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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW

(CAHDI)

Meeting report

47th meeting
Strasbourg, 20-21 March 2014

Public International Law Division and Treaty Office
Directorate of Legal Advice and Public International Law, DLAPIL

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I. INTRODUCTION

1. Opening of the meeting by the Chair, Ms Liesbeth Lijnzaad

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 47th meeting in Strasbourg on 20 and 21 March 2014 with Ms Liesbeth Lijnzaad in the Chair. The list of participants is set out in **Appendix I** to this report.

2. Adoption of the agenda

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

3. Adoption of the report of the 46th meeting

3. The CAHDI adopted the report of its 46th meeting (document CAHDI (2013) 17) and instructed the Secretariat to publish it on the Committee's website.

4. Information provided by the Secretariat of the Council of Europe

a. Statement by Mr Jörg Polakiewicz, Director of Legal Advice and Public International Law

4. Mr Jörg Polakiewicz, Director of Legal Advice and Public International Law (DLAPIL), informed the delegations of recent developments within the Council of Europe since the last CAHDI meeting.

5. The CAHDI took note of the ongoing discussions within different entities of the Organisation on the situation in Ukraine. In particular, Mr Polakiewicz mentioned:

- the interim measure granted in the inter-State case brought by Ukraine before the European Court of Human Rights against Russia on 13 March 2014;

- the Recommendation 2035 (2014) of the Parliamentary Assembly of the Council of Europe on *The functioning of democratic institutions in Ukraine*[1] adopted by the Assembly on 30 January 2014;

- the two opinions of the European Commission for Democracy through Law (Venice Commission) adopted on 21 March 2014 on *Whether the decision taken by the Supreme Council of the Autonomous Republic of Crimea in Ukraine to organise a referendum on becoming a constituent territory of the Russian Federation or restoring Crimea's 1992 Constitution is compatible with constitutional principles*[2] and on *Whether draft Federal Constitutional Law No. 462741-6 on amending the Federal Constitutional Law of the Russian Federation on the procedure of admission to the Russian Federation and creation of a new subject within the Russian Federation is compatible with international law*[3];

- the decisions adopted by the Committee of Ministers on 19-21 February[4], 26 February[5], 14 March[6] and 20 March 2014[7]; (see also the note of the Secretariat[8])

[1] See text of the Recommendation at the following link.
[2] See opinion of the Venice Commission at the following link.
[3] See opinion of the Venice Commission at the following link.
[4] See decision of the Committee of Ministers of 19-21 February 2014 at the following link.
[5] See decision of the Committee of Ministers of 26 February 2014 at the following link.
[6] See decision of the Committee of Ministers of 14 March 2014 at the following link.
[7] See decision of the Committee of Ministers of 20 March 2014 at the following link.
[8] Note of the Secretariat: Delegations are informed that the Committee of Ministers adopted a decision on 3 April 2014 on the situation in Ukraine available at the following link.

- the setting-up – requested by the Secretary General – of an International Advisory Panel in charge of overseeing judicial investigations of violent clashes between protesters and security forces since the end of November 2013[9];

- the *ad hoc* visit of the Advisory Committee of the Framework Convention for the Protection of National Minorities instructed by the Committee of Ministers scheduled to take place from 21 to 26 March 2014[10].

On this matter, delegations are invited to refer to item 18 of this report.

6. Delegations were also informed of the election of the future Secretary General of the Council of Europe scheduled to take place in June 2014 during the Third part of the 2014 Session of the Parliamentary Assembly of the Council of Europe. On 21 February 2014, the Committee of Ministers decided to submit to the Parliamentary Assembly of the Council of Europe, for appointment to the post of Secretary General, with effect from 1 October 2014, the candidatures of Mr Thorbjørn Jagland (Norway) and Ms Sabine Leutheusser-Schnarrenberger (Germany). Pursuant to the Statute of the Council of Europe, the election of the Secretary General is a shared responsibility of the Committee of Ministers and the Parliamentary Assembly: the Committee of Ministers draws up a list of candidates submitted to the Parliamentary Assembly and the Assembly elects the Secretary General among these candidates. Delegations were informed that it was the second time the Committee of Ministers drew up a restricted list of candidates based on the so-called "Juncker criteria" by which only "candidates who enjoy a high level of recognition, are well-known among their peers and the people of Europe, and have previously served as Heads of State or Government, or held senior ministerial office or similar status relevant to the post" could be presented to the Assembly[11].

7. Regarding the latest news from the Treaty Office, delegations were informed that two conventions would enter into force in 2014, namely the *Protocol to the European Convention for the Protection of the Audiovisual Heritage, on the Protection of Television Productions* [CETS No. 184] on 1 April 2014 and the *Fourth Additional Protocol to the European Convention on Extradition* [CETS No. 212] on 1 June 2014. Mr Polakiewicz also informed the CAHDI that the *draft Council of Europe Convention on the Manipulation of Sports Competitions* had been transmitted to the Parliamentary Assembly of the Council of Europe for opinion and that it would probably be opened for signature on 18 September 2014 at 13th Council of Europe Conference of Ministers responsible for Sport (17-19 September 2014, Macolin, Switzerland).

8. The CAHDI welcomed Ms Marta Requena, new Secretary to the CAHDI and Head of Public International Law Division and Treaty Office (DLAPIL) who returned on 1 February 2014 to her former position following a secondment of two years at the United Nations Office on Drugs and Crime (UNODC) as Director of the Terrorism Prevention Branch. The CAHDI warmly thanked Ms Christina Olsen who ensured the CAHDI secretariat during the last two years and expressed its appreciation for the excellent work she carried out during this period.

b. New databases of the CAHDI

9. The Secretariat presented an analysis of the project for the development of the current three databases of the CAHDI ("Immunities of States and international organisations", "Organisation and functions of the Office of the Legal Adviser of the Ministry of Foreign Affairs" and "Implementation of United Nations sanctions and respect for Human Rights") as well as the future

[9] Note of the Secretariat: Delegations are informed that the International Advisory Panel met for the first time on Wednesday 9 April 2014 at the Council of Europe. The members of the Panel are:
- Sir Nicolas Bratza, Chairman, former President of the European Court of Human Rights;
- Mr Volodymyr Butkevych, former Judge of the European Court of Human Rights;
- Mr Oleg Anpilogov, member of Kharkiv Regional Council.

[10] Note of the Secretariat: Delegations are informed that the Advisory Committee on the Framework Convention for the Protection of National Minorities issued its report on 2 April 2014 and is available at the following link.

[11] See in this regard the Procedure of the election of the Secretary General of the Council of Europe.

databases to be set up aiming at examining the interest and objectives of the project as well as its expected benefits.

10. This project aims at:

- facilitating and simplifying the contribution process of CAHDI experts to the three abovementioned databases;
- facilitating the access to the information through a more intuitive research system; and
- ensuring the sustainability of the information collected.

11. Through these new databases, the information will be more up-to-date, more targeted and will be accessible to a larger public paving the way for a higher visibility of the work of the CAHDI.

12. The Secretariat informed delegations that among the recommended development options, it had been decided to proceed with an internal development controlled by the Directorate of Information Technology of the Council of Europe (DIT) having the strength of being based on the architecture and existing good practices of the DIT and using the common, shared and sustainable framework developed by the Council of Europe.

13. Delegations were informed that the recommended development option would be implemented during a period of five years. The first year of the project would be devoted to the technical development as such and would cost 60 000 euros. The total cost of the project over five years including the initial investment costs, the maintenance costs and the staff costs would be of 139 000 euros. The Secretariat informed delegations that given that the Ordinary Budget of the Organisation for the biennium 2014-2015 did not include a budget heading provided for this purpose, the project would be developed only through voluntary contributions from member States of the Council of Europe. The Secretariat encouraged delegations to consider contributing to this project and invited them to contact the Secretariat should they have wished to obtain further information.

II. ONGOING ACTIVITIES OF THE CAHDI

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

14. The Chair presented a compilation of Committee of Ministers' decisions of relevance to the CAHDI's activities (documents CAHDI (2014) 1 and CAHDI (2014) 1 Addendum). In particular, the Committee took note that the terms of reference of the CAHDI for 2014-2015 were adopted by the Committee of Ministers at its 1185th meeting on 19-20 November 2013.

15. The CAHDI also took note that the Committee of Ministers had examined the abridged report of its 46th meeting held on 16-17 September 2013 in Strasbourg. The reply of the Committee of Ministers to Recommendation 2027 (2013) of the Parliamentary Assembly of the Council of Europe – "European Union and Council of Europe Human Rights Agendas: Synergies not Duplication" was adopted on 19-20 February 2014 on the basis of the opinions of the CAHDI and of the Steering Committee for Human Rights (CDDH). Delegations were reminded that the CAHDI had adopted its opinion on this Recommendation by written procedure in November 2013.

16. Regarding the priorities of the Austrian Chairmanship of the Committee of Ministers (14 November 2013 – 14 May 2014), the delegation of Austria drew the attention of the CAHDI to the organisation of some conferences during this Chairmanship, in particular:

- the Joint Council of Europe/OSCE Conference *Not For Sale – Joining Forces Against Trafficking in Human Beings* (17-18 February 2014, Vienna);

- the Conference on *The Rule of Law and the Internet* (13-14 March 2014, Graz); and

- the Conference on *Strengthening the Rule of Law in Europe* (3-4 April 2014, Innsbruck).

17. Furthermore, on 12-13 February 2014, the Ministers' Deputies communicated to the CAHDI Recommendation 2037 (2014) of the Parliamentary Assembly of the Council of Europe – "Accountability of international organisations for human rights violations" for information and possible comments by 18 April 2014. A draft opinion had been prepared by the Secretariat and the Chair and sent to delegations for comments/observations prior to the meeting.

18. The Chair presented the draft opinion of the CAHDI (document CAHDI (2014) 8 prov) together with the comments by delegations received on this draft (document CAHDI (2014) 8 Addendum). Following an exchange of views, the CAHDI adopted its opinion which appears in **Appendix III** to the present report.

19. In this opinion, the CAHDI stressed from the outset that the promotion and protection of human rights formed part of the foundations of the Council of Europe, the European Union (EU), the United Nations (UN) and its specialised agencies and that the most relevant international legal instruments and human rights standards had been developed in the framework of these international organisations. It also underlined that the privileges and immunities of international organisations were essential elements for the fulfilment of their mission and that they were governed by international law. The CAHDI invited international organisations to consider waiver of immunity in individual cases where appropriate, stressing however that the decision to waive immunity was an exclusive competence of the international organisation itself. It underlined that the question of the immunity of international organisations was often discussed within the Committee and referred in this regard to recent case-law related to the scope of this immunity. The CAHDI finally encouraged continuing reflection on the issues raised by the Parliamentary Assembly regarding notably the accountability issues and the responsibility of international organisations.

