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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW

(CAHDI)

Meeting report

49th meeting
Strasbourg, 19-20 March 2015

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

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TABLE OF CONTENTS

I. INTRODUCTION

1. Opening of the meeting by the Chair, Mr Paul Rietjens

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 49th meeting in Strasbourg (France) on 19-20 March 2015 with Mr Paul Rietjens (Belgium) in the Chair. The list of participants is set out in **Appendix I** to this report.

2. The Committee observed a minute's silence in memory of the victims of the terrorist attacks in Tunisia on 18 March 2015.

2. Adoption of the agenda

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

3. Adoption of the report of the 48th meeting

4. The CAHDI adopted the report of its 48th meeting (document CAHDI (2014) 24 prov 1) and instructed the Secretariat to publish it on the Committee's website.

4. Information provided by the Secretariat of the CAHDI

- **Statement by Mr Jörg Polakiewicz, Director of Legal Advice and Public International Law**

5. Mr Jörg Polakiewicz informed the CAHDI of the developments within the Council of Europe since the last meeting of the Committee[1].

6. With regard to the situation in Ukraine, he informed the CAHDI that on the occasion of a two-days visit to Kiev (17-18 March 2015), the Secretary General of the Council of Europe launched the Action Plan for Ukraine 2015-2017. This Action Plan is a joint initiative of the Council of Europe and the Ukrainian authorities and intends to support Ukraine in fulfilling its statutory and specific obligations as a Council of Europe member State and to contribute toward addressing fundamental issues of human rights and rule of law in Ukraine. The initiative renews the commitment of the Council of Europe to assist Ukraine in its necessary reform agenda in the areas of expertise of the Council of Europe – human rights, the rule of law and democracy. It is dedicated to supporting and promoting constitutional and judicial reform, decentralisation, fair elections and to fight corruption. During this visit, the Secretary General of the Council of Europe assured the Prime Minister of Ukraine of the Organisation's full support for Ukraine's reform process and territorial integrity. The Secretary General and the Prime Minister agreed on the need for a comprehensive constitutional reform and full implementation of the Minsk agreements by all parties.

7. The Director also drew the attention of the CAHDI to the Council of Europe action to combat terrorism. He informed the Committee of the immediate reactions taken by the Secretary General of the Council of Europe and of the Committee of Ministers following the horrendous terrorist attacks in Belgium, France and Denmark. In particular, mention was made to the *"Immediate Action by the Council of Europe to combat extremism and radicalisation leading to terrorism"* (document SG/Inf(2015)4 rev) presented by the Secretary General on 9 February 2015 and endorsed by the Committee of Ministers on 11-12 February 2015. The proposals contained in this document are articulated around three main objectives:

- Firstly, to step-up work on strengthening legal action against terrorism. This objective will notably consist of:

[1] The statement by Mr Jörg Polakiewicz appears on the website of the Directorate of Legal Advice and Public International Law (DLAPIL) at the following link.

- helping to ensure that all Council of Europe member States, and neighbouring countries, sign and ratify, as a matter of priority, the *Council of Europe Convention on the Prevention of Terrorism* (CETS No. 196)[2];

- concluding the preparation of an Additional Protocol on the so-called "foreign terrorist fighters" to the *Council of Europe Convention on the Prevention of Terrorism* (CETS No. 196). This Additional Protocol will define more precisely the offences named in the *United Nations Security Council Resolution 2178 (2014) on "Threats to international peace and security caused by terrorist acts"* adopted by the Security Council on 24 September 2014[3] and will commit parties to establish the required criminal offences under their domestic law. The draft Additional Protocol is currently being prepared by the Committee on Foreign Terrorist Fighters and Related Issues (COD-CTE), acting under the authority of the Committee of Experts on Terrorism (CODEXTER). It is expected to be finalised by the CODEXTER on 10 April 2015, with a view to its adoption by the Committee of Ministers at their Ministerial Session on 19 May 2015 in Brussels (Belgium).

- reviewing and updating the *Recommendation Rec(2005)7 of the Committee of Ministers to member States concerning identity and travel documents and the fight against terrorism*[4].

