (ETS No. 181)."

3. FOLLOW-UP TO THE INTERLAKEN CONFERENCE AND OTHER HUMAN RIGHTS ISSUES

3.a CM(2011)PVadd1/Item3E / 12 May 2011

European Convention on Human Rights

Decisions

"The Committee of Ministers

1. took note of the measures taken so far to implement the Interlaken Declaration and invited all concerned to pursue this work in order to meet the deadlines set forth in the Declaration;

2. welcomed the first measures taken by the Court to adapt its procedures to the new provisions of the Convention as amended by Protocol No. 14, while noting that this will not provide a comprehensive solution to the problems facing the Convention system;

3. endorsed the Declaration and Follow-up Plan unanimously adopted at the High-level Conference on the future of the European Court of Human Rights, held in Izmir on 26 and 27 April 2011, and paid tribute to the Turkish authorities for this initiative;

4. expressed its determination to implement, as a matter of priority, the Izmir Declaration[7] and its Follow-up Plan which builds on the Interlaken Action Plan and, in this context, instructed its Deputies to take the necessary decisions to this end;

5. invited the Court and the Secretary General to ensure on their own part implementation of the Follow-up Plan;

[7] The Izmir Declaration is available on the website of the Conference: www.coe.int/izmir

6. instructed also its Deputies to report at its next Session on further measures to be taken and amendments to the Convention which may be required in order to secure the long-term effectiveness of the supervisory mechanism of the European Convention on Human Rights."

3.b CM/Del/Dec(2011)1114/1.5E / 27 May 2011

121st Session of the Committee of Ministers (Istanbul, 10-11 May 2011) – Follow-up
(CM(2011)PV prov, CM(2011)PV add1, CM(2011)PV add2prov and CM/Inf(2011)21

Decisions

"The Deputies, on the basis of the decisions taken and the discussions held at the 121st Session of the Committee of Ministers,

[…]

On the *European Convention on Human Rights*

2. invited the Steering Committee for Human Rights (CDDH), in the context of its ongoing activities on follow-up to the Interlaken Conference, to examine and give appropriate follow-up to the Declaration and Follow-up Plan adopted at the Izmir Conference in all their aspects, including the strategic perspective of the future of the Court;

3. recalled the mandate already given to the CDDH to elaborate specific proposals, with different options, for a filtering mechanism within the European Court of Human Rights and for a simplified amendment procedure for the Convention's provisions on organisational issues;

4. invited the CDDH, in order to facilitate decisions by the Committee of Ministers, likewise to advise, setting out in each case the main practical arguments for and against:

- on the issue of fees for applicants to the European Court of Human Rights, already being considered;
- on any other possible new procedural rules or practices concerning access to the Court;
- on a system allowing the highest national courts to request advisory opinions from the Court concerning the interpretation and application of the Convention, already being considered;

The outcome of the work of the CDDH on all these aspects should be submitted by 31 March 2012;

5. endorsed the structure for national reports to be submitted by member states to the Committee of Ministers on measures taken to implement the relevant parts of the Interlaken Declaration and invited all member states to submit these reports as soon as possible and no later than 31 December 2011;

6. resolved to take other necessary decisions in order to fully implement the Izmir Declaration and its Follow-up Plan;

7. instructed their Ad hoc Working Party in the follow-up process to the Interlaken Declaration (GT-SUIVI.Interlaken) to steer the implementation of the Izmir Declaration and Follow-up Plan, ensuring that the deadlines set out in the Interlaken and Izmir Declarations are met, so as to report to the 122nd Ministerial Session (14 May 2012), on the basis of the proposals of the CDDH, as well as possible other proposals, on further measures to be taken and on amendments to the European Convention on Human Rights which may be required in order to secure the long-term effectiveness of the supervisory mechanism of the Convention;

8. invited their Working Party, in this context, to follow the implementation by the various stakeholders of the Interlaken process (States Parties to the Convention, European Court of Human Rights, Secretary General) of the measures falling within their respective competences;"

[…]

3.c CM/Del/Dec(2011)1110/4.8E / 04 April 2011

Steering Committee for Human Rights (CDDH) –
Draft Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations
(CM(2011)13 and CM(2011)13 add)

Decision

"The Deputies adopted the Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations, as they appear at Appendix 5 to the present volume of Decisions[8], and took note of the reference texts used for the preparation of the guidelines, as they appear in document CM(2011)13 add."

4. MISCELLANEOUS

CM/Del/Dec(2011)1107/10.1E / 04 March 2011

30th Council of Europe Conference of Ministers of Justice (Istanbul, 24-26 November 2010) – Report of the Secretary General
(CM(2011)18)

Decisions

"The Deputies, without prejudice to decisions to be taken on the Council of Europe Programme and Budget for 2012-2013,

a. Concerning Resolution No. 1 on a modern, transparent and efficient justice[9]

1. transmitted the resolution to the European Committee on Legal Co-operation (CDCJ), the European Committee on Crime Problems (CDPC), the Convention Committee on Cybercrime (T-CY) and the European Commission for the Efficiency of Justice (CEPEJ), for them to bear it in mind in their future work;

2. entrusted the CDCJ, in co-operation with other competent bodies of the Council of Europe, to provide guidance to member states in the modernisation of their justice systems and to revise in particular the Committee of Ministers' recommendations:

- Rec(95)11 on "The selection, processing, presentation and archiving of court decisions in legal information retrieval systems";

- Rec(2001)2 "Concerning the design and re-design of court systems and legal information systems in a cost-effective manner";

- Rec(2001)3 on "The delivery of court and other legal services to the citizen through the use of new technologies";

[8] The Guidelines of the Committee of Ministers are available on the website of the Committee of Ministers, under "Adopted texts": www.coe.int/cm
[9] Resolution No.1 appears on the website of the Conference: www.coe.int/minjust

- Rec(2003)14 on “The interoperability of information systems in the justice sector”; and

- Rec(2003)15 on “Archiving of electronic documents in the legal sector”;

3. entrusted the CDPC to examine how the use of information and communication technologies (“ICTs”) can make judicial co-operation in criminal matters more effective;

4. entrusted the CDPC to examine issues arising from the use of ICTs, in particular the competence of law enforcement authorities to investigate and prosecute crimes beyond national jurisdiction, in co-operation with the T-CY, while expressing their support for the ongoing work of the latter Committee on a possible standard-setting text on the use of transborder investigative measures, including transborder access to data and data flows;

5. entrusted the Secretary General to consider the feasibility of implementing a Digital Legal Information Library and a Platform for the Exchange of Information on ICT projects in member states and to report back to the Committee of Ministers;

6. entrusted the CEPEJ to build on the work of its SATURN centre, further developing its capacity to acquire better knowledge of the time required for judicial proceedings in the member states, with a view to developing tools to enable the member states to better meet their obligations under Article 6 of the European Convention on Human Rights regarding the right to a fair trial within a reasonable time;

b. Concerning Resolution No. 2 on prison policy in today’s Europe[10]

7. transmitted the resolution to the European Committee on Crime Problems (CDPC), the Steering Committee for Human Rights (CDDH) and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), for them to bear it in mind in their future work;

8. entrusted the CDPC, in co-operation with the CDDH and the CPT, to:

a) evaluate the measures taken by member states to follow the European Prison Rules, the European Rules for juvenile offenders subject to sanctions and measures, the Council of Europe Probation Rules and the other relevant Council of Europe standards in the area;

b) take stock of problems faced by prison administrations, more particularly prison overcrowding, remand in custody, treatment of foreign nationals in prison, as well as other topics which may require additional guidance through standard-setting;

c) consider, in the light of the outcome of such an assessment and stocktaking, the necessity to reinforce the legal framework in this field, including the feasibility and advisability of a legally binding instrument regulating certain aspects of detention conditions, prison management and the treatment of prisoners, or undertaking other measures to achieve this aim, including the identification and dissemination of best practices;

9. invited member states to continue to provide accurate and timely data and to support by all means Council of Europe Annual Penal Statistics (SPACE) as a valuable tool in guiding the member states’ penal policies;

10. entrusted the CDPC, in the light of the conclusions of the 15th Conference of Directors of Prison Administration (CDAP) (Edinburgh, 9-11 September 2009), to consider ways of involving judges, prosecutors, prison and probation services, in a joint discussion concerning imprisonment,

[10] Resolution No. 2 appears on the website of the Conference: www.coe.int/minjust

as well as community sanctions and measures, with a view to avoiding prison overcrowding and improving social reintegration of offenders whilst protecting public safety;

11. urged the CPT to pursue its monitoring activity with a view to strengthening the protection of persons deprived of their liberty, thereby contributing to any further standard-setting work in this field and assisting member states in implementing such standards;

c. Concerning Resolution No. 3 on data protection and privacy in the third millennium[11]

12. supported the modernisation of ETS No. 108 in order to find appropriate solutions to the new challenges posed by technology and globalisation of information to guarantee effective protection of human rights and fundamental freedoms as well as the exercise of these rights, in particular the right to respect for private and family life while processing personal data, and the enforcement of basic data protection principles, in particular to resolve issues of transparency, data security breaches, jurisdiction, applicable law and liability arising from the use of ICTs;

13. encouraged the observer states to the Council of Europe, other interested non-member states, the European Union, international organisations, NGOs and the private sector to participate actively in this process;

14. urged the Council of Europe member states that have not yet ratified ETS No. 108 and/or its additional Protocol to do so as expeditiously as possible;

15. encouraged other states having data protection legislation in compliance with ETS No. 108 and its additional Protocol to accede to these instruments;

16. agreed to take account of Resolution No. 3 on data protection and privacy in the third millennium when examining proposals for Priorities for 2012 and 2013;

d. Concerning Resolution No. 4

17. took note of this resolution and, in particular, of the invitation of the Austrian authorities to host the 31st conference in Austria in 2012;

* * *

18. taking into account the decisions above, took note of the Secretary General's report, as it appears in document CM(2011)18, as a whole.