6. Immunities of States and international organisations

a. State practice and case-law

i. Settlement of disputes of a private character to which an international organisation is a party

20. The Chair introduced the topic of the "Settlement of disputes of a private character to which an international organisation is a party", included in the agenda at the request of the delegation of the Netherlands, which prepared a document on this issue (document CAHDI (2014) 5).

21. The delegation of the Netherlands presented the document, which had been drafted in order to trigger a process of exchanging views on this issue. It aimed in particular at facilitating a discussion on the topical questions related to the settlement of third-party claims for personal injuries or death and property loss or damages allegedly caused by an international organisation and the effective remedies available for claimants in these situations. The immunity of international organisations in many cases prevents individuals who have suffered harm from conduct of an international organisation from bringing a successful claim before a domestic court. This immunity has been increasingly challenged on an alleged incompatibility of upholding immunity with the right of access to court. A relevant element is the existence of an alternative remedy provided to the claimant by the international organisation. Mention was made – for illustrative purposes – to recent events mainly in relation to some peace keeping operations of the United Nations (UN)[12] and case-law of the European Court of Human Rights[13] involving international organisations and where their

[12] In October 2013, lawyers for Haiti Cholera victims filed a class action lawsuit in the Southern District of New York against the UN.

[13] European Court of Human Rights, *Beer and Regan v. Germany*, application No. 28934/95, judgment delivered on 19 February 1999; European Court of Human Rights, *Waite and Kennedy v. Germany*, application No. 26083/94, judgment delivered on 18 February 1999; European Court of Human Rights, *Chapman v. Belgium*, application No. 39619/06,

immunity from the civil jurisdiction of domestic courts had been granted. The Dutch delegation invited the CAHDI members to hold an exchange of views on the current state of this issue from their own national experience and on the possible measures to be adopted.

22. A large majority of the delegations welcomed this initiative and thanked the Dutch delegation for addressing these topical questions. It was however underlined on several occasions that it was a rather sensitive issue and that it had to be considered with great caution as it touched upon the question of the immunity generally enjoyed by international organisations from the jurisdiction of domestic courts as well as on the link between the liability of an international organisation on the one hand and the liability of the individual member States of these organisations on the other hand.

23. Recognising the existence of lacunas with regard to the legal remedies available for civil claimants, it was however underlined by several delegations that the immunity enjoyed by international organisations remained a pillar of international law and necessary for the execution of their core missions. Restricting this immunity could have important consequences as it could lead to an increase in claims for compensation and thus reduce actions and operations of international organisations.

24. Mention was also made of the difficulty of finding a single solution to these problems. It was suggested on several occasions that the analysis of the issues would have to take place organisation by organisation, in light of the different approaches taken by courts in different jurisdictions, but also depending on the subject matter. More particularly, while the question did not arise with regard to employment law cases or commercial disputes where international organisations generally provided for a dispute settlement procedure, the issue at stake concerned mainly the operational activities of the international organisations which constituted the core of their mission.

25. Regarding the possible measures to strengthen the settlement of disputes of a private character to which an international organisation is a party, several delegations supported the proposal contained in the document submitted by the delegation of the Netherlands to establish an ombudsperson who could investigate complaints from individuals arising from the conduct/action of an international organisation, as it had been the case in Switzerland. Other possible measures were also voiced such as a) the establishment of a standing claims commission as envisaged in the Model Status-of-Forces Agreement for Peace-keeping Operations normally concluded between the United Nations and the host State of the operation or b) the waiver of immunity of international organisations in selected cases.

26. The CAHDI agreed to keep the issue on the agenda for its 48th meeting. The Chair invited the members of the CAHDI to submit in writing before the next meeting their comments on the questions raised in the document, namely a) whether they considered that this issue was a topical question that merited further attention, b) whether they had any national experience/examples in this regard and c) whether they had been given thoughts to possible measures to strengthen the settlement of disputes of a private character arising from the operational activities of an international organisation.

ii. Immunity of State owned cultural property on loan

27. The Chair presented the topic of the “Immunity of State owned cultural property on loan” included in the agenda following the initiative of the Czech Republic, supported by Austria and the Netherlands presented at the 45th meeting of the CAHDI. This initiative aimed at elaborating a draft declaration in support of the recognition of the customary nature of the pertinent provisions of the 2004 *United Nations Convention on Jurisdictional Immunities of States and Their Property* (the UN Convention) related to this issue. She recalled that it had been decided at the 46th meeting that the

judgment delivered on 5 March 2013; European Court of Human Rights, *Stichting Mothers of Srebrenica and others v. the Netherlands*, application No. 65542/12, judgment delivered on 11 June 2013.

Secretariat and the Chair would draft a questionnaire so as to have an overview of the national specific legislations and drew the delegations' attention to this questionnaire (document CAHDI (2014) 2). She invited the Czech and Austrian delegations to provide further information on this issue.

28. The delegation of the Czech Republic informed the Committee that since the last meeting, in addition to the signatures of Austria and the Czech Republic, the declaration had been signed by Latvia and Slovakia. It recalled that this declaration had been elaborated as a legally non-binding document expressing a common understanding on *opinio juris* on the basic rule that certain kind of State property (cultural property on exhibition) enjoyed jurisdictional immunity.

29. The delegation of Austria drew the attention of the delegations to the questionnaire elaborated by the Secretariat in cooperation with the Chair on this issue containing helpful questions to further develop discussions on the matter.

30. The representative of Mexico underlined the importance – in addition to the recognition of the customary international law nature of Part IV of the UN Convention – of negotiating bilateral agreements to guarantee the immunity of specific cultural property on loan. It referred in this regard to a protocol signed between Mexico and Austria foreseeing that any conflict or dispute arising with regard to the loan of a specific cultural property would be submitted to the International Court of Justice.

31. The delegation of Finland informed the Committee that the Finnish Parliament had finalised the internal national procedure allowing the ratification of the UN Convention and that the instrument of ratification would be deposited in the coming weeks.

32. The Chair invited delegations to provide answers to the questionnaire, which would be examined at the 48th meeting of the CAHDI.

iii. Immunities of special missions

33. The Chair presented the topic of the "Immunities of special missions", which had been included in the agenda of the 46th meeting of the CAHDI at the request of the delegation of the United Kingdom, which had provided a document in this regard (document CAHDI (2013) 15). She drew the delegations' attention to the questionnaire which had been drafted on this issue following this meeting (document CAHDI (2014) 3) and invited delegations to provide answers, which would be examined at the 48th meeting of the CAHDI.

iv. Exchange of national practices on possibilities for the Ministry of Foreign Affairs to raise public international law issues in proceedings pending before national tribunals and related to States' or international organisations' immunities

34. The Chair informed delegations of the update of the Slovenian contribution to this document since the previous meeting (document CAHDI (2014) 9) and invited delegations which had not yet done so to submit or update their responses to this questionnaire. She recalled that so far, 28 delegations had replied to the questionnaire.

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

35. The Chair informed the Committee that since the previous meeting of the CAHDI, Latvia had acceded to the 2004 *UN Convention on Jurisdictional Immunities of States and of their Property* on 14 February 2014.

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

36. The Chair presented the *Revised questionnaire on the organisation and functions of the Office of the Legal Adviser of the Ministry of Foreign Affairs* containing additional questions on gender equality in conformity with the Council of Europe Gender Equality Strategy for 2014-2017. The Committee agreed to redraft the third question concerning the staff employed by the Office of the Legal Adviser in the following manner: "Please give a brief description of staff employed by the OLA, including overseas staff. What is the distribution of posts between men and women within the OLA and what category of staff do they respectively belong to?" The Committee also agreed to amend the fourth question as follows: "Are there any specific recruitment and promotion policies, provisions and/or quotas to ensure non-discrimination and equal opportunities, e.g. for the underrepresented sex, for persons with disabilities or for persons belonging to ethnic or religious minorities or of immigrant origin?". The revised questionnaire appears in **Appendix IV** to the present report.

37. The CAHDI also took note of the replies submitted by the delegations of Albania and Belarus. The Chair invited the delegations which had not yet done so, to submit or update their contributions in relation to this questionnaire.

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

38. The Chair introduced document CAHDI (2012) 3 on the *Cases that have been submitted to national tribunals by persons or entities removed from the lists established by the United Nations Security Council Sanctions Committees* and invited all delegations to submit information in this respect. The Chair noted that, at present, seven delegations had submitted their contributions.

39. The representative of the European Union updated the CAHDI on the most recent cases of the Court of Justice of the European Union (CJEU) on this issue, namely the *Abdulrahim*[14] and *Ayadi*[15] cases. In the *Abdulrahim* case, the name of the applicant was entered on 21 October 2008 on the list drawn up by the United Nations Security Council Sanctions Committee[16], on the basis that he had been involved in fundraising on behalf of the Libyan Islamic Fighting Group (LIFG). Consequently, he was included on the list drawn up under the European Union legislation[17] adopted in respect of persons and entities whose funds must be frozen by virtue of a regulation imposing certain restrictive measures directed against persons associated with Usama bin Laden. The applicant brought an action before the Court of First Instance of the European Union (now "the General Court") for annulment of the European Union legislation in so far as the act concerned him. He argued that the freezing of funds, which infringed his right to property and to private life, was a disproportionate measure. The General Court ruled by order that, since the name of the applicant had been removed from the Sanctions Committee list, and subsequently from the European Union list, his application for annulment had become devoid of purpose, and that there was no longer any need to adjudicate. Mr Abdulrahim appealed to the CJEU, which ruled that, despite the removal of his name from the list, the applicant retained an interest in having the Courts of the European Union recognise that he should never have been included on it.