- Secondly, to initiate concrete measures in education, in prisons and on the Internet, to prevent and fight radicalisation. This will be achieved notably through the drafting of guidelines on how to prevent radicalisation in prisons as well as through several conferences and campaigns in order to give more visibility to Council of Europe standards and tools in this field.

- Thirdly, to devote the Ministerial Session in Brussels on 19 May 2015 to this subject and to adopt a Declaration and an action plan. The aim is to address root causes, through actions in various fields, including:

  - drafting a new recommendation on terrorists acting alone, providing guidelines to member States on how to efficiently prevent and suppress this form of terrorism;

  - preventing and fighting radicalisation through concrete measures in schools, prisons and on the Internet;

  - identifying key competences required for democratic culture and intercultural dialogue with a view to developing a competence framework for member States, to be used and adapted in their own education system;

  - providing a counter-narrative to the misuse of religion.

8. The CAHDI also took note of the approval by the Committee of Ministers of the Neighbourhood Partnership documents for the period 2015-2017 with Jordan, Morocco and Tunisia. The Council of Europe policy towards neighbouring regions aims at promoting dialogue and co-operation with the countries and regions in the vicinity of Europe which express the will to co-operate with the Council of Europe on the basis of the common values of human rights, democracy and the rule of law. According to the Neighbourhood Partnership documents, *"representatives of [Jordan, Morocco and Tunisia] may participate as observers in the parts of the*

[2] To date (27 March 2015), the Convention has been signed by 12 States and ratified by 32 States. For more information, see the website of the Council of Europe Treaty Office at the following link.
[3] The United Nations Security Council Resolution 2178 (2014) is available at the following link.
[4] See the text of Recommendation Rec(2005)7 at the following link.

meetings of relevant intergovernmental committees of experts when discussing issues of relevance to the implementation of the Neighbourhood Partnership." In this respect, the CAHDI underlined that its meetings were in principle not dealing with "issues of relevance to the implementation of the Neighbouring Partnership".

9. Regarding the latest news with respect to treaty law within the Council of Europe, delegations were informed of the opening for signature, on 25 March 2015 in Santiago de Compostela (Spain), of the *Council of Europe Convention against Trafficking in Human Organs*.

10. Regarding the specific issue of the participation of non-member States in Council of Europe conventions, delegations were informed of the latest accessions of non-member States to Council of Europe conventions. Furthermore, the Director informed the Committee of the adoption by the Committee of Ministers, on 18 February 2015, of the *Resolution CM/Res(2015)1 concerning financial arrangements for the participation of non-member States in Council of Europe conventions*[5]. This Resolution foresees the application of a calculation method when a Contracting Party to a Council of Europe convention participates as of right in the follow-up mechanism of a convention containing a clause on financial participation in its follow-up mechanism. To date, only three recent conventions provide explicitly for a financial contribution to their follow-up mechanism by non-member States: the *Council of Europe Convention on the Counterfeiting of Medical Products and Similar Crimes involving Threats to Public Health* (CETS No. 211), the *Council of Europe Convention on the Manipulation of Sports Competitions* (CETS No. 215) and the *Council of Europe Convention against Trafficking in Human Organs* opened for signature on 25 March 2015.

11. The Director also drew the attention of the Committee to the recent proposal to change the procedure for consulting non-member States on their requests for accession to Council of Europe conventions. According to the current practice, the consultation is made in two stages.

- In the first stage, all member States of the Council of Europe are consulted (even if they are not Parties to the convention). If no objections are raised during a period of six weeks, the request for accession is transmitted to the competent Rapporteur Group and then to the Committee of Ministers.

- In the second stage, once there is agreement in principle within the Committee of Ministers to give a positive reply to the request, the Secretariat is instructed by the Committee of Ministers to consult the non-member States which are Parties to the convention. These non-member States are given a two months' time-limit for the formulation of their objections. If there are no objections, the decision to invite the non-member State becomes definitive. If there is an objection, the Committee of Ministers resumes consideration of the request for invitation.

The new proposal consists of a consultation procedure in one stage in order to limit, as much as possible, differences in the status between Parties, treating them on equal footing, as suggested in the Secretary General's Report on the review of Council of Europe conventions. It also intends to significantly reduce the length of the procedure by which the Committee of Ministers decides on the invitation of a non-member State to accede to a convention. This proposal has been examined by the Committee of Ministers Rapporteur Group on Legal Co-operation (GR-J) on 24 March 2015[6].