[11] Resolution No. 3 appears on the website of the Conference: www.coe.int/minjust

APPENDICES

APPENDIX I

REPLY OF THE COMMITTEE OF MINISTERS[12] ON PARLIAMENTARY ASSEMBLY RECOMMENDATION 1920 (2010) ON "REINFORCING THE EFFECTIVENESS OF COUNCIL OF EUROPE TREATY LAW"

1. The Committee of Ministers has examined with interest Parliamentary Assembly Recommendation 1920 (2010) on "Reinforcing the effectiveness of Council of Europe treaty law". It has transmitted it to the Committee of Legal Advisers on Public International Law (CAHDI), the Steering Committee on Human Rights (CDDH), the European Committee on Legal Co-operation (CDCJ) and the European Committee on Crime Problems (CDPC), for information and comments. The Committee of Ministers agreed to communicate the recommendation to the European Union for information together with this reply.

2. The Committee of Ministers notes that the Council of Europe conventions constitute a unique integrated system of legal standards collectively defined within the Organisation and agreed upon by the member states. It considers that the Council of Europe should continue to play a major role in setting standards and developing international law in the areas of human rights' protection, democracy and the rule of law.

3. In relation to the Parliamentary Assembly's recommendation that the Committee of Ministers approve an action plan to secure ratification by all member states of the core Council of Europe treaties listed in an Appendix to Assembly Resolution 1732 (2010) on reinforcing the effectiveness of Council of Europe treaty law, the Committee of Ministers agrees with the Assembly that these are important conventions. It notes that their level of ratification is generally very high and that all, or almost all, Council of Europe member states have ratified a large part of the conventions enumerated. In addition, the Committee of Ministers or other Council of Europe bodies are regularly following the situation as regards the instruments with less ratifications. As an example can be mentioned the Committee's yearly "tour de table" on the state of ratification of the European Social Charter and the European Social Charter (revised) and its related instruments. Moreover, twice a year, the Committee reviews the state of ratification of the protocols to the European Convention on Human Rights providing for the abolition of the death penalty. In accordance with their terms of reference, steering and ad hoc committees such as the Committee of Experts on Terrorism (CODEXTER) regularly review the situation as regards the ratification of instruments within their respective remits and report back to the Committee of Ministers. As a final example of measures taken to increase ratification of important Council of Europe conventions can be mentioned the recently launched campaign to stop sexual violence against children which will promote ratification of the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. The Committee of Ministers will pursue this work which is very much in line with the Assembly's recommendations, and will also undertake further steps to increase the level of participation in these and other instrumental conventions of the Council of Europe.

4. With regard to the issue of reducing the use of reservations, derogations and restrictive declarations, the Committee of Ministers refers to the activities carried out by CAHDI (see below), on which the latter reports regularly to the Committee of Ministers. CAHDI may also be asked to resume its listings of problematic reservations and declarations to treaties applicable to the fight against terrorism.

5. With regard to the Parliamentary Assembly's recommendation for "pan-European model acts to supplement its treaties", the Committee of Ministers notes that according to Article 15 of the Statute of the Council of Europe, it is the competent body of the Council of Europe to adopt decisions and/or to address recommendations to member states. The Statute foresees only two different categories of legal acts to be adopted by the Committee of Ministers, either conventions or recommendations. Furthermore, without ignoring the possible harmonising effect that such model acts might entail, such acts would not be consistent with the Council of Europe treaty practice. Moreover, states and their authorities should retain the flexibility required to incorporate international treaties into the respective domestic legal orders. Given that the Council of Europe member states have different systems of transforming treaty obligations into their national laws, it is also not clear whether "pan-European model acts" could be of significant assistance in facilitating the implementation of Council of Europe treaties.

[12] Adopted at the 1114th meeting of the Ministers' Deputies (25 May 2011)

6. As regards the suggestion of the Parliamentary Assembly concerning the practice of the so-called "disconnection clause", the Committee of Ministers recalls CAHDI's report on the consequences of the so-called "disconnection clauses" and stresses the importance of maintaining a coherent approach when using such clauses in line with the Ministers' Deputies decision of 10 December 2008.

7. Accession of the European Union to the European Convention on Human Rights is a high priority for the Council of Europe. The Committee of Ministers has given the CDDH the task "to elaborate, in co-operation with representative(s) of the European Union to be appointed by the latter, a legal instrument, or instruments, setting out the modalities for EU accession to the Convention, including its participation in the Convention system; and, in this context, to examine any related issue." To facilitate this work, the CDDH has established an informal working group which has met on several occasions and is making good progress. The chairmanship of the Committee of Ministers informs the Parliamentary Assembly regularly about the progress made in this respect. It is hoped that the work under way will be completed rapidly.

8. The Committee of Ministers recalls that the Secretary General's proposals on Council of Europe priorities for 2011 included a "review of the relevance of Council of Europe conventions", which "will provide the basis for decisions on follow-up including measures to increase the visibility and the number of parties to relevant conventions". On 17 February 2011, the Secretary General issued an "Outline of Convention Review",[13] the main objectives of which is to identify: a set of conventions, applicable throughout the European continent, with a view to creating a common legal platform applicable in all member states in the areas of human rights, rule of law and democracy; obsolete conventions; conventions in need of modernisation (revision/updating); ways of promoting accession by non member states and ways of facilitating EU accession. The next step is the elaboration, in close consultation with the national authorities, relevant steering committees and CAHDI, of a comprehensive report for the attention of the Committee of Ministers by the end of September 2011. The report will also contain proposals for measures for each group of conventions, with the focus being on increasing the efficiency of individual instruments and the Council of Europe's convention body as a whole.

9. The Committee of Ministers invites the Secretary General to keep in mind the Assembly's recommendations and its list of important conventions in the elaboration of the above-mentioned report. The Committee of Ministers for its part will keep the Parliamentary Assembly informed about the outcome of this activity.

Appendix 1 to the reply

Comments by the Committee of Legal Advisers on Public International Law (CAHDI)

1. On 9 June 2010, the Ministers' Deputies forwarded Parliamentary Assembly Recommendation 1920 (2010) to the Committee of Legal Advisers on Public International Law (CAHDI) for information and possible comments by 15 October 2010.

2. In its recommendation, the Parliamentary Assembly asks the Committee of Ministers to:

- approve an action plan to secure the early ratification by all member states of the core Council of Europe treaties, as defined in the appendix to the Assembly resolution, with the fewest possible reservations;

- urge member states to withdraw their reservations, derogations and restrictive declarations concerning Council of Europe treaties, particularly the European Convention on Human Rights, and instruct the Committee of Legal Advisers on Public International Law (CAHDI) to intensify its existing efforts in this area and to reduce the use of such clauses;

- agree on an action programme of new conventions to be drawn up, as a matter of priority, over the next five years;

- instruct the Steering Committee on Human Rights (CDDH), the European Committee on Legal Co-operation (CDCJ) and the European Committee on Crime Problems (CDPC), in close co-operation with the Council of Europe's Legal Advice Department and the Treaty Office, to examine the binding legal instruments within their respective areas of authority, with a view to identifying:

- treaties that are still relevant but require updating;

[13] Document SG/Inf(2011)2.

- treaties that are obsolete and should be abrogated;

- treaties which have lost their relevance and have not come into force within a certain number of years of their adoption and which should be withdrawn;

- in the light of changes in European law within the European Union, particularly the advent of framework decisions or community acts, consult the CAHDI on the possible adoption by the Council of Europe of pan-European model acts to supplement its treaties.

Furthermore, the Assembly asks the Committee of Ministers to draw up strict guidelines to control the practice of the so-called disconnection clause in Council of Europe treaties, on the base of the work of the CAHDI, in order to ensure the coherence of the Council of Europe treaty law, and to avoid establishing new dividing lines in Europe.

3. The CAHDI examined the above-mentioned Recommendation at its 40th meeting (Tromsø, 16-17 September 2010) and adopted the following comments which are of particular relevance to the activities of the CAHDI and to its mandate (public international law).

4. From the outset, the CAHDI observes that the Council of Europe conventions constitute a unique integrated system of legal standards collectively defined within the Organisation and agreed upon by the member states. The Council of Europe should continue playing a major role in setting standards and developing international law in the areas of human rights' protection, democracy and the rule of law.

5. In this context, and as regards the issue of reducing the use of reservations, derogations and restrictive declarations, the CAHDI has conducted two specific recent activities in its capacity as European Observatory of reservations to international treaties. Since 1998, the CAHDI regularly considers a list of outstanding reservations to international treaties, concluded within and outside the Council of Europe. Members of the CAHDI are therefore regularly called upon to consider outstanding reservations and declarations and to exchange views on national positions. A table of objections to these clauses is regularly presented to the Committee of Ministers together with abridged reports of the CAHDI meetings. This activity constitutes one of the core activities of the CAHDI.

6. With regards to reservations to international treaties applicable to the fight against terrorism, the CAHDI has specifically – since its 23rd meeting (4-5 March 2002) – held exchanges on views on possible problematic reservations to regional and universal conventions relating to the fight against terrorism with a view to co-ordinating the positions taken by member states. Since then, the CAHDI has produced a list of possibly problematic reservations. In 2004, the Ministers' Deputies examined the list, and invited the member states concerned to consider withdrawing their respective reservations. They further invited the Secretary General to notify to non-member states the conclusions of CAHDI with regard to their respective reservations and invited member states to volunteer to approach those non-member states with regard to their respective problematic reservations. In 2009, the Deputies took note of a Revised List of Problematic Reservations and Declarations to International Treaties Applicable to the Fight against Terrorism. The CAHDI stands ready to reopen this activity if such an interest is expressed by states and/or decision-making bodies of the Council of Europe.