40. In the *Ayadi* case, the factual elements were similar to those of the *Abdulrahim* case. Following different legal procedures in connected cases, Mr Ayadi requested the CJEU to set aside the order of the General Court of 31 January 2012 in Case T-527/09 *Ayadi v. Commission* by

[14] Court of Justice of the European Union, *Abdulbasit Adbulrahim v. Council and Commission*, Case C-239/12 P, judgment delivered on 28 May 2013.
[15] Court of Justice of the European Union, *Chafiq Ayadi v. European Commission*, *Council of the European Union*, Case C-183/12 P, judgment delivered on 6 June 2013.
[16] Established by United Nations Security Council Resolution 1267 (1999) concerning Al-Qaida and Associated Individuals and Entities, adopted by the Security Council at its 4051st meeting on 15 October 1999.
[17] Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban (OJ 2002 L 139, p.9).

which the General Court held that there was no longer any need to adjudicate on the action which he had brought for annulment of *Commission Regulation (EC) No 954/2009 of 13 October 2009 amending for the 114th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban* in so far as it concerned him. In support of his appeal, the applicant asserted his right to an effective remedy and to effective judicial protection (Articles 47 and 52§3 of the Charter of Fundamental Rights of the European Union) and his right to respect for private and family life (Article 7 of the Charter of Fundamental Rights of the European Union). The CJEU set aside the order of the General Court in so far as the order decided that there was no longer any need to adjudicate on the action for annulment. The CJEU considered that "in the light of the circumstances of the present case and, in particular, the extent of the damage to Mr Ayadi's reputation resulting from his inclusion on the list at issue for a considerable period, his interest in bringing proceedings continues to exist for the purpose of seeking annulment of the regulation at issue in so far as it concerns him and of securing, should his action be upheld, his rehabilitation and, thus, some form of reparation for the non-material harm suffered by him".

41. The delegation of Switzerland referred to the judgment of the European Court of Human Rights (the Court) in the case of *Al-Dulimi v. Switzerland*[18], delivered on 26 November 2013. In this case, the applicants, an Iraqi national and a company based in Panama of which the first applicant was managing director, claimed that the confiscation of their assets and economic resources, in compliance with the United Nations Security Council Resolution inviting United Nations member and non-member States to impose a general embargo on Iraq after it invaded Kuwait in 1990, had been ordered in the absence of any procedure compatible with Article 6§1 of the ECHR. The Court recalled that it was presumed that States did not depart from the requirements of the Convention when they did no more than implement legal obligations flowing from their membership of an organisation which provided equivalent protection to the Convention. It considered that the presumption of equivalent protection was intended, in particular, to ensure that a State party was not faced with a dilemma when it was obliged to rely on the legal obligations incumbent on it as a result of its membership of an international organisation which was not party to the Convention. With regard to the protection provided in this case, the Court noted that it had been recognised that the system in place did not provide equivalent protection to that required by the Convention. The Court took the view that the applicants had been deprived from their assets for a considerable period of time and were entitled under Article 6§1 to have the restrictive measures taken in application of the sanctions regime reviewed by a national court and concluded to the violation of the applicant's right of access to court. The Court considered that as long as there was no effective and independent judicial review at United Nations level of the legitimacy of including persons and entities on the United Nations' lists, it was essential that the targeted persons and entities could ask national courts to examine any measure taken in application of the sanctions regime. The Swiss delegation informed the Committee that Switzerland would refer the case to the Grand Chamber and that three similar cases were pending before national courts. It further indicated that Switzerland intended to submit new proposals to strengthen due process in the context of listing and de-listing procedures as well as on the possibility to extend the mechanism of the Ombudsperson of the Security Council's 1267 Sanctions Committee to other sanctions regimes.

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

42. The CAHDI addressed the issue of the accession of the European Union to the European Convention on Human Rights (ECHR). The CAHDI took note of the latest information transmitted in writing to the Committee by Mr Wennerström, observer of the CAHDI to the *ad hoc* Group 47+1 on the European Union's accession to the ECHR, who was unable to attend the meeting. He informed the Committee that the formal approval accession instrument by the Committee of Ministers of the Council of Europe was expected once the internal procedures by negotiating parties, notably the European Union, would be completed. In this respect, Mr Wennerström mentioned that the next major step forward was the delivering of an opinion by the Court of Justice

[18] European Court of Human Rights, *Al-Dulimi and Montana Management Inc. v. Switzerland*, application No. 5809/08, judgment delivered on 26 November 2013.

of the European Union. In this respect, he underlined that the question submitted to the CJEU was a complex and singular one: “Is the Draft Agreement on the Accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms compatible with the Treaties?” He underlined that the European Union member States and institutions had the opportunity to submit observations to the CJEU and that the CJEU would call for a hearing before deciding on its opinion.

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

43. The delegation of the United Kingdom provided information on a recent case, *Jones and Others v. the United Kingdom*[19], before the European Court of Human Rights (the Court) involving issues of public international law. The case concerned four British nationals who alleged that they had been tortured in Saudi Arabia by Saudi State officials. The applicants complained about the United Kingdom courts’ subsequent dismissal for reasons of State immunity of their claims for compensation against Saudi Arabia and its officials. Relying on Article 6 § 1 (access to court), the applicants complained that the United Kingdom courts’ granting of immunity in their cases meant that they had been unable to pursue claims for torture either against Saudi Arabia or against named State officials. They alleged that this had amounted to a disproportionate violation of their right of access to court. The Court found that the granting of immunity to Saudi Arabia and its State officials in the applicants’ civil cases had reflected generally recognised current rules of public international law and had not therefore amounted to an unjustified restriction on the applicants’ access to court. In particular, while there was some emerging support at the international level in favour of a special rule or exception in public international law in cases concerning civil claims for torture lodged against foreign State officials, the weight of authority suggested that the State’s right to immunity could not be circumvented by suing named officials instead. The House of Lords had considered the applicants’ arguments in detail and dismissed them by reference to the relevant international law principles and case-law. However, in light of the current developments in this area of public international law, this was a matter which needed to be kept under review by Contracting States. The delegation of the United Kingdom also informed the Committee that there was no information yet as to a possible reference of the case to the Grand Chamber and recalled that the deadline was 14 April 2014.

44. In relation to this judgment of the European Court of Human Rights, it was underlined that the lifting of immunity as well as every attempt to limit the immunity of States should always be considered in a precautionary manner.

45. The representative of Canada indicated that there had been a number of cases before national courts in which the immunity of jurisdiction of States was alleged during the legal proceedings. He mentioned in particular the case of *Estate of the Late Zahra (Ziba) Kazemi, et al. v. Islamic Republic of Iran, et al.*, in which a Canadian national had filed a civil liability claim against the Islamic Republic of Iran and Iranian State officials for the arrest, torture and death of his mother, a Canadian citizen arrested and detained in Iran who was allegedly tortured and sexually assaulted and later died from her injuries. The Iranian respondents brought an action to dismiss the claim, alleging that it was barred by the principle of State immunity as set out in the State Immunity Act which prohibits lawsuits against foreign States before Canadian courts. The Canadian representative informed the Committee that this case was recently referred to the Supreme Court. With regard to national legislation, the representative of Canada informed the Committee about the *Justice for Victims of Terrorism Act*, which lifts the immunity from jurisdiction of the States listed by the Canadian government as States for which there are reasonable grounds to believe that they supported or support terrorism, in proceedings brought against them for their support of terrorism. He also pointed out that this legislation could be considered incompatible in some aspects with the 2004 *United Nations Convention on Jurisdictional Immunities of States and Their Property* and, therefore, could prevent Canada from ratifying it. He drew the attention of the

[19] European Court of Human Rights, *Jones and Others v. the United Kingdom*, applications No. 34356/06 and 40528/06, judgment delivered on 14 January 2014 (not final).

Committee to the ongoing domestic legal discussions on the developing issue of State immunity and stated that he would keep the Committee informed of further developments.

46. The Chair invited delegations to keep the Committee informed of any judgments or decisions, pending cases or relevant forthcoming events.

11. Peaceful settlement of disputes

47. In the context of its consideration of issues relating to the peaceful settlement of disputes, the Chair presented the latest version of the document on the *Compulsory jurisdiction of the International Court of Justice* (document CAHDI (2013) 11) and invited the delegations to submit to the Secretariat any relevant information in order to update it.

48. Several delegations provided information to the CAHDI on the candidates who had been nominated in view of the elections for judges at the International Court of Justice, scheduled to be held this year.

49. In this respect, the Chair recalled that the members of the Permanent Court of Arbitration from each Member State constitute a "national group", which is entitled to nominate candidates for the election to both the International Court of Justice and the International Criminal Court.

12. Law and practice relating to reservations and interpretative declarations concerning international treaties: European Observatory of Reservations to International Treaties

50. In the framework of its activity as the European Observatory of Reservations to International Treaties, the CAHDI examined a list of outstanding reservations and declarations to international treaties. The Chair presented the documents updated by the Secretariat containing these reservations and declarations (documents CAHDI (2014) 6 and CAHDI (2014) 6 Addendum prov) and opened the discussion.

51. With regard to the **declarations from Viet Nam** to the International Convention Against the Taking of Hostages, a number of delegations voiced concerns with respect to the first declaration and stated that the declaration amounted to a reservation. These delegations informed the Committee that they were reviewing the scope of the reservation.

52. With regard to the **declaration from Kuwait** to the International Convention for the Suppression of the Financing of Terrorism, it was recalled that Egypt, Jordan and the Syrian Arab Republic made similar declarations, to which a number of CAHDI delegations had objected. Concerns were voiced with respect to the limitation embodied in the declaration to the definition of "terrorism" and to the reference to "Arab and Islamic obligations". Many delegations stated that the declaration amounted to a reservation and expressed their intention to object.

53. With regard to the Convention on the Rights of Persons with Disabilities, one delegation informed the Committee that it was considering the possibility of making an interpretative declaration.

54. With regard to the **declaration from Colombia** to the International Tropical Timber Agreement, one delegation pointed out the lack of clarity regarding the objectives that Colombia was seeking to achieve with this declaration but indicated that it would not react against it.

55. With regard to the **declaration from Lithuania** to the Council of Europe Convention on preventing and combating violence against women and domestic violence, some delegations expressed their intention to object if the declaration was confirmed upon ratification. It was recalled that another State made a similar declaration which was not confirmed upon ratification. The Lithuanian delegation informed the Committee that it had no further information to share with the Committee since its last meeting and that the ratification process had not yet started.

56. The Chair informed delegations that the Secretariat would update the table of objections and circulate it for comments.

13. Review of Council of Europe Conventions

57. Following the Ministers' Deputies' decision of 10 April 2013 on the review of Council of Europe conventions in the light of the Secretary General's report, the CAHDI drew up a work plan at its 46th meeting for the follow-up of the conventions for which it had been given responsibility. In pursuance of this work plan, the Committee examined the *European Convention for the Peaceful Settlement of Disputes* [ETS No. 23] (the European Convention). The Chair referred to document CAHDI (2014) 7 presenting the European Convention and noted that although the Convention was not very well-known, it had been used in the past. She invited the delegations to hold an exchange of views on the practical importance of this convention.