12. Delegations were finally informed of the signature on 16 December 2014 of an Arrangement with the Central Commission for the Navigation of the Rhine allowing the Administrative Tribunal of the Council of Europe to examine the related disputes between this organisation and its staff members.

[5] See the text of Resolution CM/Res(2015)1 at the following link.
[6] **Note of the Secretariat:** At the end of the discussions, the Chair of the GR-J concluded that the GR-J agreed with this new procedure. The Chair of the GR-J informed the Ministers' Deputies about this new consultation procedure by letter dated 15 April 2015.

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

13. The Chair presented a compilation of Committee of Ministers' decisions of relevance to the CAHDI's activities (documents CAHDI (2015) 1 prov 1 and CAHDI (2015) Addendum prov 1). In particular, the CAHDI took note that the Committee of Ministers had examined the abridged report of its 48th meeting (The Hague, Netherlands, 18-19 September 2014) on 14 January 2015 and that, within the framework of the Belgian Chairmanship of the Committee of Ministers, a High-level Conference on "Implementation of the European Convention, our shared responsibility" would take place in Brussels on 26-27 March 2015.

14. Furthermore, on 11-12 February 2015, the Ministers' Deputies communicated to the CAHDI *Recommendation 2060 (2015) of the Parliamentary Assembly of the Council of Europe – "The implementation of the Memorandum of Understanding between the Council of Europe and the European Union"* for information and possible comments by 23 March 2015. A draft opinion had been prepared by the Secretariat and the Chair and sent to delegations for comments/observations prior to the meeting.

15. The Chair presented the draft opinion of the CAHDI (document CAHDI (2015) 6 prov) together with the comments by delegations received on this draft (document CAHDI (2015) 6 Addendum). Following an exchange of views, the CAHDI adopted its opinion which appears in **Appendix III** to the present report.

16. In this opinion, the CAHDI stressed from the outset that the *Memorandum of Understanding* concluded in 2007 between the Council of Europe and the European Union (hereinafter the "EU") remained the relevant applicable framework for cooperation between both organisations. With regard to the accession of the EU to Council of Europe conventions, the CAHDI noted that the EU was already party to ten Council of Europe conventions and that it had signed but not yet ratified four other conventions. Furthermore, the EU could become party to twenty-three more conventions and could be invited to accede to twelve other conventions after their entry into force. To facilitate further accessions, the CAHDI reiterated that it stood ready to assist the Committee of Ministers with respect to the examination of legal issues raised by the participation of the EU in Council of Europe conventions such as those identified in the *Report of the Secretary General on the review of Council of Europe conventions* (adaptation of final and interpretation clauses, modalities of EU participation in follow-up mechanisms, financial participation). With regard more specifically to the accession of the EU to the European Convention on Human Rights, the CAHDI encouraged, following the Opinion 2/13 of the Court of Justice of the European Union, the finalisation of the process at the earliest opportunity.

6. Immunities of States and international organisations

a. Topical issues related to immunities of States and international organisations

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

17. The Chair presented the topic of the "Settlement of disputes of a private character to which an international organisation is a party" which had been included in the agenda of the 47th meeting of the CAHDI at the request of the delegation of the Netherlands, which had provided a document in this regard (document CAHDI (2014) 5). This document 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)[7] and case-law of the European Court of Human Rights[8] involving international organisations where their immunity from the civil jurisdiction of domestic courts had been granted. The Dutch document also contained the following five questions addressed to the members of the CAHDI:

- Do you share our analysis concerning the current state of the settlement of disputes of a private character to which an international organisation is a party?
- What is your experience with the settlement of disputes of a private character to which an international organisation is a party in your legal system?
- In particular, are there examples in your legal system of perceived shortcomings in the settlement of disputes of a private character to which an international organisation is a party leading claimants to turn to the member States?
- Do you consider that the strengthening of the settlement of disputes of a private character to which an international organisation is a party merits attention?
- Specifically in respect of settlement of private claims in UN peace operations, how do you see the merits of the possible measures described above?