7. Furthermore, the CAHDI takes note of the suggestion of the Parliamentary Assembly to involve the Steering Committee on Human Rights (CDDH), the European Committee on Legal Co-operation (CDCJ) and the European Committee on Crime Problems (CDPC) – together with the Council of Europe's Legal Advice Department and the Treaty Office – in the review of the Council of Europe binding legal instruments with the aim of identifying treaties that require updating, that are obsolete or which have lost their relevance. Taking into account the nature of this activity and the scope of the competence of the CAHDI (public international law), the CAHDI expresses its interest to remain closely associated to this Council of Europe activity. In this respect, the CAHDI would like to recall that it has already conducted activities which are pertinent to this new activity, suggested by the Assembly in this recommendation, such as the activities on the role of the depositaries of treaties, within or outside the Council of Europe, on consent of states to be bound by the treaty, and on state succession in Europe relating to treaties.

8. Moreover, the CADHI takes note of the suggestion made by the Parliamentary Assembly's recommendation to "consult the CAHDI on the possible adoption by the Council of Europe of pan-European model acts to supplement its treaties" (…) "in the light of changes in European law within the European Union, particularly the advent of framework decisions or community acts".

9. In this sense, the CAHDI would like to underline that, according to Article 15 of the Statute of the Council of Europe, the Committee of Ministers is the competent body of the Council of Europe to adopt decisions and/or to address recommendations to member states. Additionally, the CAHDI would like to recall that, in this regard, the Statute foresees only two different categories of legal acts to be adopted by the Committee of Ministers, either conventions or recommendations.

10. In response to the Parliamentary Assembly suggestion concerning "pan-European model acts to supplement its treaties", the CAHDI observes, without ignoring the possible harmonising effect that such model acts might entail, that such a proposal would not be consistent with the Council of Europe treaty practice.

Moreover, the CAHDI observes that states and their authorities should retain the flexibility required to incorporate international treaties into their respective domestic legal orders.

Given that the Council of Europe member states have different systems of transforming treaty obligations into their national laws, it is also not clear whether "pan-European model acts" could be of significant assistance in facilitating the implementation of Council of Europe treaties.

11. Finally, as regards the suggestion of the Parliamentary Assembly concerning the practice of the so-called disconnection clause, the CAHDI recalls its report on the consequences of the so-called "disconnection clause" and stresses the importance of maintaining a coherent approach in the use of such clauses in line with the Ministers' Deputies decision of 10 December 2008. In this respect, the CAHDI stands ready to work closely with the relevant decision-making bodies of the Council of Europe if the need arises.

Appendix 2 to the reply

Comments by the Steering Committee for Human Rights (CDDH)

1. The Steering Committee for Human Rights (CDDH) takes notes of Recommendation 1920 (2010) of the Parliamentary Assembly on "Reinforcing the effectiveness of Council of Europe treaty law" in which the Parliamentary Assembly suggests that, notably, certain binding legal instruments be examined with a view to identifying those that are relevant but require updating, and urges the European Union to accede in particular to the European Convention on Human Rights, as provided for in the Lisbon Treaty. In its recommendation, the Parliamentary Assembly also underlines the importance of ratification, by all member states, of certain Council of Europe treaties.

2. The CDDH draws attention to the fact that at present, the reform of the European Court of Human Rights and the accession of the European Union to the European Convention on Human Rights represent two principal activities of the CDDH and its subordinate bodies. It is expected that as a result of each, it will be necessary to amend the European Convention on Human Rights.

3. Within the framework of the ongoing work on the reform of the European Court of Human Rights and as a follow-up to the Interlaken Declaration, the CDDH has been instructed by the Committee of Ministers, *inter alia*, "to elaborate specific proposals for measures requiring amendment of the Convention, including proposals, with different options, for a filtering mechanism within the European Court of Human Rights and proposals for making it possible to simplify amendment of the Convention's provisions on organisational issues". As requested, the CDDH will submit to the Committee of Ministers an interim activity report by 15 April 2011 and a final report by 15 April 2012.

4. Concerning the accession of the European Union to the Convention, the CDDH has been instructed by the Committee of Ministers "to elaborate, in co-operation with representative(s) of the European Union to be appointed by the latter, a legal instrument, or instruments, setting out the modalities of accession of the European Union to the European Convention on Human Rights, including its participation in the Convention system; and, in this context, to examine any related issue." To facilitate the work, the CDDH has established an informal working group on the accession of the European Union to the European Convention on Human Rights (CDDH-UE).

Appendix 3 to the reply

Comments by the European Committee on Legal Co-operation (CDCJ)

1. Following the adoption by the Parliamentary Assembly, on the occasion of its Session of

21 May 2010, of Recommendation 1920 (2010) on "Reinforcing the effectiveness of Council of Europe treaty law", the Committee of Ministers[14] decided to send this recommendation to the European Committee on Legal Co-operation (CDCJ), for information and possible comments by 15 October 2010.

2. The CDCJ took note of this recommendation of the Parliamentary Assembly and decided to make the following comments.

3. The CDCJ welcomes the reference made by the Parliamentary Assembly to "one of the Council of Europe's main functions [, which] is to draw up standards on human rights and the rule of law that together form a coherent body of European conventions". The CDCJ has been working for many years to enhance and promote the rule of law and has drawn up many conventions on the subject.

4. The CDCJ takes note of the reference in the list of "core" Council of Europe treaties (appended to Resolution 1732 (2010) on "Reinforcing the effectiveness of Council of Europe treaty law") to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and the Civil Law Convention on Corruption (ETS No. 174), while regretting the absence of other important Council of Europe conventions (particularly the European Convention on the Exercise of Children's Rights (ETS No. 160) and the European Convention on Nationality (ETS No. 166), to name but two). The CDCJ wishes to underline that the existence of this list does not in any way affect the legal status of the Council of Europe conventions.

5. The CDCJ takes note of the request to the Committee of Ministers in paragraph 1.4 of the recommendation to "instruct … the European Committee on Legal Co-operation (CDCJ) … in close co-operation with the Council of Europe's Legal Advice Department and the Treaty Office, to examine the binding legal instruments" within its area of authority to identify treaties that are still relevant but require updating, treaties that are obsolete and should be abrogated and treaties which have lost their relevance and have not come into force within a certain number of years of their adoption and should be withdrawn. Under its terms of reference, the CDCJ is responsible for monitoring "the functioning and implementation of the international instruments coming within its field of competence". This exercise has already been underway for some time.

6. In this connection, the CDCJ would emphasise that at its 84th plenary meeting (6-9 October 2009), it decided to review several targeted conventions within its field of competence such as those relating to intellectual property and patent, liability and administrative law. The Bureau of the CDCJ extended this process to the conventions on commercial and financial law. The reports prepared on the subject[15] were presented at the plenary meeting on 11 to 14 October 2010, as the relevance of some of the conventions concerned has been questioned.

7. Lastly, it should be noted that the Secretary General's proposals on Council of Europe priorities for 2011,[16] included a "review of the relevance of Council of Europe conventions", which "will provide the basis for decisions on follow-up including measures to increase the visibility and the number of parties to relevant conventions". The CDCJ suggests that it would be wise to await the outcome of this review.

Appendix 4 to the reply

Comments by the European Committee on Crime Problems (CDPC)

1.0 Introduction

At their 1087th meeting on 9 June 2010, the Committee of Ministers' Deputies decided to communicate the Parliamentary Assembly's Recommendation 1920 (2010) on "Reinforcing the effectiveness of Council of Europe treaty law" to the CDPC for information and possible comments, by 15 October 2010.

The CDPC takes note of the request to the Committee of Ministers in paragraph 1.4 of the recommendation to 'instruct…the (CDPC)…in close co-operation with the Council of Europe's Legal Advice Department and Treaty Office, to examine the binding legal instruments within its area of authority,' to identify treaties that are still relevant but might require updating, treaties that are obsolete and treaties which have lost their

[14] 1087th meeting, 9 June 2010.
[15] Memorandum on targeted conventions: CDCJ (2010) 8 rev. (intellectual property and patent, liability) and CDCJ (2010) 18 (commercial and financial law).
[16] Document CM(2010)42 rev.

relevance and have not come into force within a certain number of years of their adoption. Under its terms of reference, the CDPC regularly follows up the functioning and implementation of treaties coming within its field of competence.

In order to assess the relevance or obsolescence of a particular instrument, the CDPC report considers the overall number of states to have ratified it (both member and non-member states), in the context of the circumstances of each Convention or Protocol: for example, have member states had sufficient time to implement it, or has the instrument been superseded by subsequent instruments.[17] Whilst these are not necessarily the only criteria to evaluate the effectiveness of treaties, they are of particular importance and provide a sound basis for the analysis.

The findings of this assessment have then been evaluated in order to define the three principal contexts specified by section 1.4 of the recommendation, thus:

- treaties that are still relevant but require updating (section 1.4.1 of the recommendation);
- treaties that are obsolete (section 1.4.2 of the recommendation);
- treaties which have lost their relevance and have not come into force within a certain number of years of their adoption (section 1.4.3 of the recommendation).

It should be noted at the outset that by far the majority of extant instruments in the criminal law field appear to be sufficiently active and well-supported by member states to require no further action.

2.0 By percentage of member states ("MS") ratifications

2.1 Ratification by all 47 member states

The following criminal law Conventions/Protocols have been ratified by all 47 Council of Europe member states:

ETS No.	Title
024	European Convention on Extradition (47+2) *Status: active.*
030	European Convention on Mutual Assistance in Criminal Matters (47+1) *Status: active.*
141	Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (47+1) *Status: active.*

Suggested status: Active and complete

2.2 80-99% MS ratified

The following eight instruments have been ratified by most member states:

ETS No.	Title
098	Second Additional Protocol to the European Convention on Extradition (40+1) *Status: active.*
099	Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (40) *Status: active.*
112	Convention on the Transfer of Sentenced Persons (46+18) *Status: active.*
120	European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches (41) *Status: active.*

[17] Bracketed numbers inserted after each instrument indicate the number of states to have ratified: where '+ x' has been inserted, this indicates ratification by non-member states.