58. The delegation of Ireland expressed its support to the reviewing process of Council of Europe conventions and pointed out that this particular Convention deserved attention. It indicated that since Ireland had accepted the compulsory jurisdiction of the International Court of the Justice (ICJ) under Article 36§2 of the Statute of the ICJ, it had commenced a review of other conventions containing provisions relating to the role of the ICJ in order to consider accepting the jurisdiction of the Court under these conventions. In this regard, the Irish delegation is considering ratifying the European Convention.

59. The delegation of Lithuania informed the Committee that its country signed the European Convention in 2009 and continued the internal procedure for the ratification of the European Convention in the nearest future.

60. The delegation of Germany underlined the importance of to the European Convention and highlighted that three cases had been referred to the ICJ on its basis: the *North Sea Continental Shelf* cases, the *Case concerning certain property* and the case concerning the *Jurisdictional Immunity of the State*. The German delegation underlined that there was no need for a revision of the European Convention as it was considered as a good convention, which would need more adherence and benefit from additional ratifications.

61. A number of delegations indicated that the Convention was very useful in encouraging resort to the ICJ and encouraged States who had not yet done so to consider ratifying it. The CAHDI welcomed the two ratifications of the European Convention that have been announced by the members of the Committee. The Chair summarised the discussions and noted that the Convention would benefit from more promotion in order to improve its visibility and increase the number of ratifications.

III. GENERAL ISSUES OF PUBLIC INTERNATIONAL LAW

14. Exchange of views with Ms Fatou BENSOUDA, Prosecutor of the International Criminal Court (ICC) – *"Reflections from the Prosecutor of the International Criminal Court, Ms Fatou BENSOUDA"*

62. The Chair welcomed and thanked Ms Fatou Bensouda, Prosecutor of the International Criminal Court (ICC) for having accepted the invitation of the CAHDI. The Chair underlined that it was an honour for the Council of Europe and the CAHDI to count with the presence of the Prosecutor of the ICC.

63. Ms Bensouda informed the CAHDI of the recent activities of the Office of the Prosecutor as well as the challenges it faced. Her presentation is set out in **Appendix V** to this report.

64. Ms Bensouda recalled that the ICC was established following the conclusion in 1998 of the Rome Statute. This treaty sets out the crimes falling within the jurisdiction of the ICC, the rules of procedure and the mechanisms for States to cooperate with the ICC. At present, it has been ratified by 122 States. Ms Bensouda noted that only six member States of the Council of Europe had not yet become party to the Rome Statute but expressed hope that these States would ratify the Statute in the near future.

65. Regarding the activities of the Court, Ms Bensouda informed the Committee that eight situations were currently under investigation, nine were under preliminary examination and a handful of cases were at trial stage. In this regard, she gave an overview of the situations with respect to the Democratic Republic of Congo (DRC), Kenya, the Central African Republic, Darfur, Mali, Côte d'Ivoire, Libya and Uganda. She also outlined the situations which were currently under preliminary examination, noting that in none of these situations, a final determination on whether or not to open an investigation had been made.

66. Ms Bensouda also shared her reflections on the challenges faced by the Office of the Prosecutor, notably on the question of witness interference and intimidation, which directly affected the integrity of the ICC's proceedings. Mention was made in particular to the trial of Jean-Pierre Bemba Gombo (Central African Republic), where the Pre-Trial Chamber II considered that there were reasonable grounds to believe that a criminal scheme – in which certain defence witnesses in the case were given various forms of compensation in exchange for providing false testimony and presenting evidence that they knew to be false or forged – had been carried out, to the benefit of the accused. Ms Bensouda expressed the hope that by carrying out investigations relating to offenses against the administration of justice, the Office of the Prosecutor could offset some of the negative impacts on the cases and prevent such crimes in the future. She also called on States Parties to assist the Court in this regard, by supporting the relocation of witnesses under threat as well as by prosecuting such cases nationally, if requested by the Court.

67. With regard to the cooperation and the coordination between the ICC and the States Parties, Ms Bensouda encouraged States Parties to assist the Court, notably with regard to arrest warrants. She highlighted on this matter that a total of 13 individuals against whom the Chambers had issued arrest warrants still remained at large and reminded delegations that the responsibility to enforce warrants of arrest in all cases remained with States.

68. With regard to the criticism faced by the Office of the Prosecutor for alleged limited scope and targeting of the investigations, Ms Bensouda underlined that her decisions were solely based on law and on evidences emerging from the investigations of the Office of the Prosecutor, conducted in an independent and impartial manner.

69. Ms Bensouda finally underlined that in order for the Office of the Prosecutor to effectively carry out its mandate, full, timely and tangible support and cooperation from the States Parties, inter-governmental organisations and civil society were needed. She therefore welcomed this exchange of views with the CAHDI and expressed the hope that her visit marked the beginning of an era of cooperation and collaboration between the Council of Europe and the Office of the Prosecutor of the ICC.

70. The Chair of the CAHDI thanked Ms Bensouda for her presentation and invited delegations which so wished to take the floor.

71. Delegations welcomed the presence of Ms Bensouda in the Council of Europe and expressed the hope that their cooperation would be strengthened in the future. They commended her important and efficient work since she took office on 15 June 2012 and expressed a large support for her strong and independent role.

72. In particular, several delegations welcomed the policy papers made on key issues, such as for instance the *Office of the Prosecutor (OTP) Strategic Plan June 2012-2015*[20]. This plan was released on 11 October 2013 and signalled important changes in the direction of the Office reflecting the lessons learned from the first nine years' of operation of the Court. The OTP had made strategic changes at three levels in light of new challenges – policy, resources and organisational performance – which were translated into 6 strategic goals[21]. Furthermore, the *Draft Policy Paper on Sexual and Gender Based Crimes*[22] was also mentioned. This was published on 7 February 2014 and aimed at helping the collective efforts to advance justice and to respond to the urgent needs expressed by victims of all forms of sexual violence and gender-based crimes for recognition and accountability. The usefulness of this Paper was recognised, not only for the work of the ICC but also in cases of such crimes addressed by national courts and other actors. Mention was also made of the *Policy Paper on Preliminary Examinations*[23] which was released in November 2013 and described the relevant Rome Statute principles, factors and procedures applied by the OTP in the conduct of its preliminary examination activities. Delegations acknowledged that these new strategies entailed increased financial requirements and welcomed the approval of the increase of the ICC's budget and especially the one of the OTP by the Assembly of States Parties (ASP) at its 12th Plenary Meeting on 27 November 2013[24].

73. With regard to the numerous questions posed by delegations on the amendments to the Rules of Procedure and Evidence adopted by the ASP at its 12th Plenary Meeting on 27 November 2013, and in particular on the new Rule 134*quater* on "Excusal from presence at trial due to extraordinary public duties"[25] tested for the first time by the Trial Chamber V in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*[26], Ms Bensouda underlined the need to be careful with this new Rule and the interpretation that could be given to it. She indicated that she had requested an explanation of the interpretation given by the Chamber of Rule 134*quater* and its compliance with the Rome Statute and noted the need to determine its scope *ratione personae*.

74. The recent proposal of amendments to the Rome Statute submitted by Kenya on 22 November 2013[27] was also raised, and in particular the proposal of amendment of Article 27 on "Irrelevance of official capacity". With regard to the concerns expressed by delegations on these proposals, Ms Bensouda emphasized the paramount importance of this Article, being the heart of the Rome Statute and noted that attention should also be paid by States Parties to the other proposal of amendments. She recalled that according to Article 121 of the Rome Statute on "Amendments", any modification of the Rome Statute would require seven-eighths ratifications by States Parties.

75. These proposals highlighted however the critical juncture in which the ICC had entered and Ms Bensouda therefore recalled that cooperation with States Parties was crucial and essential for the proper functioning of the Court. She welcomed the cooperation she had had with individual States Parties and indicated that emphasis should be put in the future on the question of complementarity.

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[20] The OTP Strategic Plan June 2012-2015 is available at the following link.
[21] The strategic goals are the following: 1) Conduct impartial, independent, high-quality, efficient and secure preliminary examination, investigations and prosecutions; 2) Further improve the quality and efficiency of the preliminary examinations, investigations and the prosecutions; 3) Enhance the integration of a gender perspective in all areas of our work and continue to pay particular attention to sexual and gender based crimes and crimes against children; 4) Enhance complementarity and cooperation by strengthening the Rome System in support of the ICC and of national efforts in situations under preliminary examination or investigation; 5) Maintain a professional office with specific attention to gender and nationality balance, staff quality and motivation, and performance management and measurement, and 6) Ensure good governance, accountability and transparency.
[22] The Draft Policy Paper on Sexual and Gender Based Crimes is available at the following link.
[23] The Policy Paper on Preliminary Examinations is available at the following link.
[24] See Resolution ICC-ASP/12/Res.1 available at the following link.
[25] See Resolution ICC-ASP/12/Res.7 available at the following link.
[26] See the website of the ICC devoted to this case.
[27] See Depository Notification C.N.1026.2013.TREATIES-XVIII.10.

76. The importance of the Agreement on the Privileges and Immunities of the ICC was also mentioned. It had been designed to provide officials and staff of the ICC with certain privileges and immunities necessary for them to perform their duties in an independent and unconditional manner and came into effect on 22 July 2004 for those countries that have ratified the Agreement.

77. With regard to a question related to the situation in Colombia and notably with regard to killing of civilians by State actors also known as *"falsos positivos"*, Ms Bensouda informed delegations that the OTP was closely monitoring the situation and receiving information as to the steps that were being taken to address these crimes, that a mission had been sent and that following the information collected, an assessment would be made.

78. Several conferences and seminars related to the ICC were also mentioned by delegations. The delegation of Sweden informed the Committee that a seminar would be organised in May 2014 in Stockholm to support the OTP and the national efforts of States Parties in this regard. The delegation of Romania mentioned the organisation of a Conference on 14 May 2014 in Bucharest on the role of the ICC in supporting international criminal law. Finally, the delegation of Belgium informed the Committee that an *International Conference on Genocide Prevention*[28] would take place in Brussels on 31 March – 1 April 2014 with the participation of Mr Ban Ki-moon, Secretary-General of the United Nations, Ms Bensouda and Mr Thorbjørn Jagland, Secretary General of the Council of Europe.