18. The Chair welcomed the written comments submitted by Andorra, Armenia, Denmark, Germany, Mexico, Slovenia, Switzerland and the United Kingdom to the questions contained in document CAHDI (2015) 2 prov and invited delegations to orally present their views on the current state of this issue from their own national experience and on the possible measures to be adopted.

19. A large majority of the delegations welcomed this initiative and agreed that the issues raised in the document merited further attention as they had been neglected since the setting-up of the current international organisations system.

20. Many delegations underlined that while the privileges and immunities enjoyed by international organisations were crucial for their proper functioning, independence and efficiency, the important question remained the balance to be struck between this need and the need for accountability i.e. the need to protect victims. In this regard, some delegations pointed out that a distinction had to be made between the activities of international organisations having a direct contact and impact on individuals (such as peace-keeping operations) and those which had only an indirect impact (such as policy guidelines on specific areas, legal activities etc.). Many delegations underlined that indeed the diversity of international organisations and the subject matters made it necessary to envisage a tailor-made approach for each and every international organisation. Moreover, the question of the differences between the acts of *jure imperii* of international organisations and those of *jure gestionis* had also to be taken into account when examining this issue.

21. Many delegations reiterated their support for the proposals contained in the document submitted by the delegation of the Netherlands regarding the specific suggested measures to strengthen the mechanism of settlement of disputes of a private character to which an international organisation is a party. In particular, the establishment of an ombudsperson who could investigate complaints from individuals arising from the conduct/action of an international organisation was viewed favourably by most delegations and appeared to be a conceivable solution.

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[7] In October 2013, lawyers for Haiti Cholera victims filed a class action lawsuit in the Southern District of New York against the UN. The judgment of the Southern District Court of New York handed down on 9 January 2015 concluded that the UN was immune from the plaintiffs' suit.

[8] *Eur. Court HR, Beer and Regan v. Germany, Judgment* of 18 February 1999, Application No. 28934/95; *Eur. Court HR, Waite and Kennedy v. Germany, Judgment* of 18 February 1999, Application No. 26083/94; *Eur. Court HR, Chapman v. Belgium, Judgment* of 5 March 2013, Application No. 39619/06; *Eur. Court HR, Stichting Mothers of Srebrenica and others v. the Netherlands, Judgment* of 11 June 2013, Application No. 65542/12.

22. The CAHDI agreed to keep this issue on the agenda of its 50th meeting. Furthermore, the Chair called on delegations to send their comments in writing before the next meeting in order to have sufficient replies for deciphering the main trends on this issue.

ii. Immunity of State owned cultural property on loan

23. The Chair recalled that the topic of "Immunity of State owned cultural property on loan" had been included in the agenda of the 45th meeting of the CAHDI at the initiative of the Czech Republic and Austria and supported by the Netherlands. 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 question. This Declaration was presented at the 46th meeting of the CAHDI as a non-legally binding document expressing a common understanding of *opinio juris* on the basic rule that certain kind of State property (cultural property on exhibition) enjoyed jurisdictional immunity.

24. Delegations were informed that to date, the Declaration had been signed by 6 States (Austria, Czech Republic, Georgia, Latvia, Romania and Slovakia). Furthermore, they were reminded that the Secretariat of the CAHDI performed the functions of "depository" of this Declaration and that the text of the Declaration was available in English and French on the website of the CAHDI[9].

25. The CAHDI encouraged its members and observers which had not yet done so to sign the Declaration. In this respect, the Chair recalled that the signature of this Declaration could be done by the Ministers of Foreign Affairs during events/conferences. He also mentioned the possibility to sign the Declaration in capitals and to send it to the Secretariat of the CAHDI through diplomatic courier. In this regard, a number of delegations informed the Committee of the intention of their State to sign the Declaration.

26. Furthermore, it was recalled that the Secretariat and the Chair had drafted a questionnaire on this issue in order to have an overview of the specific national legislations and practices. Delegations had been invited to submit their replies.

27. In this regard, the CAHDI welcomed the replies submitted by 13 delegations (Andorra, Austria, Armenia, Belgium, Cyprus, Finland, Germany, Greece, Ireland, Latvia, Mexico, the United Kingdom and the United States of America) to this questionnaire and encouraged the delegations which had not yet done so, to submit their replies at their earliest convenience.

iii. Immunities of special missions

28. Delegations were reminded that the topic of "Immunities of special missions" 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). Following this meeting, the Secretariat and the Chair had drafted a questionnaire aimed at establishing an overview of legislations and specific national practices in this field.