135 Anti-Doping Convention (46+4) *Status: active.*

173 Criminal Law Convention on Corruption (42+1) *Status: active.*

2.3 50-79% MS ratified

ETS No.	Title
073	European Convention on the Transfer of Proceedings in Criminal Matters (25) *Status: update.*
086	Additional Protocol to the European Convention on Extradition (37+1) *Status: active.*
116	European Convention on the Compensation of Victims of Violent Crimes (25) *Status: update.*
167	Additional Protocol to the Convention on the Transfer of Sentenced Persons (35) *Status: active.*
185	Convention on Cybercrime (29+1) *Status: active*.
188	Additional Protocol to the Anti-Doping Convention (25+1) *Status: active.*
191	Additional Protocol to the Criminal Law Convention on Corruption (25) *Status: active.*
197	Council of Europe Convention on Action against Trafficking in Human Beings (30) *Status: active.*

2.4 30-49% MS ratified

ETS No.	Title
051	European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (19) *Status: update.*
070	European Convention on the International Validity of Criminal Judgments (22) *Status: update.*
182	Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (19+1) *Status: active.*
189	Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (18) *Status: active.*
198	Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (21) *Status: active.*

2.5 <30% MS ratified

This group represent the instruments most sparsely supported by member states.

ETS No.	Title
052	European Convention on the Punishment of Road Traffic Offences (5) *Status: update.*
119	European Convention on Offences relating to Cultural Property (0) *Status: lost its relevance.*
130	Convention on Insider Trading (8) *Status: update/lost its relevance.*
133	Protocol to the Convention on Insider Trading (8) Status: update/lost its relevance.

156 Agreement on illicit traffic by sea, implementing Article 17 of the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances (13) Status: update.

172 Convention on the Protection of Environment through Criminal Law (1) Status: lost its relevance.

201 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (8) Status: active.

3.0 Opinion on the Parliamentary Assembly's Recommendation 1920 (2010)

In light of this analysis, the CDPC finds that the following treaties should be considered to remain active, either because they have been ratified by a majority of member states, or because they are recent and, as such, states still need time to ratify:

(024) European Convention on Extradition (47+2)
(030) European Convention on Mutual Assistance in Criminal Matters (47+1)
(086) Additional Protocol to the European Convention on Extradition (37+1)
(098) Second Additional Protocol to the European Convention on Extradition (40+1)
(099) Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (40)
(112) Convention on the Transfer of Sentenced Persons (46+18)
(120) European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches (41)
(135) Anti-Doping Convention (46+4)
(141) Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (47+1)
(167) Additional Protocol to the Convention on the Transfer of Sentenced Persons (35)
(173) Criminal Law Convention on Corruption (42+1)
(182) Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (19+1)
(185) Convention on Cybercrime (29+1)
(188) Additional Protocol to the Anti-Doping Convention (25+1)
(189) Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (18)
(191) Additional Protocol to the Criminal Law Convention on Corruption (25)
(197) Council of Europe Convention on Action against Trafficking in Human Beings (30)
(198) Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (21)
(201) Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (9)

3.1 Treaties that are still relevant but might require updating

The CDPC considers that the following criminal law instruments are still relevant but may require updating:

(051) European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (19)
This instrument was originally signed by 17 member states, and was ultimately ratified by 19. The issues it was designed to address are partly dealt with in the European Convention on the International Validity of Criminal Judgments (ETS No. 070), which it has been proposed to update in section 3.1 above.

(052) European Convention on the Punishment of Road Traffic Offences (5)
In spite of the low number of states who have ratified this Convention, it has been deemed worthy of updating this instrument, as the issue remains very much a priority of member states.

(070) European Convention on the International Validity of Criminal Judgments (22)
and;
(073) European Convention on the Transfer of Proceedings in Criminal Matters (25)
Similarly, these two instruments deal with pertinent issues and it is noted that they have been ratified by roughly half of the Council of Europe's member states. Given recent developments in international legal co-operation within the criminal law field, it may be necessary to update or perhaps even consolidate them, in light of such changes.

(116) European Convention on the Compensation of Victims of Violent Crimes (25)
This issue is likewise an issue which continues to be debated, currently within the wider context of the general standing and rights of victims. Given more than half of member states have ratified it, it has been deemed more appropriate to review and update it.

(156) Agreement on illicit traffic by sea, implementing Article 17 of the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances (13)
This Convention came into force in 2000 and was originally signed by 22 member states. However it was only ratified by 13, most recently the Ukraine and Ireland in 2007. Of the member states who signed up to it in 1995, the year it was adopted (Greece, Italy, Norway, Sweden and the UK), only Norway subsequently ratified.

Of the 13 states which did ratify however, the geographic distribution is interesting, as they together form a corridor of states from central Europe to the rest of the world. This corridor begins with the Black Sea coastlines of the Ukraine and Romania, through the land-locked states of Hungary, Slovakia, Austria and the Czech Republic, to states with access to every European coast: the Atlantic Ocean (Ireland); the Adriatic Sea (Slovenia); the Mediterranean Sea (Cyprus); the Baltic Sea (Lithuania, Latvia, Germany); and the North/Norwegian Seas (Norway).

This, plus the fact that the most recent ratifications occurred less than three years ago, indicates it is potentially highly relevant to specific member states, and the CDPC considers that it should therefore be reviewed with a view to updating.

3.2 Treaties that have entered into force but may be considered to be obsolete

As a result of this review, the CDPC proposes that the following criminal law instruments may be judged obsolete:

(130) Convention on Insider Trading (8)
and;
(133) Protocol to the Convention on Insider Trading (8)
These were originally signed by 9 member states, of which only 8 ultimately ratified. It is likely that they have simply been superseded by more recent legal instruments.

3.3 Treaties which have not entered into force and which may be considered to have lost their relevance

The following two treaties never came into force, and it is considered that they have lost their relevance:

(119) European Convention on Offences relating to Cultural Property (0)
This Convention was immediately superseded by a UN instrument. It was also problematic for many states, as it instigated the criminalisation of perpetrators even in cases where there existed no apparent intent. Of only six original signatories, none ultimately ratified it.

(172) Convention on the Protection of Environment through Criminal Law (1)
Of 14 original signatories, only one member state has ratified this Convention. This is perhaps explained by an EU Directive that was implemented along these lines almost immediately, thus EU member states were focused more upon the EU instrument than this Convention. Furthermore, the sanctions were considered to be very harsh, as their application was envisaged even where there was no intent. Some states were also reluctant to ratify the articles relating to corporate responsibility.

4.0 Conclusion

In conclusion, whilst it may appear that some criminal legal instruments have been ratified by only very few member states, this can be for a variety of reasons: some have only recently been adopted, for example the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (8 ratifications since 2007); the Additional Protocol to the Convention on Cybercrime (18 since 2003); and Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (21 since 2005).

Furthermore, some instruments appear to have specific relevance for some states, but not for others, for example the Agreement on Illicit Traffic by Sea (13 since 1995). In other cases, Conventions or Protocols addressing issues which remain widely debated by member states, but which have only been ratified by a few – such as the European Convention on the Compensation of Victims of Violent Crimes – have been listed for review: such instruments may still be highly relevant for the states party to them, and it may simply be a question of updating.

On this basis, the CDPC is of the opinion that by far the majority of criminal legal instruments are active and up-to-date: indeed only two have not yet made it into force and only three appear under-supported by member states, all of which deal with issues that have subsequently been addressed by other instruments.

Appendix 1 – Complete list of criminal law instruments

		Total no. of signatories		**Total ratifications**	
ETS No.	**Title**	**Member states**	**Non- member states**	**Member states**	**Non-member states**
024	European Convention on Extradition	42	0	47	2
030	European Convention on Mutual Assistance in Criminal Matters	43	0	47	1
051	European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders	17	0	19	0
052	European Convention on the Punishment of Road Traffic Offences	15	0	5	0
070	European Convention on the International Validity of Criminal Judgments	28	0	22	0
073	European Convention on the Transfer of Proceedings in Criminal Matters	32	0	25	0
086	Additional Protocol to the European Convention on Extradition	35	0	37	1
098	Second Additional Protocol to the European Convention on Extradition	37	0	40	1
099	Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters	39	0	40	0
112	Convention on the Transfer of Sentenced Persons	39	2	46	18
116	European Convention on the Compensation of Victims of Violent Crimes	31	0	25	0
119	European Convention on Offences relating to Cultural Property	6	0	0	0
120	European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches	37	0	41	0
130	Convention on Insider Trading	9	0	8	0
133	Protocol to the Convention on Insider Trading	9	0	8	0
135	Anti-Doping Convention	40	2	46	4
141	Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime	46	1	47	1
156	Agreement on illicit traffic by sea, implementing Article 17 of the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances	22	0	13	0

		Total no. of signatories		Total ratifications	
ETS No.	**Title**	**Member states**	**Non-member states**	**Member states**	**Non-member states**
167	Additional Protocol to the Convention on the Transfer of Sentenced Persons	36	0	35	0
172	Convention on the Protection of Environment through Criminal Law	14	0	1	0
173	Criminal Law Convention on Corruption	45	3	42	1
182	Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters	35	0	19	1
185	Convention on Cybercrime	42	4	29	1
188	Additional Protocol to the Anti-Doping Convention	31	1	25	1
189	Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems	32	2	18	0
191	Additional Protocol to the Criminal Law Convention on Corruption	35	0	25	0
197	Council of Europe Convention on Action against Trafficking in Human Beings	43	0	30	0
198	Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism	32	0	21	0
201	Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse	41	0	9	0

APPENDIX II

REPLY OF THE COMMITTEE OF MINISTERS[18] ON PARLIAMENTARY ASSEMBLY RECOMMENDATION 1913 (2010) ON "THE NECESSITY TO TAKE ADDITIONAL INTERNATIONAL LEGAL STEPS TO DEAL WITH SEA PIRACY"

1. The Committee of Ministers has carefully examined Parliamentary Assembly Recommendation 1913 (2010) on "The necessity to take additional international legal steps to deal with sea piracy". It has brought the recommendation to the attention of their governments and has also communicated it to the European Committee on Crime Problems (CDPC) and to the Committee of Legal Advisors on Public International Law (CAHDI), for information and possible comments.[19]

2. The Committee of Ministers agrees that it is necessary for the international community to combat piracy effectively as it is seriously threatening shipping traffic and the safety of people and goods. It considers that the United Nations remains the most appropriate institution to discuss the issue of piracy and its legal framework, given the global scope of the law of the sea.