15. Consideration of current issues of international humanitarian law

79. The representative of the International Committee of the Red Cross (ICRC) provided CAHDI members with an update on the ICRC's initiative on strengthening legal protection for victims of armed conflict. He recalled the two tracks of this project, namely strengthening international humanitarian law compliance mechanisms on the one hand, and strengthening the norms protecting persons deprived of liberty in non-international armed conflict on the other hand.

80. Regarding the second track of the project, the representative of the ICRC informed the Committee that the second phase of the consultations, consisting in centralised thematic consultations, has started. These consultations focus on a concrete and technical assessment on how to strengthen the law to address the legal and humanitarian issues identified in the regional consultations held in 2012 and 2013. The first thematic consultation was held on 29-30 January 2014 and focused on the existing protections related to conditions of detention and vulnerable groups in the relevant international humanitarian law and human rights treaties as well as on the assessment of the practical implications of applying those provisions in non-international armed conflicts. The second thematic consultation is planned for the fall of 2014 and will focus on the grounds and procedures for detention and transfers of detainees, which should lead to an outcome document of a non-binding nature strengthening international humanitarian law. As regards the ICRC's work on the issue of health care in danger, the representative of the ICRC informed the Committee of the end of the expert consultations in April 2014, which have generated a series of practical recommendations. He invited States to analyse these recommendations and to commit to those that are most relevant to their national or regional context in order for the ICRC to generate a body of good practices. Finally, the representative of the ICRC addressed the issue of autonomous weapons. He noted that these weapons were still in the research phase and stressed that all means of warfare must be used in accordance with the rules of international humanitarian law governing the conduct of hostilities. In this respect, he stressed some questions that may arise, in particular concerning the respect of the rules of discrimination and proportionality, to the obligations of precaution in the attack and to the accountability of possible violations of international humanitarian law committed. The representative of the ICRC welcomed the international debate taking place among States on this issue and informed the Committee of the ongoing analysis carried out by the ICRC.

[28] See website of the Conference.

81. The delegation of Switzerland informed the CAHDI about the "Montreux +5" *Conference on Private Military and Security Companies* organised in cooperation with the ICRC, which took place from 11 to 13 December 2013 in Montreux. He underlined that the "*Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict"* reached its fifth anniversary in late 2013 and that this conference represented an important opportunity to take stock of the progress made and looking forward to identify ways to support both the implementation and wider endorsement of the obligations and best practices contained in the Montreux Document. Three areas of focus for the future were identified. Firstly, the Swiss delegation mentioned the need to increase the outreach and noted that, at present, 50 States and 3 international organisations - the European Union, the Organization for Security and Cooperation in Europe (OSCE) and the North Atlantic Treaty Organization (NATO) - have signed the Montreux Document. Secondly, the delegation of Switzerland underlined that there will be an increased focus on the implementation of the Montreux Document in national legislation. Finally, it drew the attention of the Committee on the consensus that was reached on the need to institutionalise the Montreux Document process by creating a forum, which would facilitate both the communication and the coordination between the participants. This forum would also advise the International Code of Conduct Association, which is in the process of being set up, on regulatory methods. The Swiss delegation informed the Committee that a first meeting on the outlines of such a forum was held on 27 February 2014 and that a second meeting will be held on 28 May 2014 with a view to decide on the possible structure of the forum. The delegation of Switzerland invited all States and international organisations to participate actively and contribute on the establishment and functioning of the future forum.

82. The delegation of Germany thanked the ICRC and Switzerland for their valuable work on improving compliance with international humanitarian law and underlined the need for better and more efficient mechanisms. It further reaffirmed its willingness to actively participate and contribute to this process.

83. The delegation of the Netherlands informed the Committee of the ongoing domestic discussions on the topical issue of armed drones and, in particular, of the advisory opinion of the Dutch *Advisory Committee on Issues of Public International Law*, which was issued at the request of the Ministry of Foreign Affairs in July 2013. It also informed the Committee of the round table organised in January 2014 by the Dutch government, which addressed legal, ethical, political and humanitarian aspects of the use of armed drones, and of the parliamentary debate that will take place in April 2014 with the participation of both the Minister of Foreign Affairs and the Minister of Defence.

84. The Secretariat of the CAHDI informed the Committee on the current work carried out by the Parliamentary Assembly of the Council of Europe (PACE) in relation to the issue of drones. In this respect, the Secretariat underlined that the PACE work is in its preliminary steps and that, so far, there are no public documents available. For the time being, a Motion for a Resolution entitled *Drones and targeted killings: the need to uphold human rights* was tabled by a parliamentarian, Ms Marina Schuster (Germany, ALDE), on 29 April 2013. In accordance with the procedure, the motion was signed by 20 other parliamentarians. Afterwards, on 24 June 2013, the Bureau of the Assembly referred this motion to the Committee on Legal Affairs and Human Rights for report. On 4 September 2013, the PACE Committee on Legal Affairs and Human Rights appointed Ms Marina Schuster as Rapporteur. Ms Schuster was replaced by Mr Arcadio Diaz Tejera (Spain, SOC) at the Committee's meeting on 12 November 2013. The Committee also agreed to hold a hearing in 2014. The term of office of the Rapporteur will expire in June 2015 and his report should therefore be prepared before this date. The Secretariat will keep the CAHDI informed on any development concerning this issue.

16. Developments concerning the International Criminal Court (ICC)

i. Kampala amendments to the Rome Statute

85. Several delegations updated the Committee on the latest developments regarding the two amendments to the Rome Statute adopted at the Review Conference of the Rome Statute held in Kampala (Uganda) on 31 May – 11 June 2010, also known as the "Kampala amendments". The first amendment consisted of bringing under the jurisdiction of the ICC the war crime of employing certain poisonous weapons and expanding bullets, asphyxiating or poisonous gases, and all analogous liquids, materials and devices, when committed in armed conflicts not of an international character. The second amendment included to the Rome Statute the definition of the crime of aggression and the conditions under which the ICC could exercise jurisdiction with respect to the crime.

86. The delegation of the Czech Republic informed the Committee that both amendments had been approved on 19 February 2014 by the Czech government and that they would soon be examined by the Parliament.

87. The delegation of Finland informed the CAHDI that following the establishment in 2013 of a governmental working group in charge of preparing a bill to the Parliament to ratify the Kampala amendments, Finland was currently in the process of drafting the proposals for the necessary legislative amendments. It underlined that these proposals were intended to be submitted to the Parliament in autumn 2014.

88. The delegation of Austria also informed the Committee that following the approval by the government of the Kampala amendments, the debates in the Parliament on this issue were scheduled to begin.

89. The delegation of the Slovak Republic informed the Committee that the Parliament would examine the Kampala amendments the following week (24-28 March 2014).

90. The delegation of Latvia informed the Committee that its country was in the early stages of preparing the necessary legislation for the ratification of the Kampala amendments and that intergovernmental consultations were taking place for this purpose.

91. The delegation of the Netherlands informed the CAHDI that a bill had been submitted to the Parliament for the ratification of the Kampala amendments and that it was foreseen that the procedures would be finished in the end of 2014.

92. The delegation of Armenia informed the Committee that its country was currently in the process of reforming its Constitution. It underlined that following this reform, scheduled to end in 2015, Armenia would be ready to ratify the Rome Statute and the Kampala amendments.

ii. Other issues

93. Delegations were reminded that the Assembly of States Parties to the Rome Statute would elect six new judges to the ICC – a third of the ICC's 18-member bench – for the period 2015-2024 at its thirteenth session, scheduled to take place in New York on 8-17 December 2014.

94. The delegation of Slovenia updated the Committee on the progress of the initiative launched by the Netherlands, Slovenia and Belgium – the so-called "Mutual Legal Assistance (MLA) Initiative" – aimed at improving the international framework for mutual legal assistance and extradition on investigating and prosecuting the most serious crimes: genocide, crimes against humanity and war crimes. This initiative intended to strengthen the principle of complementarity that governs the exercise of the ICC's jurisdiction in order to ensure, *in fine*, the effectiveness and efficiency of the ICC as the principle prompts the States Parties and other States to carry out

consistent and rigorous national proceedings obviating thus the need for trials before the ICC. The Slovenian delegation noted that the initiative had already received the support of 39 States and informed the Committee that discussions were currently taking place on which forum discussions on this initiative – and in particular the possibility of elaborating draft legal instrument on this matter – could take place.

95. The delegation of Ukraine informed the Committee of the intention of its country to ratify the Rome Statute in accordance with the EU-Ukraine Association Agreement signed on 21 March 2014.

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

96. The CAHDI took note of recent developments concerning the implementation and functioning of other international criminal tribunals. As regards the International Criminal Tribunal for the former Yugoslavia (ICTY), the Chamber denied the Prosecution's motion to present its evidence in rebuttal in the *Karadžić* case[29] on the grounds that rebuttal evidence must relate to a significant issue arising directly out of the Defence evidence which could not reasonably have been anticipated. Furthermore, on 20 February 2014, Trial Chamber II dismissed the motion for acquittal of Goran Hadžić, former President of the self-proclaimed Republic of Serbian Krajina charged with crimes against humanity and violations of the laws or customs of war committed in Croatia from June 1991 to December 1993. The Defence requested acquittal on specific charges contained within counts 2 through 9 of the indictment against him. With regard to the International Criminal Tribunal for Rwanda (ICTR), the Appeals Chamber pronounced its judgement in the *Military II* case[30] on the appeals lodged by Augustin Ndindiliyimana, François-Xavier Nzuwonemeye and Innocent Sagahutu, and the Prosecution, reversing the convictions of Ndindiliyimana and Nzuwonemeye in their entirety, reversing certain convictions for Sagahutu, which lead to a reduction of his sentence from 20 to 15 years of imprisonment, and rejecting, in part, the Prosecution's appeal. In December 2013, the Special Court for Sierra Leone (SCSL) completed its mandate and its transition to the Residual Special Court for Sierra Leone (Residual SCSL) which was established to oversee the continuing legal obligations of the SCSL after its closure. These include the witness protection and support, the supervision of prison sentences, the management of the SCSL archives and the assistance to national prosecution authorities. The Residual SCSL also has the authority to manage requests for review from convicted persons.

18. Topical issues of international law

i. International law aspects of the recent events in Ukraine

97. Following the request of the delegation of Ukraine, the CAHDI held an exchange of views on the international law aspects of the recent events in Ukraine. The following paragraphs summarise the statements, declarations and comments made by the delegations of the CAHDI. They are not a literal transcription of the discussions.