29. The CAHDI welcomed the replies submitted by 20 delegations (Albania, Andorra, Armenia, Austria, Belarus, Czech Republic, Denmark, Estonia, Finland, Georgia, Germany, Ireland, Italy, Latvia, Mexico, Norway, Serbia, Switzerland, the United Kingdom and the United States of America) to this questionnaire.

[9] The dedicated webpage is available at the following link.

30. Considering the topicality and the importance of this issue, the CAHDI agreed to prepare an analysis outlining the main trends arising from these replies and which could ultimately become a publication similar to the previous CAHDI publications[10].

iv. Service of process on a foreign State

31. The Chair reminded delegations that the topic of "Service of process on a foreign State" had been included in the agenda of the 44th meeting of the CAHDI (Paris, 19-20 September 2012), during which the Portuguese delegation referred to the difficulties faced in identifying the manner in which to serve documents instituting proceedings against a foreign State. On this occasion, the Austrian delegation had also provided information on this matter regarding the judgment of the European Court of Human Rights in the case *Wallishauser v. Austria*[11]. At its 46th meeting (Strasbourg, 16-17 September 2013), the CAHDI adopted a questionnaire in order to collect relevant information on this matter.

32. The Chair informed the Committee that 19 replies had been submitted to this questionnaire (Albania, Austria, Belgium, Cyprus, Czech Republic, Germany, Greece, Finland, Ireland, Israel, Italy, Japan, Latvia, Norway, Portugal, Slovenia, Switzerland, the United Kingdom and the United States of America) which were contained in document CAHDI (2014) 15 Addendum.

33. Several delegations underlined the practical relevance of this issue in the daily work of the Ministries of Foreign Affairs with regard to diplomatic traffic. It was pointed out that service of process was not only physical transfer of documents but also a sovereign act of the notifying State. If the procedure and the practice were well-established in several States, some delegations underlined the need to obtain further information on specific questions raised on this matter (related for example to time-limits, translations etc.) in order to improve their internal procedures.

34. Consequently, the CAHDI agreed to keep this issue on its agenda, to prepare an analysis of the replies to the questionnaire which will be complemented by further information and which could ultimately become a publication similar to the previous CAHDI publications[12].

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, the Czech Republic had ratified the 2004 *UN Convention on Jurisdictional Immunities of States and of their Property* on 12 March 2015. He furthermore underlined that to date, 17 States had ratified the Convention and that in order for the Convention to enter into force, 30 ratifications were needed. The Chair therefore invited delegations to provide information with regard to possible future ratifications.

36. The delegation of Liechtenstein informed the Committee that the Parliament of Liechtenstein had approved the Convention and that the instrument of ratification would be submitted in the coming weeks.

37. The delegation of Slovakia informed the Committee that the ratification process of the Convention had started and that the instrument of ratification would hopefully be deposited in the course of the year 2015.

38. The delegation of Armenia informed the Committee that due to the current preparations of a new Constitution, Armenia had suspended the internal procedures of ratification of the Convention.

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[10] *"State practice regarding State Immunities"* (2006, ISBN-13 9789004150737, xxviii, 1043 pp.); *"Treaty Making - Expression of Consent by States to be Bound by a Treaty"* (2001, ISBN-13 9789041116925, 720 pp.); *"State Practice regarding State Succession and Issues of Recognition"* (1999, ISBN-13 9789041112033, 528 pp.)

[11] *Eur. Court HR, Wallishauser v. Austria, Judgment* of 17 July 2012, Application No. 156/04.

[12] Ibid, footnote 10.

39. The delegation of Mexico informed the Committee that Mexico was in the process of approving the Convention. It furthermore underlined that Mexico was currently considering drafting a special law on immunities outlining the principles of the international law on immunities in order for national tribunals to apply those principles in a clear and efficient way.

c. State practice, case-law and updates of the website entries

40. The CAHDI welcomed the updated contribution to the CAHDI database on State practice regarding States Immunities from the United Kingdom. It noted that to date, 35 States (Andorra, Armenia, Austria, Belgium, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Mexico, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom) and one organisation (European Union) had submitted a contribution to this database. The Chair invited delegations, which had not yet done so, to submit or update their contributions to the relevant database at their earliest convenience.