3. The Committee underlines the importance of the existing legal instruments in this field, in particular the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS). Articles 100 to 111 of the convention provide mechanisms of dissuasion and rules on the legal action to be taken following the arrest of persons suspected of piracy on the high seas. The UNCLOS, a large part of which reflects customary law, is the legal reference in this field given that 162 states or entities, 42 of which are Council of Europe member states, are party to it. The Committee of Ministers encourages those member states which are not yet party to consider ratifying or acceding to this instrument. It also draws member states' attention to the importance of bringing their national legislation on combating piracy into line with the related provisions of the UNCLOS so as to enable, as appropriate, the exercise of national criminal jurisdiction.[20]

4. The Committee of Ministers notes that experience in the fight against piracy has shown that there are a number of difficult legal issues involved in case of anti-piracy measures taken by naval ships far away from their home state. Furthermore, protection of piracy victims should be duly considered.

5. Concerning the specific situation in Somalia, mentioned in the Parliamentary Assembly's recommendation, the Committee of Ministers evokes the resolutions taken in this context[21] by the UN Security Council pursuant to Chapter 7 of the UN Charter, and in particular welcomes the Security Council's latest Resolution 1976 (2011). It further notes that the UN Security Council has expressed its intention to remain seized of this matter. The Committee also welcomes the work of the Contact Group on Piracy off the Coast of Somalia, including its Working Group 2 on legal issues, as well as the report of the United Nations Secretary General on possible options to further the aim of prosecuting and imprisoning persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia[22] and the appointment in the context of that report of Mr Jack Lang as Special Adviser on Legal Issues related to Piracy off the Coast of Somalia. As noted by the President of the Security Council, the report provides a solid base for future work in order to enhance international, regional and national co-operation in bringing pirates to justice. The Committee of Ministers also notes the recent adoption of the report of the United Nations Secretary General on the modalities for the establishment of specialised Somali anti-piracy courts.

6. The Committee of Ministers observes furthermore that UNODC runs assistance programmes in the region, in particular in favour of Kenya, Seychelles and the Puntland and Somaliland regions of Somalia. Kenya and Seychelles also benefit from assistance provided by the European Union and the states that have

[18] Adopted at the 1118th meeting of the Ministers' Deputies (6 July 2011)
[19] Comments received from these committees are attached to the present reply.
[20] The Committee of Ministers notes the relevance of the 1958 Geneva Convention on the High Seas – which defines piracy in almost identical terms to those used in the UNCLOS – to states which are not party to the UNCLOS. Certain other international texts may also be relevant to the fight against piracy, such as the 1988 International Maritime Organisation (IMO) Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (the SUA Convention), the 1979 International Convention against the Taking of Hostages, the 2000 United Nations Convention against Transnational Crime, the IMO Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships (Resolution A.922(22)) and the Djibouti Code of Conduct to repress acts of piracy and armed robbery against ships in the Western Indian Ocean and the Gulf of Aden.
[21] Resolutions 1816 (2008), 1838 (2008), 1846 (2008), 1851 (2008), 1897 (2009), 1918 (2010), 1950 (2010), 1976 (2011) of the UN Security Council and Statement by the President of the Security Council S/PRST/2010/16 of 25 August 2010.
[22] Reference S/2010/394.

concluded transfer arrangements with them. The assistance provided by the European Union and these states is principally delivered under the UNODC Counter-Piracy Programme, although some of them also provide substantial assistance on a bilateral basis. The Committee of Ministers notes that sustainable financing is needed to maintain efficiency of the Counter-Piracy Trust Fund's important work, and encourages member states to take active participation in these efforts.

7. The Committee of Ministers notes with grave concern that, according to UN findings, Somali sea piracy has developed links with money laundering and organised crime on a transnational level.[23] The Committee of Ministers is well aware of and underlines the importance of strengthening international co-operation in launching prosecutions against persons suspected of piracy, as well as those who illicitly plan, organise, finance or unlawfully profit from piracy. It notes that important initiatives have already been taken at international level, as reflected also in the recommendation of the Assembly, such as the proposed initiative to establish a special mechanism for prosecution of persons suspected of sea piracy. The Committee of Ministers encourages member states to take an active part in these initiatives, and in their implementation, as well as to conclude further bilateral or regional agreements or to develop joint strategies, while taking into account existing international law and the demands of national legal systems.

8. In light of the UN's leading role on the subject of sea piracy and the present budgetary situation in the Council of Europe, the Committee of Ministers will not at this stage instruct the steering committees concerned to undertake any major work in this field or set up any new structure for this purpose. However, it will continue, as will the CAHDI and, as regards criminal law matters, the CDPC, to follow the situation closely and if further issues arise on this subject, the Committee of Ministers will invite these committees to consider possibilities for co-ordinating the position of Council of Europe member states on these issues at the international level and possible other steps to aid the international effort of combating sea piracy.

9. In relation to the treatment of suspected pirates, the Committee of Ministers reaffirms that Council of Europe member states are required to fulfil their obligations under different international human rights instruments, in particular the European Convention on Human Rights. These concern, *inter alia*, the right to a fair trial, the prohibition of torture and inhuman or degrading treatment, the non-application of the death penalty and respect for the rights of detainees. In this regard, the Committee of Ministers refers to the well-established case law of the European Court of Human Rights.[24]

Appendix 1 to the reply

Comments by the European Committee on Crime Problems (CDPC)

1. At its 1085th meeting on 26 May 2010, the Committee of Ministers' Deputies communicated the Parliamentary Assembly's Recommendation 1913 (2010) on "The necessity to take additional legal steps to deal with sea-piracy" to the CDPC for information and possible comments.

2. The CDPC welcomes the opportunity to provide an opinion on the important issue of combating sea-piracy.

3. The Committee notes that there exist various international legal instruments and guidelines dealing with the issue of prevention and combating of acts of violence against ships on the high seas or their passengers: the International Maritime Organisation's (IMO's) Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation ('SUA Convention' of 1988 and the 2005 Protocol thereto; the United Nations' ('UN') Convention on the Law of the Sea ('UNCLOS') of 1982, articles 101-107, as well as the IMO's Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships (Resolution A.922(22)) specifically dealing with piracy in the waters off Somalia there is the ('IMO') Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden.

4. Both the United Nations Security Council and the Contact Group on Piracy off the Coast of Somalia deal with sea-piracy and related issues on a regular basis. In his report to the Security Council of 26 July 2010 (doc. S/2010/394) on possible options to further the aim of prosecuting and imprisoning

[23] Resolution 1950 (2010) of the UN Security Council, paragraph 15-17.[24] See, *inter alia*, recently Medvedyev and others v. France judgment of 29 March 2010 [GC], No. 3394/03, paragraphs 64-65.
[24] See, *inter alia*, recently Medvedyev and others v. France judgment of 29 March 2010 [GC], No. 3394/03, paragraphs 64-65.

persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia, the Secretary General of the UN has outlined a number of options concerning the establishment of regional or international tribunals to try persons alleged to have committed acts of piracy. The Committee also notes that UNODC runs assistance programmes in the region, in particular in favour of Kenya, Seychelles and the Puntland and Somaliland regions of Somalia. Kenya and Seychelles also benefit from assistance provided by the European Union and the states that have concluded transfer arrangements with them. The assistance provided by the European Union and these states is principally delivered under the UNODC Counter-Piracy Programme, although some of them also provide substantial assistance on a bilateral basis.

5. The Committee further notes the existence of the Regional Co-operation Agreement on Combating Piracy and Armed Robbery against Ships in Asia ('RECAAP').

6. The Committee stresses that bringing alleged pirates to justice is an important element of the overall efforts of the international anti-piracy coalition. To ensure, without delay, criminal investigation and prosecution of persons suspected of committing acts of piracy and of financing or otherwise assisting in the preparation of such acts would enhance the effectiveness of combating piracy. Impunity, on the contrary, as in any other criminal activity, encourages more individuals to get involved.

7. Some CDPC delegations consider that existing international instruments are for now sufficient, and that what it is needed is more action-orientated tactics and, for those countries facing specific legal problems, a thorough review of national relevant laws with the aim of assessing whether or not those existing instruments are properly implemented on a more global scale than that possible within Council of Europe member states' geographic scope.

8. The Committee is of the opinion that a further review is required in order to determine if existing ad hoc arrangements to deal with piracy in national and international waters, including the aforementioned RECAAP, should be further supported by a detailed and consistent international legal framework prescribing the criminalisation of acts of piracy at sea and providing a firm basis for co-operation between participating states with regard to criminal law and administrative measures in order to effectively combat piracy at sea, including by ensuring that alleged pirates are brought to justice.

9. In the view of the Committee, the current international legal framework could at the very least be examined to determine the extent to which it may be insufficient, with particular regard to the following:

- While UNCLOS provides for a clear definition of acts of piracy, it does not require states to criminalise acts of piracy or armed robbery;

- UNCLOS also does not contain any provisions on international co-operation in the fight against piracy or armed robbery;

- UNCLOS, however, includes a provision allowing other states than the flag state to seize a pirate ship or a ship taken by pirates and arrest and prosecute the pirates;

- The SUA Convention and its 2005 Protocol are not specifically directed at acts of piracy for private ends (as defined in article 101 of UNCLOS); not all acts of piracy can be considered to fall under the provisions of the SUA Convention and its 2005 Protocol;

- The 2005 SUA Protocol foresees, where applicable, a mechanism to request a flag state's authorisation to stop, board and search a ship, its cargo and persons on board and a mechanism to request the flag state's consent to exercise jurisdiction including seizure, forfeiture, arrest and prosecution;

- There may be uncertainty as to the application of the SUA Convention in the fight against piracy at sea and in particular the applicability of its provision on jurisdiction in case pirates are captured by warships patrolling the sea.