98. The delegation of Ukraine, given the recent events in its country causing many concerns among the international community, raised the issue of the legal analysis of the current situation in the Autonomous Republic of Crimea, one of the administrative units of Ukraine. The Ukrainian delegation underlined that, as one of the founding States of the United Nations, a member of the Council of Europe and of a great number of other international organisations, Ukraine strictly adhered to norms and principles of international law and contributed to the maintenance of international peace and security and to the protection of human rights, including the rights of foreigners. The delegation of Ukraine stated that the threat or use of force against the territorial integrity or political independence of any State could not be accepted and that peaceful settlement

[29] International Criminal Tribunal for the Former Yugoslavia, *The Prosecutor v. Radovan Karadžić*, Decision on Prosecution's motion to admit evidence in rebuttal, Judgment of 21 March 2014, Case No. IT-95-5/18-T.
[30] International Criminal Tribunal for Rwanda, *Ndindilyimana et al. v. the Prosecutor*, Case No. *ICTR*-00-56-A.

of disputes should always be sought in order not to undermine international peace and security. The Ukrainian delegation indicated that the actions of the Russian Federation towards Ukraine constituted a violation of the sovereign rights of a State and of the rules of peaceful coexistence reflected in international norms. In this regard, the delegation of Ukraine stated that the decision of the Federal Council of the Federal Assembly of the Russian Federation on the deployment of a "limited military contingent" of armed forces of the Russian Federation on the territory of Ukraine on 1 March was approved in violation of the United Nations Charter, the Declaration on Principles of International Law of 1970, the Helsinki Final Act of 1975, the Agreement between Ukraine and the Russian Federation on Friendship, Cooperation and Partnership of 1997 and of a range of other international instruments. The Ukrainian delegation underlined that the occupation of the Ukrainian territory by the Russian Federation constituted a breach of the fundamental provisions of the Statute of the Council of Europe and recalled in this respect the statement of the President of the Parliamentary Assembly of the Council of Europe of 18 March 2014. The delegation of Ukraine also recalled that, on 13 March, Ukraine lodged an inter-States application against the Russian Federation before the European Court of Human Rights under Article 33 of the ECHR and indicated that the President of the Third Section had decided, on the basis of the request submitted by Ukraine under Rule 39 of the Rules of the Court, to indicate an interim measure calling on both Parties to refrain from taking any measures, in particular military actions, which might entail breaches of the ECHR rights of the civilian population and to comply with their engagements under the ECHR, notably in respect of Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment). The delegation of Ukraine condemned the holding of the referendum on 16 March and the subsequent proclamation of the so-called "Republic of Crimea" on 17 March, which – according to the Ukrainian delegation – were carried out under pressure from the armed forces of a foreign State and in violation of the Ukrainian Constitution, according to which the Autonomous Republic of Crimea was an integral part of Ukraine. It furthermore stated that the recognition of the so-called "Republic of Crimea" and the signing of the agreement to include it, along with the City of Sebastopol, in the Russian Federation were carried out in violation of fundamental principles of international law, namely the principles of territorial integrity, inviolability of borders and non-intervention in the internal affairs of a State. The Ukrainian delegation reiterated that it denied any sovereignty of the Russian Federation on the territory of Ukraine and reserved its right to take appropriate measures in accordance with international law and the legislation of Ukraine.

99. The delegation of the Russian Federation stated that its country considered that the destitution of the Ukrainian President, Viktor Yanukovych, was unlawful and that the current Ukrainian government did not represent and exercise control over the country and that this government came to power in violation of the Ukrainian Constitution. The Russian delegation also stated that the further existence of Crimea within the borders of Ukraine was made impossible, owing to threats and violent measures directed against the population which constituted massive human rights violations, including discrimination and persecution on the basis of nationality, ethnicity, language and political conviction. The Russian delegation indicated that its country considered that the people of Crimea had exercised its right to self-determination as enshrined in the Charter of the United Nations and other international instruments. The delegation of the Russian Federation further indicated that no troops had entered the Ukrainian territory, except those which were legally located and deployed in accordance with the bilateral treaty signed between Ukraine and the Russian Federation. The Russian delegation shared information about the process that lead to the inclusion of Crimea in the Russian Federation, which was based on the free will of the population of Crimea expressed in the referendum carried out on 16 March. It recalled that 82% of the electorate voted and that over 96% spoke in favour of reuniting Crimea with Russia. The delegation of the Russian Federation referred to the opinion of the International Court of Justice on Kosovo, in which the ICJ considered that there was no general prohibition against unilateral declarations of independence under international law. The delegation of the Russian Federation also observed that international law did not prohibit secession. The Russian delegation recalled that it was on the basis of the referendum and of the subsequent declaration of independence of Crimea that the Russian Federation had signed a treaty providing for the inclusion of the Republic of Crimea and the City of Sebastopol in the Russian Federation and the forming of two new entities within the federation. This treaty provided that the borders of Crimea,

on both land and sea, became the borders of the Russian Federation and guaranteed the right of all people residing in Crimea to preserve their native language and to obtain Russian nationality or to refrain from it. The Russian delegation informed the Committee that three official languages would be established: Russian, Ukrainian and Crimean Tatar. The delegation of the Russian Federation further informed the Committee that there would be an interim period until 5 January 2015, during which the issues relating to the creation of new entities within the legal and financial system of the Russian Federation would be dealt with.

100. The State holding the presidency of the Council of the European Union (Greece), recalled the Statement of the Heads of State or Government on Ukraine made on 6 March 2014. In this statement, the European Union Heads of State condemned the unprovoked violation of Ukrainian sovereignty and territorial integrity by the Russian Federation and called on the Russian Federation to immediately withdraw its armed forces to the areas of their permanent stationing in accordance with the relevant agreements. It was also pointed out that the solution to the crisis in Ukraine must be based on the territorial integrity, sovereignty and independence of Ukraine, as well as the strict adherence to international standards. The statement of the Council of the European Union of 17 March was also recalled, in which it was declared that the European Union did not recognise the referendum and its outcome. The Council of the European Union decided to introduce additional measures, including travel restrictions and an asset freeze against persons responsible for actions which undermined or threatened the territorial integrity, sovereignty and independence of Ukraine, and urged the Russian Federation not to take steps to annex Crimea in violation of international law. The readiness of the European Union for a constructive dialogue with all parties was reiterated.

101. Many delegations supported the content of the statement made by the State holding the presidency of the Council of the European Union and welcomed the readiness of the European Union to engage in a productive dialogue. They expressed their profound concern regarding the current situation in Ukraine and the infringement of basic principles of international law, in particular of the principles of territorial integrity and of inviolability of borders guaranteed by international law and bilateral agreements. They underlined that in accordance with Article 2§4 of the Charter of the United Nations, the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations, was prohibited and underlined that the situation in Ukraine was a threat to international peace and security. They also stated that they did not recognise the referendum and its outcome, which they considered illegal with regard to both international and Ukrainian law, and denounced the signing of the agreement to include the Autonomous Republic of Crimea and the City of Sebastopol within the Russian Federation. With regard to the issue of the declaration of independence of Crimea, several States emphasized that the Kosovo case, to which the Russian delegation referred, was not applicable in this case as the situations in Crimea and Kosovo were different. They stressed the need to seek a peaceful resolution to the situation in Ukraine.

102. The delegation of Ukraine requested the CAHDI to ask the Committee of Ministers to instruct the CAHDI to issue a legal opinion on several questions regarding the legal consequences of the adoption of the declaration of independence of Crimea and the compliance with international law of both the unilateral secession of Crimea from Ukraine and the incorporation of Crimea into the Russian Federation.

103. In relation to this request, it was recalled that, in accordance with the terms of reference of the CAHDI adopted by the Committee of Ministers on 19-20 November 2013, the CAHDI provides opinions at the request of the Committee of Ministers or at the request of other Steering Committees or Ad Hoc Committees, transmitted via the Committee of Ministers.

ii. Other issues

104. The delegation of Austria presented document CAHDI (2014) Inf 6 providing information on the Conference organised by the Austrian Chairmanship of the Committee of Ministers on 15

November 2013 in Vienna "Working together for Europe – Interrelations between the Council of Europe, European Union and Member States". The Austrian delegation underlined that several issues were discussed, in particular the disconnection clause, the distribution of competences in the field of data protection and the cooperation of the European Union and the Council of Europe concerning media regulation.

IV. OTHER

19. Date, venue and agenda of the 48th meeting of the CAHDI

105. The CAHDI decided to hold its 48th meeting in The Hague (the Netherlands) on 18-19 September 2014. The delegation of the Netherlands informed the Committee that a seminar on *"The legal aspects of the role of the host State"* would be held in the margins of the meeting of the CAHDI.

106. The Committee instructed the Secretariat, in liaison with the Chair of the Committee, to prepare in due course the provisional agenda of this meeting.

20. Other business

107. The CAHDI concluded its 47th meeting by adopting its abridged report.

APPENDICES

APPENDIX I

LIST OF PARTICIPANTS

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

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[Apologised / Excusé]

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Ministry of Foreign Affairs

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Service Public Fédéral des Affaires étrangères, Commerce extérieur et Coopération au Développement

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BULGARIA / BULGARIE

[Apologised / *Excusé*]

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Ms Fatou BENSOUDA, Prosecutor, International Criminal Court

SECRETARIAT GENERAL

DIRECTORATE OF LEGAL ADVICE AND PUBLIC INTERNATIONAL LAW / DIRECTION DU CONSEIL JURIDIQUE ET DU DROIT INTERNATIONAL PUBLIC

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INTERPRETERS / INTERPRETS

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APPENDIX II

AGENDA

I. INTRODUCTION

1. Opening of the meeting by the Chair, Ms Liesbeth Lijnzaad
2. Adoption of the agenda
3. Adoption of the report of the 46th meeting
4. Information provided by the Secretariat of the Council of Europe
   a. Statement by Mr Jörg Polakiewicz, Director of Legal Advice and Public International Law
   b. New databases of the CAHDI

II. ONGOING ACTIVITIES OF THE CAHDI

5. Committee of Ministers' decisions and activities of relevance to the CAHDI's activities, including requests for CAHDI's opinion
6. Immunities of States and international organisations
   a. State practice and case-law
      - recent national developments and updates of the website entries
      - exchange of national practices on possibilities for the Ministry of Foreign Affairs to raise public international law issues in procedures pending before national tribunals and related to States' or international organisations' immunities
   b. UN Convention on Jurisdictional Immunities of States and Their Property
7. Organisation and functions of the Office of the Legal Adviser of the Ministry of Foreign Affairs
8. National implementation measures of UN sanctions and respect for human rights
9. European Union's accession to the European Convention of Human Rights (ECHR)
10. Cases before the European Court of Human Rights involving issues of public international law
11. Peaceful settlement of disputes
12. Law and practice relating to reservations and interpretative declarations concerning international treaties: European Observatory of Reservations to International Treaties
    - List of outstanding reservations and declarations to international treaties
13. Review of Council of Europe Conventions

III. GENERAL ISSUES OF PUBLIC INTERNATIONAL LAW

14. Exchange of views with Ms Fatou BENSOUDA, Prosecutor of the International Criminal Court (ICC) – *"Reflections from the Prosecutor of the International Criminal Court, Ms Fatou BENSOUDA"*

15. Consideration of current issues of international humanitarian law

16. Developments concerning the International Criminal Court (ICC)

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

18. Topical issues of international law

IV. OTHER

19. Date, venue and agenda of the 48th meeting of the CAHDI

20. Other business

APPENDIX III

OPINION OF THE CAHDI

ON RECOMMENDATION 2037 (2014) OF THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE – "ACCOUNTABILITY OF INTERNATIONAL ORGANISATIONS FOR HUMAN RIGHTS VIOLATIONS"

1. On 12-13 February 2014, the Ministers' Deputies communicated Recommendation 2037 (2014) of the Parliamentary Assembly of the Council of Europe (see appendix) to the Committee of Legal Advisers on Public International Law (CAHDI) for information and possible comments by 18 April 2014. The Ministers' Deputies have also communicated this Recommendation to the Steering Committee for Human Rights (CDDH).