41. The delegation of the United Kingdom informed the Committee of the latest judgments added to the updated contribution.

The case of *Benkharbouche and Janah v. Embassy of the Republic of Sudan and Libya*[13] concerned Ms Benkharbouche, who was employed as a cook in the Sudanese embassy. She brought claims in the Employment Tribunal for unfair dismissal, failure to pay the minimum wage and breach of the Working Time Regulations 1998[14]. Ms Janah, whose duties included cooking, cleaning and shopping, brought claims against the Libyan Embassy for unfair dismissal, arrears of pay, racial discrimination, harassment and breach of the Working Time Regulations 1998. In both cases the respondent sought to resist proceedings by asserting State immunity under the State Immunity Act 1978 (SIA)[15]. The issue for consideration was whether or not State immunity under the SIA was compatible with the applicant's rights under Article 6 of the ECHR (right to a fair trial)[16] and Article 47 of the EU Charter[17] (right to an effective remedy and to a fair trial). The Court found that the very broad scope of immunity provided in Section 16(1)(a) of the SIA, which obstructed low-level staff such as the appellants from bringing claims that did not touch issues sensitive to their employer States, was not within what was required by international law and was a breach of Article 6. As regards Section 4(2)(b) of the SIA, which required an individual to be either British or British-resident when they were hired in order to benefit from the section's exception to the general State immunity, it was considered that as there was no established body of international practice consistent with Section 4(2)(b) of the SIA, it constituted a breach of Article 6 in conjunction with Article 14 (freedom from discrimination). The Court of Appeal therefore issued a declaration of incompatibility under the Human Rights Act 1998 and disapplied sections of the SIA relevant to the claims based in EU law to enable those actions to proceed.[18]

In the case of *Reyes and Suryadi v. Al-Malki*[19] the Court of Appeal held that diplomatic immunity could successfully prevent Ms Reyes, a Philippine national, and Ms Suryadi, an Indonesian national, from pursuing claims for racial discrimination, harassment and failure to pay the minimum wage following their trafficking by the Al-Malki's' into the UK for domestic servitude at the official diplomatic residence of the Saudi Arabian mission in London. The defendants successfully claimed

[13] Court of Appeal, *Benkharbouche and Janah v. Embassy of the Republic of Sudan and Libya* [2015] EWCA Civ 33.
[14] See the Working Time Regulations 1998 at the following link.
[15] See the State Immunity Act 1978 at the following link.
[16] See the European Convention of Human Rights at the following link.
[17] See the EU Charter at the following link.
[18] It was common ground before the Court of Appeal that a breach of Article 6 entailed a breach of Article 47 EU Charter, which was in line with Article 52(3) EU Charter. In light of the CJEU jurisprudence the Court concluded that the right of access to justice contained in Article 47 EU Charter was sufficiently precise to have horizontal direct effect. On this basis the Court disapplied ss. 4(2)(b) and 16(1)(a) *"to the extent necessary to enable employment claims (other than for recruitment, renewal or reinstatement) falling within the scope of EU law by members of the service staff, whose work does not relate to the sovereign functions of the mission staff" [85].*
[19] Court of Appeal, *Reyes and Suryadi v. Al-Malki* [2015] EWCA Civ 32.

that they were entitled to diplomatic immunity under the 1961 *Vienna Convention on Diplomatic Relations*, which conferred on diplomats complete immunity from civil actions except in cases that concern commercial activity carried out outside of the diplomat's official functions (Article 31(1)(c)). The Court unanimously dismissed the appeal concluding that the employment of persons to provide domestic services in a diplomatic mission in the receiving State was conducive to the performance of diplomatic functions: it was not an action relating to "commercial activity" undertaken for the financial benefit of the diplomatic agent or relating to commercial activity "outside his official functions".