10. In addition, experience in the fight against piracy has shown that there are a number of difficult legal issues involved in case of anti-piracy measures taken by naval ships far away from their home state. In particular, this applies to the questions of detention of pirates (detention periods, needs and possibilities for judicial review) and transfer of pirates to other states that may agree to accept the detained persons for the purpose of criminal investigation and prosecution.

11. The CDPC is of the opinion that an in-depth review should be undertaken on the basis of reliable data and in close co-operation with other relevant international organisations and experts in the field to evaluate current legal difficulties that arise in the fight against piracy and that may call for a comprehensive international criminal law instrument against piracy at sea.

12. The Committee considers on a preliminary basis that such an instrument may deal with the following elements regarding international criminal law:

- provide a clear definition of 'piracy at sea';
- criminalise acts of piracy and those closely related to piracy;
- establish a clear jurisdictional framework for the efficient international co-ordination of policing, investigation, apprehension, transfer or extradition and prosecution in piracy cases;
- where necessary, establish means to protect suspects in case they are being transferred to third countries for the purpose of criminal prosecution, as well as for victims and witnesses in piracy cases;
- establish rules on the collection of evidence that will facilitate their admissibility.

13. The Committee believes that a small expert team should be set up, working under the auspices of the CDPC in close co-operation with the CAHDI and the Committee of Ministers, to further study the needs for such an international legal instrument and the feasibility for its development in the framework of the Council of Europe.

Appendix 2 to the reply

Comments by the Committee of Legal Advisors on Public International Law (CAHDI)

1. On 26 May 2010, the Ministers' Deputies communicated Parliamentary Assembly Recommendation 1913 (2010) to the Committee of Legal Advisors on Public International Law (CAHDI) for information and possible comments by 20 September 2010.

2. In its recommendation, the Assembly recommends that the Committee of Ministers, with the help of a newly mandated expert group or through an already existing mechanism:

- conduct an in-depth study on member states' practice in dealing with suspected pirates and the state of national criminal law concerning the repression and prosecution of acts of piracy;

- prepare, according to existing international guidelines, a code of conduct on how to deal with suspected pirates in full compliance with international human rights standards in order to ensure the harmonisation of national criminal legislation on the subject of combating sea piracy;

- promote the conclusion of international agreements clearly specifying state responsibility for the prosecution of pirates and the elaboration of common procedures to be followed for this purpose;

- seek appropriate ways in which the existing international legal framework can be adapted to face current needs of policing at sea and consider creating, provided all existing disadvantages in this field are removed, a special mechanism (international or with international participation) for the prosecution of persons suspected of piracy.

The Assembly further recommends that the Committee of Ministers enhance co-operation in combating sea piracy with other international organisations, including the United Nations, the African Union, NATO and the European Union, with a view to eradicating it from the waters off the Somali coast, while ensuring full observance of the requirements stemming from the European Convention on Human Rights and other pertinent international legal instruments.

3. The CAHDI examined the above-mentioned recommendation at its 40th meeting (Tromsø, 16-17 September 2010) and adopted the following comments on aspects of the recommendation which are of particular relevance to the mandate of the CAHDI (public international law).

4. From the outset, the CAHDI agrees that it is necessary for the international community to combat piracy effectively as it is seriously threatening shipping traffic and the safety of people and goods. The CAHDI takes note of the work of the Contact Group on Piracy off the Coast of Somalia, including its Working

Group 2 on Legal Issues, as well as the recent report of the United Nations Secretary General on possible options to further the aim of prosecuting and imprisoning persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia[25] and the appointment of Mr Jack Lang as Special Adviser on Legal Issues related to Piracy off the Coast of Somalia. As noted by the President of the Security Council, the report provides a solid base for future work in order to enhance international, regional and national co-operation in bringing pirates to justice. The CAHDI considers that, as in the past, the United Nations remains the most appropriate institution to discuss the issue of piracy and its legal framework, given the global scope of the law of the sea.

5. The CAHDI first wishes to underline the importance of the existing legal instruments in this field, in particular the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS). Articles 100 to 111 of the Convention provide mechanisms of dissuasion and rules on the legal action to be taken following the arrest of persons suspected of piracy on the high seas.

6. The UNCLOS, a large part of which reflects customary law, is the legal reference in this field given that 160 states or entities, 42 of which are Council of Europe member states, are party to the Convention.[26] The CAHDI therefore recommends that the Ministers' Deputies invite the Council of Europe member states which have not yet done so to consider the ratification or accession to this instrument. The Committee also draws states' attention to the importance of bringing their national legislation on combating piracy into line with the related provisions of the UNCLOS so as to enable, as appropriate, the exercise of national criminal jurisdiction.

7. Furthermore, the CAHDI notes the relevance of the 1958 Geneva Convention on the High Seas – which defines piracy in almost identical terms to those used in the UNCLOS – to states which are not party to the UNCLOS. Certain other international texts may also be relevant to the fight against piracy. In this context, the CAHDI refers to the 1988 International Maritime Organisation Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (the SUA Convention), the 1979 International Convention against the Taking of Hostages, the 2000 United Nations Convention against Transnational Crime and the Djibouti Code of Conduct to repress acts of piracy and armed robbery against ships in the Western Indian Ocean and the Gulf of Aden.

8. Concerning the specific situation in Somalia, mentioned in the Parliamentary Assembly's recommendation, the CAHDI evokes the resolutions taken in this context[27] by the UN Security Council pursuant to Chapter 7 of the UN Charter. The CAHDI further takes note of the fact that the UN Security Council has expressed its intention to remain seized of this matter.

9. The CAHDI underlines that Council of Europe member states are required to fulfil their obligations under different international human rights instruments, in particular the European Convention on Human Rights. These concern, *inter alia*, the right to a fair trial, the prohibition of torture and inhuman or degrading treatment, the non-application of the death penalty and respect for the rights of detainees. In this regard, the CAHDI refers to the well-established case law of the European Court of Human Rights.[28]

10. Finally, the CAHDI would underline the importance for states to strengthen international co-operation in launching prosecutions against persons suspected of piracy. In this connection, it notes that important initiatives have already been taken at international level and that these are reflected in the recommendation of the Parliamentary Assembly. Moreover, the Committee can but encourage member states and international organisations to conclude further bilateral or regional agreements or to develop joint strategies, while taking into account the existing international law and the demands of national legal systems.

[25] Reference S/2010/394.
[26] State of signatures and ratifications at the date of 16 September 2010. See following link for further details: http://treaties.un.org.
[27] Resolutions 1816 (2008), 1838 (2008), 1846 (2008), 1851 (2008), 1897 (2009), 1918 (2010) of the UN Security Council and Statement by the President of the Security Council S/PRST/2010/16 of 25 August 2010.
[28] See, *inter alia*, recently Medvedyev and others v. France judgment of 29 March 2010 [GC], No. 3394/03, paragraphs 64-65.

APPENDIX III

French only

INTERVENTION DE M. EDWIGE BELLIARD, PRESIDENTE DU COMITE DES CONSEILLERS JURIDIQUES EN DROIT INTERNATIONAL PUBLIC (CAHDI)

1118E REUNION DES DELEGUES DES MINISTRES, 6 JUILLET 2011

Monsieur le Président,
Mesdames et Messieurs les délégués des Ministres des Affaires étrangères,

C'est avec grand plaisir que je me présente aujourd'hui devant vous, pour la première fois, pour vous faire part des récents travaux du Comité des Conseillers juridiques en droit international public, que j'ai l'honneur de présider depuis le 1er janvier 2011.

Origine et mandat du CAHDI

Comme vous le savez, créé à l'origine comme un sous-comité du Comité européen de coopération juridique (CDCJ), le CAHDI est devenu en 1991 un Comité à part entière, dépendant directement du Comité des Ministres. Sous l'autorité de ce dernier, le CAHDI est chargé de procéder à des échanges de vues et d'examiner les questions de droit international public qui peuvent se poser. Il peut lui être demandé de coordonner les points de vue des Etats membres sur divers sujets de droit international et de rendre des avis juridiques, ce qu'il a déjà fait à de nombreuses reprises.

La composition du CAHDI est unique en ce qu'il réunit les conseillers juridiques des ministères des affaires étrangères de cinquante-cinq Etats et des représentants de plusieurs organisations intergouvernementales. Outre les Etats membres du Conseil de l'Europe, des Etats ayant le statut d'observateurs et des organisations participent, sans droit de vote, à ses travaux[29].

Cette diversité est une grande richesse, elle donne aux participants l'occasion de s'informer mutuellement sur des questions d'actualité et d'échanger sur leurs expériences et pratiques nationales. Plus qu'un forum de coordination, le CAHDI est également un organe de discussion, de réflexion et de conseil. Le niveau de représentation et d'engagement des délégations présentes donne, il me semble, à ses travaux (qu'il s'agisse de rapports, d'avis, de commentaires, de recommandations) une indéniable crédibilité.

Le CAHDI se réunit deux fois par an (en mars et en septembre), ce qui lui permet d'assurer un suivi régulier des questions traditionnellement inscrites à son ordre du jour. Cela est particulièrement vrai s'agissant du sujet des réserves et déclarations interprétatives aux traités internationaux, étant donné que les Etats ont un délai de douze mois pour réagir après la notification de la ratification par l'Etat réservataire et éventuellement entamer des démarches auprès de cet Etat.