2. The CAHDI examined the above-mentioned Recommendation at its 47th meeting (Strasbourg, 20-21 March 2014) and adopted the following comments which concern aspects of the recommendation which are of particular relevance to the mandate of the CAHDI.

3. From the outset, the CAHDI notes that the protection and promotion of human rights form part of the foundations of the Council of Europe, the European Union (EU), the United Nations (UN) and its specialised agencies, as enshrined in the Statute of the Council of Europe (Article 1), the Treaty on European Union (Article 2) and the Charter of the United Nations (Article 1). In accordance with these constituent treaties, the protection and respect of human rights must be an integral part of any action and activities of these organisations.

4. The CAHDI also notes that in the framework of these international organisations, the most relevant international legal instruments and human rights standards have been developed, such as the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the Convention on the Rights of the Child (1989), the European Convention on Human Rights (1950), the European Social Charter (1961) as well as the Charter of Fundamental Rights of the European Union (2000).

5. The CAHDI also points out that over the years, international organisations and the European Union have developed mechanisms, bodies and entities with a view to ensuring respect for universal human rights standards, including to prevent possible infringements of human rights derived from the application of certain targeted sanctions resolutions, such as the setting up of the Office of the Ombudsperson of the Security Council's 1267 Committee. It recalls in this regard the exchange of views that it had with the Ombudsperson at its 41st meeting and welcomes the enhancement of the Ombudsperson mandate in Security Council resolutions 1989 (2011) and 2083 (2012).

6. To the extent that international organisations, and in particular the UN, are also increasingly being called upon to provide support to non-UN security forces, the CAHDI underlines the existence of a Human Rights Due Diligence Policy endorsed by the UN Secretary-General in July 2011[1]. This policy sets out measures that all UN entities must take in order to ensure that any support that they may provide to non-UN forces is consistent with the purposes and principles as set out in the Charter of the UN and with its responsibility to respect, promote and encourage respect for international humanitarian, human rights and refugee law. The CAHDI would therefore welcome any development aiming at further implementing the Policy's requirements.

7. Regarding the issue of the "status" of international organisations within national legal systems and in particular the question of the immunities of international organisations, the CAHDI underlines that the privileges and immunities enjoyed by international organisations are essential

[1] See documents A/67/775 and S/2013/110.

elements for the fulfilment of their mission. The privileges and immunities of international organisations are governed by international law such as constituent instruments (e.g. Article 40 of the Statute of the Council of Europe, Article 105 of the UN Charter), multilateral agreements (e.g. Convention on the Privileges and Immunities of the United Nations of 1946, General Agreement on Privileges and Immunities of the Council of Europe of 1949) or bilateral agreements, i.e. headquarters or host agreements (e.g. Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations of 1947). The CAHDI invites international organisations, which according to international law have the exclusive competence to decide to waive their immunity or not, to consider waiver of immunity in individual cases where appropriate.

8. The CAHDI underlines that it regularly discusses the issue of the immunity of international organisations and has noted in this respect an increase in the practice and case-law related to the scope of this immunity and to the question of the availability of "reasonable alternative means"[2] in the framework of the relevant organisation for an effective protection of the rights under the European Convention on Human Rights. It furthermore underlines that these issues can be considered alongside the procedures for dispute settlement involving international organisations and points out that a reflection on this specific topic is currently taking place within the Committee.

9. With regard to the invitation of the Committee of Ministers to engage in a reflection on the accountability issues concerning international organisations, the CAHDI can only encourage any initiative in this respect as this issue, on the one hand, raises several questions which deserve special attention and on the other hand, is important for ensuring the full enjoyment of human rights and fundamental freedoms. It refers in this regard to the recent case-law on the attribution of responsibility to a State or an international organisation[3] with regard to the implementation of international organisations' norms as well as to the work of the International Law Commission (ILC) on "The responsibility of States for internationally wrongful acts" and on "The responsibility of international organisations".

10. Concerning the latter topic of the ILC, the CAHDI recalls that in 2011, the Directorate of Legal Advice and Public International Law of the Council of Europe submitted a contribution to the ILC on the Draft Articles on "Responsibility of International Organisations" and which were presented to the CAHDI for information. It also notes that, as it appears in the General Commentary of the Articles, "*the fact that several of the present draft articles are based on limited practice moves the border between codification and progressive development in the direction of the latter.*"[4]. It is thus the view of the CAHDI that discussions should continue on these questions in order to participate in their development.

[2] European Court of Human Rights, *Beer and Regan v. Germany*, application No. 28934/95, judgment delivered on 18 February 1999; European Court of Human Rights, *Waite and Kennedy v. Germany*, application No. 26083/94, judgment delivered on 18 February 1999; European Court of Human Rights, *Chapman v. Belgium*, application No. 39619/06, judgment delivered on 5 March 2013.

[3] European Court of Human Rights, *Nada v. Switzerland*, application No. 10593/08, judgment delivered on 12 September 2012; Judgment of the Court of Justice of the European Union of 18 July 2013 in Joined Cases C-584/10 P, C-593/10 P and C-595/10 P, *Commission, Council, United Kingdom v. Yassin Abdullah Kadi*; European Court of Human Rights, *Al-Dulimi and Montana Management Inc. v. Switzerland*, application No. 5809/08, judgment delivered on 26 November 2013.

[4] General Commentary, paragraph 5.

Appendix to the opinion

Recommendation 2037 (2014) of the Parliamentary Assembly of the Council of Europe – "Accountability of International Organisations for Human Rights Violations"[1]

1. The Parliamentary Assembly refers to its Resolution 1979 (2014) on accountability of international organisations for human rights violations, which stresses the importance of appropriate mechanisms to ensure the accountability of such organisations for any human rights violations that may occur as a consequence of their activities.

2. The Assembly invites the Committee of Ministers to:

2.1. encourage international organisations of which member States are a part, including the United Nations and its specialised agencies, as well as the European Union and the International Monetary Fund, to examine the quality and effectiveness of mechanisms aimed at ensuring compliance with their human rights obligations and to further develop legal standards in this area;

2.2. recommend that member States examine the status of international organisations within their national legal systems and ensure that arrangements be envisaged for waiver of immunity when this is required;

2.3. engage in a reflection on the accountability issues raised by the phenomenon of international organisations taking on responsibilities traditionally held by States with respect to which the European Court of Human Rights does not have jurisdiction, with a view to closing the resulting lack of accountability.

3. The Assembly also considers it appropriate that the Council of Europe, as an international organisation specialising in human rights matters, reflect on how to respond to the call in United Nations General Assembly Resolution 66/100 (2011) relating to the International Law Commission's text on the responsibility of international organisations, and ensure follow-up thereto within the remit of its competence both with respect to its own accountability as well as that of other international organisations.

[1] *Assembly debate* on 31 January 2014 (9th Sitting) (see Doc. 13370, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr José María Beneyto). *Text adopted by the Assembly* on 31 January 2014 (9th Sitting).

APPENDIX IV

REVISED QUESTIONNAIRE ON THE ORGANISATION AND FUNCTIONS OF THE OFFICE OF THE LEGAL ADVISER OF THE MINISTRY OF FOREIGN AFFAIRS

1. What is the title, rank and position of the Legal Adviser?

2. What are the principal functions of the OLA?

3. Please give a brief description of staff employed by the OLA, including overseas staff. What is the distribution of posts between men and women within the OLA and what category of staff do they respectively belong to?

4. Are there any specific recruitment and promotion policies, provisions and/or quotas to ensure non-discrimination and equal opportunities, e.g. for the underrepresented sex, for persons with disabilities or for persons belonging to ethnic or religious minorities or of immigrant origin?

5. Is OLA staff trained on gender equality issues and are these issues mainstreamed into the OLA's work?

6. Briefly describe the organisation and structure of the OLA.

7. What is the OLA's place within the Ministry of Foreign Affairs?

8. What are the main contacts of the OLA within Government?

9. Please describe the relations of the OLA with lawyers in private practice, academics and legal institutions.

10. Please provide a brief bibliography on the OLA, if available.

APPENDIX V

PRESENTATION BY MS FATOU BENSOUDA, PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT

Ladies and Gentlemen,

Good afternoon.

Allow me to start by thanking the Committee of Legal Advisers on Public International Law of the Council of Europe, and in particular its Chair, Ms Liesbeth Lijnzaad, for kindly inviting me to speak here today.

It's an honour for me to address this gathering of prominent legal minds from so many countries; minds moreover that cherish and promote many of the same values as I do as Prosecutor of the International Criminal Court. Indeed, our respective organisations, albeit with a different mandates, work on similar themes relating, *inter alia,* to promotion and protection of human rights and advancement of the rule of law. My visit today, the first of its kind, marks the beginning of an era of constructive engagement between the Council of Europe and the Office of the Prosecutor. I am therefore grateful for this opportunity and look forward to many more.
The Council of Europe has been leading Europe's human rights agenda since 1949, when the idea of using the law to hold individual perpetrators of mass atrocities criminally accountable was only just being tested in Nuremberg and in Tokyo.
While these tribunals marked an important milestone in the development of individual criminal responsibility, it took 50 years for this notion to crystalize. Following mass crimes in the former Yugoslavia and in Rwanda, amongst others, and the creation of more *ad hoc* UN tribunals and special courts, States recognised again that accountability and the rule of law are fundamental preconditions to provide the framework to protect individuals and nations from mass atrocities, to promote peace and international security and to manage conflicts.