De manière générale, le CAHDI suit avec attention l'ensemble des travaux de la Commission du droit international, organe des Nations Unies chargé du développement progressif et de la codification du droit international. Notre comité reçoit chaque année, lors de sa réunion du septembre, un membre de la Commission pour discuter des travaux en cours devant la Commission. Cette discussion est d'une très grande utilité pour l'ensemble des participants en vue de la préparation de la session de la Sixième Commission de l'Assemblée générale.

Première réunion sous présidence française

La 41e réunion du CAHDI, la première sous ma présidence, s'est tenue à Strasbourg les 17 et 18 mars 2011. Tout comme lors des précédentes réunions, la qualité des interventions et la diversité des sujets abordés ont donné lieu à des discussions d'un grand intérêt pour l'ensemble des participants.

Bien que le CAHDI, compte tenu en particulier, en l'espèce, des délais très courts imposés, n'ait pas reçu de demande formelle d'avis du Comité des Ministres, ce dernier lui avait demandé, par décision en date du 2

[29] Autres participants : (1) les institutions de l'Union européenne (Commission européenne et Secrétariat général du Conseil de l'Union européenne ; (2) les Etats ayant le statut d'observateurs du Conseil de l'Europe (Canada, Etats-Unis, Japon, Mexique, Saint-Siège) ; (3) organisations intergouvernementales (Conférence de La Haye de droit international privé, OTAN, OCDE, les Nations Unies et ses agences spécialisées, CERN, INTERPOL).
Observateurs : Australie, Israël, Nouvelle Zélande et CICR.

mars 2011, de procéder à un échange de vues sur le projet de *Convention du Conseil de l'Europe sur la prévention et la lutte contre la violence à l'égard des femmes et la violence domestique*, et de lui transmettre les résultats des discussions sur la compatibilité de plusieurs articles du projet avec le droit international, y compris en matière de droits de l'Homme. Les débats sur cette question ont été particulièrement riches.

L'ensemble des délégations s'est accordé pour reconnaître l'importance de cette Convention ainsi que l'intérêt qui s'attachait à son adoption rapide mais il a été reconnu que certaines formulations méritaient cependant, comme l'avaient relevé plusieurs délégations, d'être explicitées. A l'issue des discussions, le CAHDI est parvenu à l'adoption de ce qui équivaut à un avis dont la teneur a été transmise à votre Comité. Le CAHDI préconisait en particulier de compléter le rapport explicatif pour clarifier un certain nombre de dispositions du projet de convention, ce qui a été fait. Comme vous le savez, votre Comité a adopté la Convention le 7 avril 2011 et celle-ci a été ouverte à la signature à Istanbul le 11 mai dernier.

Parmi les sujets régulièrement inscrit et à l'ordre du jour du CAHDI, la discussion relative à la question de l'immunité des Etats et des organisations internationales a été particulièrement riche. De nombreuses délégations ont fait part de leur pratique et de la jurisprudence correspondante. M. Joël SOLLIER, représentant d'INTERPOL a informé le CAHDI de l'importance pour INTERPOL d'ouvrir les canaux de la coopération policière et judiciaires dans le respect de l'impératif de neutralité de l'Organisation et des principes généraux du droit international, notamment ceux s'appliquant en matière d'immunités. Pour cela, la pratique d'INTERPOL se fonde sur la jurisprudence de la Cour internationale de Justice dans l'affaire relative au *Mandat d'arrêt du 11 avril 2000 (République démocratique du Congo c. Belgique*) mais plusieurs questions restent encore à résoudre, notamment sur le champ d'application de cette jurisprudence. La réunion a également été l'occasion de faire état de la participation décevante des Etats à la *Convention des Nations Unies sur les immunités juridictionnelles des Etats et de leurs biens* et ainsi de les encourager à la ratifier.

Le débat sur les réserves aux traités a permis aux Etats de renouveler leur inquiétude et de faire état des démarches quant aux réserves pakistanaises émises à plusieurs dispositions du *Pacte international relatif aux droits civils et politiques* et de la *Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants*. Les participants ont également fait le point sur les conséquences juridiques à attacher aux retraits partiels de réserves.

Comme cela est d'usage, deux intervenants extérieurs ont effectué des présentations portant sur des questions d'actualité relatives au droit international public qui sont régulièrement examinées par le CAHDI. Mme Kimberly PROST, Médiatrice du Comité du Conseil de sécurité des Nations Unies créé par la résolution 1267 (1999) concernant les sanctions contre Al-Qaïda et les Taliban, a décrit de façon précise les enjeux auxquels fait face son bureau. Pour garantir l'accès des personnes listées au mécanisme mis en place par la résolution 1904 (2009) du Conseil de sécurité, elle a concentré une partie de son activité à faire connaitre l'existence du bureau du Médiateur. Mme PROST a fait part des nombreux défis qu'elle doit relever, tel que le manque de ressources et la question de l'accès aux informations. Elle a également décrit l'état d'avancement du travail du bureau du Médiateur et évoqué notamment la publication de son premier rapport.

M. Jean-Claude BONICHOT, juge français à la Cour de justice de l'Union européenne, s'est exprimé à titre personnel sur la problématique de l'adhésion de l'Union européenne à la Convention européenne des droits de l'Homme. Il a souligné la complexité du processus d'adhésion, notamment en raison de la nécessité d'organiser les rapports entre deux systèmes de conception différente, l'un faisant prévaloir les droits individuels, tandis que l'autre les confronte davantage avec la notion d'intérêt général. M. BONICHOT a également insisté sur la nécessité de préserver le rôle d'interprétation des traités de l'Union européenne qui incombe à la Cour de justice de l'Union européenne et l'importance de mettre en œuvre un mécanisme de saisine de la CJUE préalablement à la décision de la Cour européenne des droits de l'Homme lorsque cette dernière sera saisie d'une affaire ayant trait à une règle de droit de l'Union européenne sans que la CJUE ait pu se prononcer au préalable. Il a insisté sur les contacts réguliers qui ont lieu entre les deux Cours et souligné l'importance de ce dialogue des juges.

Ces deux présentations, relatives à des dossiers placés sous le feu de l'actualité, ont été particulièrement intéressantes. Les échanges de vues qui les ont suivis ont d'ailleurs été très animés et enrichissants pour l'ensemble des participants.

M. Erik WENNERSTROM, observateur du CAHDI auprès du Groupe informel sur l'adhésion de l'Union européenne à la Convention européenne des droits de l'Homme, a informé le CAHDI de l'avancée des travaux du Groupe. Ce dernier a mis en lumière les principes généraux devant guider ces travaux,

notamment la préservation du système de la Convention européenne des droits de l'Homme par la limitation des amendements et des adaptations du système à ce qui est strictement nécessaire, le respect de la répartition des compétences entre l'Union européenne et ses Etats membres, ainsi qu'entre les institutions de l'UE et la nécessité de s'assurer que les réformes du système à venir s'appliqueront à tous les Etats parties actuels et futurs, ainsi qu'à l'UE.

Parmi les interventions, je tiens enfin à signaler celle de M. Hans VAN LOON, Secrétaire général de la Conférence de La Haye de droit international privé, sur le thème de l'interaction entre la Convention européenne des droits de l'Homme et les Conventions élaborées par la Conférence de La Haye, et plus particulièrement la *Convention sur les aspects civils de l'enlèvement international d'enfants* du 25 octobre 1980. Il a souhaité attirer l'attention des participants sur la jurisprudence récente de la Cour européenne des droits de l'Homme qui a jugé injustifiées des demandes de retour d'enfants dans leur pays de résidence, demandes intentées sur le fondement de la Convention de La Haye de 1980 (plus particulièrement les arrêts *Neulinger and Shuruk c. Suisse*, Grande chambre, 6 juillet 2010 et *Raban c. Roumanie*, 26 octobre 2010). M. VAN LOON a souligné les difficultés qu'il pouvait y avoir pour concilier cette jurisprudence avec le mécanisme mis en place par la Convention de La Haye de 1980, qui vise à assurer, sauf circonstances particulières, un retour rapide des enfants enlevés dans leur lieu habituel de résidence, considérant notamment que les juridictions de l'Etat de résidence sont les mieux à mêmes pour se prononcer au fond sur la garde de l'enfant.

Les enjeux à venir

Pour ce qui concerne l'avenir du CAHDI, les prochaines réunions ne manqueront pas de réaffirmer son rôle d'organe de coordination et de réflexion à la disposition du Comité des Ministres et des autres Comités du Conseil de l'Europe.

Comme vous le savez, dans le cadre du processus de réforme du Conseil de l'Europe, les Priorités du Secrétaire Général pour 2011 incluaient, entre autres, la proposition d'analyser la pertinence des Conventions du Conseil de l'Europe. A cette fin, le Secrétariat a préparé un schéma sur le passage en revue des Conventions pour présenter les principaux objectifs poursuivis et les modalités à suivre pour mettre en œuvre la proposition du Secrétaire général. Lors de la 41e réunion du CAHDI, ce schéma a été présenté par M. LEZERTUA aux Etats membres, qui ont ainsi pu émettre des commentaires sur la méthodologie retenue. La principale proposition du Secrétaire Général vise l'élaboration d'un Rapport complet à l'attention du Comité des Ministres d'ici la fin septembre 2011. Ce Rapport devrait être au préalable soumis pour examen au CAHDI lors de sa prochaine réunion, les 22 et 23 septembre prochain. Nous nous réjouissons de pouvoir ainsi participer à la grande réforme du Conseil de l'Europe.

Par ailleurs, le Comité des Ministres devra prochainement donner un nouveau mandat à tous les Comités directeurs et structures subordonnées, mandat applicable à partir du 1er janvier 2012. La proposition du Secrétaire Général pour la nouvelle organisation des structures intergouvernementales suggère différentes pistes de réflexion pour optimiser le fonctionnement du Conseil de l'Europe. A cet égard, je constate que ce document propose de maintenir le CAHDI dans sa forme actuelle, ce qui confirme la manière positive dont sont perçues le mode de fonctionnement et les travaux de ce Comité, ce dont nous ne pouvons que nous féliciter.