In Rome in 1998, the Statute establishing the International Criminal Court was concluded with the goal of holding accountable perpetrators of mass crimes and preventing future crimes, by building an independent, yet mutually reinforcing system of justice, based on the principles of complementarity and cooperation.

Currently, 122 States Parties have accepted these principles by signing the Rome Statute I note that only six member States of the Council of Europe have not yet become party to the Rome Statute.1 I'm hopeful that these States too will join the ICC family in the near future.
Certainly, the interest in the Court and its activities is ever growing. In 2014, we are busier than we have been before, with eight situations currently under investigation, nine situations under preliminary examination, and a handful of cases at trial stage.

The Court handed down two convictions thus far, both in relation to cases in the Democratic Republic of the Congo (DRC). Two weeks ago, Germain Katanga was found guilty on four counts of war crimes and one count of crime against humanity committed during the attack in 2003 on the village of Bogoro, in the Ituri district of the DRC. Decisions on sentencing and victim reparations will be rendered later. The other verdict was against Thomas Lubanga, who in July 2012, was sentenced to 14 years of imprisonment for enlisting and conscripting children under the age of 15 and using them to participate actively in hostilities. In a third DRC case, against Bosco Ntaganda, the confirmation of charges hearing has recently been concluded and we expect the Chamber's decision on whether or not this case can proceed to trial before the summer recess.

The Kenya cases have kept my Office fully occupied in recent months. As you may be aware, proceedings against Vice-President William Ruto and Joshua Sang are on-going and my Office continues to present its witness testimonies. In parallel, pre-trial hearings have been held in relation to the case against President Uhuru Kenyatta, following my request for an adjournment of

commencement of trial, based amongst others on the fact that one of the Prosecution's key linkage witnesses indicated that he was no longer willing to testify, and a second key witness confessed to giving false evidence regarding a critical event in the Prosecution's case. Although it has other crime based and insider witnesses, in light of these developments, the Prosecution considers that it has insufficient evidence to proceed to trial at this stage and has therefore sought the adjournment of the start of trial.

A variety of legal issues are currently being debated and tested in Court, including the presence of the accused and the cooperation, or rather lack thereof, by the Kenyan Government with regard to requests for assistance made by my Office.

Also in the Kenya situation, the Judges issued an arrest warrant for Walter Barasa, a Kenyan national, who my Office alleges has committed offenses against the administration of justice, by attempting to corruptly influence witnesses and tampering with evidence. This arrest warrant is pending execution by the Kenya authorities. Other investigations into alleged tempering of witness are on-going.

We have seen an increase in the number of cases of witness interference and intimidation. Across situations, suspects seem determined to frustrate cases by bribing and/or intimidating witnesses. This is a new challenge which directly affects the integrity of the Court's proceedings, and to which we, therefore, need to pay particular attention.

This phenomenon of witness interference has reared its ugly head in Jean-Pierre Bemba Gombo's trial, in which four individuals including members of Bemba's defence team have been arrested on charges relating to corruptly influencing witnesses. The accused himself, Mr Bemba, is also implicated in what appears to be a bribery scheme that he coordinated from prison. We hope that by carrying out investigations relating to offenses against the administration of justice, we can offset some of the negative impacts on our cases and prevent such crimes in the future.

States Parties too can assist the Court in some of these instances, including through support for the relocation of witnesses who under threat as well as by prosecuting such cases nationally, if so requested by the Court.

While these cases draw much of my Office's resources and attention, we are moving ahead in other situations.

The trial of Abdallah Banda, Commander-in-Chief of the Justice and Equality Movement Collective-Leadership, allegedly responsible for the attack against African Union peacekeepers at the AU base in Haskanita, Darfur, is due to start in May.

In the situation in Mali, it has now been a little over a year since my Office started to investigate possible crimes. The investigation is currently focused on possible war crimes committed in the north of the country, where the people have been living in profound turmoil caused by the armed conflict since 2012. Given the on-going volatility of the security situation in these areas, our investigation has faced a number of significant challenges. Against this backdrop, cooperation with the Malian authorities, other States and international organisations has been of great importance for us to advance towards our common objective of establishing accountability for what happened in Mali over the past two years, including for the destruction of its world cultural heritage. In this situation and others, as part of my Office's new strategic plan, we endeavour to rely on a wider variety of evidence, including forensic and cyber evidence.

With regard to Côte d'Ivoire, the case against former President Laurent Gbagbo is at the pre-trial stage and the Judges' decision on the confirmation of charges is awaited. Following the issuance of arrests warrants against Simone Gbagbo and Charles Blé Goudé, the Government of Côte d'Ivoire challenged the admissibility of the case against Simone Gbagbo, arguing that she is being investigated and prosecuted for the same crimes in Côte d'Ivoire. The issue is currently being

litigated before the judges. In relation to Charles Blé Goudé, by contrast, to date the Government of Côte d'Ivoire has neither challenged the admissibility of the case against him nor handed him over to ICC. In these circumstances, we continue to insist that Côte d'Ivoire should comply with its obligations and surrender Blé Goudé to the Court without delay. Investigations remain on-going in respect of allegation of crimes committed during the post electoral conflict in Côte d'Ivoire.

In the Libya situation, the Pre-Trial Chamber made important decisions regarding admissibility last year. In the case against Saif al Islam Gaddafi, the Judges called on Libya to surrender him to the Court. In the case against former intelligence chief Abdullah al Senussi, the Chamber was satisfied that Libya was genuinely investigating al Sennussi and in accordance with the principle of complementarity, the Chamber declared the case inadmissible before the ICC. Both decisions are currently on appeal. My Office and Libya continue to engage on collaborative efforts to ensure that other individuals alleged to have committed crimes are brought to justice genuinely – in Libya or before the ICC.

It's worth highlighting that a total of 13 individuals against whom Chambers have issued arrest warrants remain at large. These include President Al Bashir of Sudan, Joseph Kony of the LRA, and the military commander of the *Forces démocratiques de libération de Rwanda*, Sylvestre Mudacumura. It is for States to arrest and surrender those indicted by the Court. It is particularly disturbing to note that victims continue to bear the brunt of crimes committed by those against whom arrests warrants have been issued by the Court. Unless the investment of resources in investigations under difficult circumstances is matched by a strong commitment and will to arrest those indicted by the Court, the return for victims will remain meaningless. Time is long overdue for States to cooperate and coordinate with each other in devising strategies for arrest.

Ladies and Gentlemen,

In addition to investigations and prosecutions, another core activity of my Office is preliminary examinations. The Rome Statute endows my Office with the responsibility for independently determining whether or not to open an investigation in any given situation, irrespective of how that situation has come to the attention to the Office, and by following clear and sound legal criteria established by the Rome Statute.

Currently my Office is conducting nine such preliminary examinations across the globe: Afghanistan, Comoros, Honduras, Korea, Colombia, Georgia, Guinea, Nigeria, and most recently, the new alleged crimes reported in Central African Republic.
In none of these situations has a final determination been made on whether or not to open an investigation; we are assessing if crimes that fall within the jurisdiction of the Court have been committed while in some situations we are monitoring national proceedings and the gravity of the crimes, to determine whether national authorities have the will and the capacity to carry out their primary responsibility to genuinely investigate and prosecute perpetrators of the most serious crimes.

In line with States Parties' primary responsibility, we endeavour to encourage as much as possible genuine national proceedings, by sharing information, sending missions, and making public statements, when and where possible.

With regard to a number of other situations too, regular calls for the Court's engagement have been made, often in a public manner. It is however not in all such situations that the Office can actually act upon these calls. Syria, Egypt, and Ukraine are just few examples of situations that have been linked, one way or the other, with the Court in recent times. Nonetheless, as these States are all States *not* Party to the Rome Statute, without additional steps, such as a referral by the UN Security Council, accession to the Rome Statute, or acceptance of the Court's jurisdiction, the Office does not have the legal mandate to act.

I do not get involved in political discussions about what situations merit the ICC's attention. I base my decisions solely on law and the evidence emerging from my Office's investigations. It will thus be clear to you that geographical balance is never part of my decision making.

It is in part also due to these legal restrictions, and lack of understanding thereof, that my Office has received criticism, in particular from the African Union, for the alleged limited scope and the targets of our investigations. My Office tries to engage, as much as possible, and at different levels, with the AU, to provide information and clarify misunderstandings about our activities. I personally have met with a large number of African Heads of State during missions I undertook since I assumed Office almost two ago. I'm encouraged by the reassurances and messages of commitment I received during these meetings.

At the same time, the Court should not face such criticism alone. States Parties, be it in multilateral fora, during summits, or in their bilateral contacts, must remain vigilant to uphold the fundamental values that are enshrined in the Rome Statute and serve as robust custodians of the treaty's object and purpose.

It is in this regard that I see an important role that all of you present here today can play, noting again our synergies and shared ideals. In fact, I see room for further engagement on a number of other issues too.

My Office has been working on the development of a policy paper on sexual and gender-based crimes, to guide my Office's work in this context, and to promote transparency and clarity, as well as predictability in the application of the legal framework for the prosecution of such crimes.
A firm response is necessary to counter these ills. As a Prosecutor, my job is to reverse the increasing tide of disproportionate impact that conflicts have on the marginalized groups in society: women and children who suffer the brunt of these conflicts. My work, however, needs to be complemented by that of others. Human rights agendas, development efforts, and endeavours to investigate and prosecute serious crimes, need to align and mutually reinforce each other.

My Office can only succeed in delivering on its mandate if it receives full, timely and tangible support and cooperation from the States Parties, inter-governmental organizations, and civil society.

The ICC is no longer an idea on paper; it is a functioning institution whose value is being slowly but increasingly appreciated. It is here to stay and everyone must realize that they have to adjust to this new reality; politicians, law makers, mediators, as well as of course warlords.

Success in the endeavor to combat impunity, protect human rights, and promote the rule of law will be built upon mutual trust, collaboration and assistance, and a genuine effort to achieve our common objectives.

Ladies and Gentlemen,

I thank you once again for this opportunity to speak here today, and look forward to engaging and collaborating with each one of you in the future.