Au nom du CAHDI, je tiens à vous remercier pour la confiance renouvelée dont vous lui témoignez. Je ne peux qu'encourager la poursuite de la collaboration étroite que votre Comité entretient avec le CAHDI et je saisis cette occasion pour vous réaffirmer l'engagement des conseillers juridiques des ministères des Affaires étrangères des Etats membres à promouvoir le rôle du droit international public et le respect de la règle de droit dans les relations internationales.

APPENDIX IV

OPINION 280 (2011)[30] OF THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE ON THE DRAFT COUNCIL OF EUROPE CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

1. The Parliamentary Assembly has consistently, repeatedly and forcefully condemned violence against women as one of the most serious violations of human rights in Europe, finding its roots in unequal power relations between women and men and discrimination against women. The Assembly, therefore, warmly welcomes the draft Council of Europe convention on preventing and combating violence against women and domestic violence, as the first international binding instrument specifically devoted to this issue and as an important step forward in the promotion of substantive equality between women and men.

2. The Assembly welcomes the comprehensive and holistic approach of the draft convention, which encompasses simultaneously the prevention of violence against women, the protection of victims, the prosecution of perpetrators and integrated policies.

3. It also commends the strong monitoring mechanism foreseen by the draft convention, as well as the innovative provisions setting out a specific role for national parliaments and the Assembly in the context of monitoring the implementation of the convention.

4. Having had the opportunity to take part in the entire negotiation process in the Ad hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO), the Assembly is aware that the text of the draft convention is the result of a delicate compromise between diverging views, interests and concerns.

5. The Assembly notes that the scope of the draft convention itself is the result of a compromise as it primarily covers all forms of violence against women, including domestic violence, which affects women disproportionately, while the states parties are encouraged to apply the convention also to other victims of domestic violence.

6. Although such a wide scope goes beyond the mandate of the Council of Europe campaign “Stop domestic violence against women”, and was not clearly defined in the terms of reference of the CAHVIO, the Assembly does not think it appropriate, at this stage, to call it into question, because of the risk of altering a balance which has been very carefully negotiated.

7. The Assembly, however, wishes to propose amendments, with a view to strengthening the standards set out in the draft convention.

8. In particular, the Assembly expresses its concern with regard to the inadequate protection of some specific vulnerable groups, such as children, elderly people and migrant women without a legal residence status. These women are mentioned only in the case of their losing their residence status as a result of the dissolution of a relationship with a spouse or partner as a consequence of their being victims of violence.

9. In addition, the Assembly points out that, in the field of prosecution, too much flexibility is left to the states parties on how to sanction some of the forms of violence covered by the draft convention, whether through administrative, civil or criminal law. The Assembly would have preferred a much stronger emphasis on the obligation to criminalise certain acts of violence, even if this created the need for some member states to make additional efforts to adapt their domestic law to the draft convention.

10. It is likewise regrettable that exceedingly broad latitude to make reservations is left to the states parties, with the result that a considerable proportion of the convention could be made inoperative. This is all the more worrying considering that reservations could be made to important provisions such as those concerning the victims’ right to compensation, the exercise of jurisdiction, the statute of limitations, residence status or the obligation to provide for criminal sanctions for certain acts, as opposed to non-criminal sanctions.

[30] Text adopted by the Standing Committee, acting on behalf of the Assembly, on 11 March 2011 (see Doc. 12530, report of the Committee on Equal Opportunities for Women and Men, rapporteur: Mr Mendes Bota).

11. In the light of the above, the Assembly recommends to the Committee of Ministers that the draft convention be amended so as to replace the expression “gender-based violence against women” with “gender-based violence” in Article 3.d, Article 14, paragraph 1, and Article 60, paragraph 1.

12. In addition, with a view to addressing the situation and needs of specific vulnerable groups, the Assembly invites the Committee of Ministers to consider drafting three additional protocols to the draft convention, respectively on children, disabled people and elderly people. It also recommends the following amendments to the draft convention:

12.1. in Article 15, paragraph 2, replace “encourage” with “ensure”;

12.2. in Article 22, at the end of paragraph 2, add the following words: “taking into account their specific needs”.

13. Moreover, in order to make it explicit that the convention applies also to migrant women without a regular residence status and to reinforce measures aimed at protecting them and encouraging them to report violence to the relevant authorities, the Assembly recommends to the Committee of Ministers that the draft convention be amended as follows:

13.1. in Article 4, paragraph 3, after the words “migrant or refugee status” add the words “, absence of legal residence status”;

13.2. in Article 18, paragraph 1, after the word “victims” add “, irrespective of their legal status,”;

13.3. in Article 59, paragraph 1, delete the words “in the event of particularly difficult circumstances”;

13.4. after Article 59, add the following new article:

“Irregular migrant status

1. Parties shall take the necessary legislative or other measures to ensure that victims without regular residence status are granted a residence permit in the following cases:

a. where the competent authority considers that their stay is necessary owing to their personal situation;

b. where the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in an investigation or criminal proceedings.

2. Parties shall apply all the provisions of the present Convention to victims without regular residence status, without discrimination.”

14. With a view to reinforcing substantive law provisions and protection measures, the Assembly recommends to the Committee of Ministers the following amendments:

14.1. in Article 34, replace the words “repeatedly engaging in threatening conduct directed at” with “following, harassing or threatening”;

14.2. in Article 36, paragraph 3, delete the words “as recognised by internal law”;

14.3. in Article 40, delete the words “or other legal”;

14.4. in Article 46, paragraph 1.a, delete the words “as recognised by internal law”;

14.5. reword Article 53 as follows:

“1. Parties shall take the necessary legislative or other measures to ensure that appropriate restraining and protection orders are available to the police and to the victims of all forms of violence covered by the scope of this Convention.

2. Parties shall take the necessary legislative or other measures to ensure that the restraining and protection orders referred to in paragraph 1 are:

– available for immediate protection and without undue financial or administrative burdens placed on the victim;

– issued for a specified period or until modified or discharged;

– where necessary, issued on an ex parte basis which has immediate effect;

– where necessary, issued ex officio;

– available irrespective of, and in addition to, other legal proceedings;

– allowed to be introduced in subsequent legal proceedings.";

14.6. in Article 56, paragraph 1.f, replace the words "may be" with "are".

15. With a view to further reinforcing the monitoring mechanism foreseen by the draft convention, and involving more closely specialised non-governmental structures, national parliaments and the Assembly, the Assembly recommends to the Committee of Ministers that the draft convention be amended as follows:

15.1. reword Article 68, paragraph 5, as follows:

"GREVIO may receive information on the implementation of the Convention from national human rights institutions and equality bodies, civil society and non-governmental organisations, especially women's organisations.";

15.2. in Article 70, after paragraph 2, add a new paragraph worded as follows:

"Parties shall consult their national parliaments when drafting the comments to be submitted to GREVIO in accordance with Article 68 of the Convention.";

15.3. in Article 70, after paragraph 3, add a new paragraph worded as follows:

"The Parliamentary Assembly shall be entitled to participate in the meetings of GREVIO and the Committee of the Parties as an observer."

16. With a view to reducing the current exceedingly broad latitude for the states parties to enter reservations, the Assembly recommends the following amendments:

16.1. in Article 78, rephrase paragraph 2 as follows:

"Any state or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases or conditions the provisions laid down in Article 44, paragraph 1.e.";

16.2. in Article 78, delete paragraph 3.

17. Finally, the Assembly recommends to the Committee of Ministers the following amendments to the draft convention:

17.1. in Article 1, reword sub-paragraph b as follows:

"Contribute to the elimination of all forms of discrimination against women and promote equal dignity for all women and substantive equality between women and men, including by empowering women;";

17.2. in Article 10, paragraph 1, after the words "one or more official bodies", add "involving all decision-making levels (governments, parliaments and local and regional authorities)";

17.3. in Article 11 paragraph 1.a, replace the words "disaggregated relevant statistical data at regular intervals" with "disaggregated, relevant, harmonised and up-to-date statistical data on an annual basis";

17.4. in Article 12, paragraph 1, replace the word "inferiority" with "subordinate position";

17.5. in Article 12, after paragraph 6, add a new paragraph worded as follows:

“Parties shall promote the activities of non-governmental organisations aimed at providing advice and assistance to victims, including on a cross-country basis.”;

17.6. in Article 13, paragraph 1, after “increase awareness and understanding among the general public of”, insert the words “the dignity and value of women and”;

17.7. reword Article 20, paragraph 1, as follows:

“Parties shall take the necessary legislative or other measures to ensure that victims have access to services facilitating their recovery from violence. These measures should include, where appropriate, services such as legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment or setting up a business. The Parties are encouraged to set up special measures to facilitate the victims’ access to employment.”;

17.8. in Article 29, paragraph 2, replace “state authorities” with “public authorities”.

18. The Assembly also invites the Committee of Ministers to establish a close dialogue with the European Union on the issue of violence against women, with a view to avoiding double standards or contradictions between the draft Council of Europe convention and European Union legislation in this field, and encouraging European Union accession to the convention.

19. In the light of the urgency of effective legal standards to prevent and combat violence against women and domestic violence, the Assembly calls on member states:

19.1. not to hinder the process leading to the opening for signature of the convention as soon as possible, giving a strong political signal of their commitment to eradicating violence against women;

19.2. to sign and ratify the convention as soon as possible;

19.3. to ensure the application of the convention “to all victims of domestic violence”, as they are encouraged to do under Article 2, paragraph 2, of the draft convention;

19.4. to refrain from entering reservations and, in any case, not to renew them after a period of five years from the entry into force of the convention in respect of the state party concerned.

20. Recalling the activities conducted from 2006 to 2008 when embodying the parliamentary dimension of the Campaign entitled “Stop domestic violence against women”, the Assembly affirms its commitment, through its network of the contact parliamentarians of the Parliamentary Assembly committed to combating violence against women, to conducting campaigning and awareness-raising activities in support of the promotion of the signature and ratification of the convention.