The case of *Belhaj and Boudchar v. The Rt. Hon Jack Straw, Sir Mark Allen (CMG) and others*[20] concerned the detention and transfer to Libya of a former leader of a Libyan fighters group. The appellants sought a declaration of illegality and damages arising from what they contended was the participation of the respondents in their unlawful abduction, kidnapping and removal to Libya in March 2004. The claim included allegations that they were unlawfully detained and/or mistreated in third States and that their detention and mistreatment was carried out by agents of third States. The respondents submitted that the proceedings were barred by State immunity and the act of State doctrine according to which domestic courts will not adjudicate the lawfulness of the actions of a foreign State. The Court of Appeal rejected the arguments of the respondents: 1) firstly, it considered that State immunity did not bar the proceedings on the grounds that the foreign States were not directly involved in the case and 2) secondly, it considered that the claim was not barred by the act of State doctrine because it fell within a limitation on grounds of public policy in cases of violations of international law and fundamental human rights. The delegation of the United Kingdom informed the Committee that the judgment was subject to an appeal to the Supreme Court.

The case of *Rahmatullah v. Ministry of Defence and another*[21] concerned claims in tort and applications for judicial review against the defendant Ministries and Secretaries of State involving mistreatment in Iraq and Afghanistan by forces of a third State following transfer of custody from the hands of British forces. As in the case of *Belhaj and Boudchar v. The Rt. Hon Jack Straw, Sir Mark Allen (CMG) and others*, the High Court held that the claims in tort were not barred by reason of the doctrines of State immunity or act of State. The delegation of the United Kingdom informed the Committee that this judgment was also subject to an appeal.

42. The delegation of the Czech Republic informed the Committee of a case before a German court involving the jurisdictional immunities of State property. In this case, the Czech Republic had argued, *inter alia*, that its emergency stocks of fuel (forming part of its material reserves required by the Czech and EU law) located in Germany should be excluded from the bankruptcy proceedings related to the company Victoriagruppe AG, as this category of State property enjoyed jurisdictional immunities under the customary international law codified in the *UN Convention on Jurisdictional Immunities of States and Their Property*. The delegation of Germany added that the case was a very complex one, involving issues not only of State immunity, but also of a bilateral treaty, of EU law, and of German bankruptcy law.

43. The delegation of the Netherlands informed the Committee of the numerous pending cases before Dutch tribunals in relation to immunities of States and international organisations. In particular, it was underlined that those cases concerned mainly 1) the availability of "reasonable alternative means" in the framework of the relevant organisation for an effective protection of the rights under the ECHR and 2) challenges to the immunity from execution of States.

44. The delegation of Canada provided information on the case of *Kazemi v. Islamic Republic of Iran*[22]. The case concerned Ms Zahra Kazemi, a Canadian citizen and freelance photographer and journalist, who died in custody in Iran in 2003, following her detention, torture and sexual

[20] Court of Appeal, *Belhaj and Boudchar v. The Rt. Hon Jack Straw, Sir Mark Allen (CMG) and others*, [2014] EWCA Civ 1394
[21] High Court, *Rahmatullah v. Ministry of Defence and another*, [2014] EWHC 3846 (QB)
[22] Supreme Court of Canada, *Kazemi v. Islamic Republic of Iran*, 2014 SCC 62, Judgment of 10 October 2014.

assault in prison. The authorities refused to return her body to Canada and buried her in Iran. Although a domestic investigation reported links between the Iranian authorities and her torture and death, only one person was charged but subsequently acquitted. Ms Kazemi's son sued the Islamic Republic of Iran, claiming damages for his mother's suffering and death, and for the emotional and psychological harm that this caused him. The defendants sought to dismiss the motion based on claims of State immunity, which was implemented in Canada by the State Immunity Act (SIA) 1985[23].The Supreme Court dismissed the claim because the defendants enjoyed State immunity from civil proceedings, and cited the recent judgment of the European Court of Human Rights in the case *Jones v. the United Kingdom* of 14 January 2014[24] in this respect.

45. The representative of the European Union informed the Committee of the pending case *La Chaine hôtelière La Frontière, Shotef SPRL v. European Commission*[25] before the Court of Justice of the European Union concerning the application for authorisation to serve an attachment order.

46. The representative of the OSCE informed the Committee that the issue of the international legal personality, legal capacity, and privileges and immunities of the OSCE had been on the agenda of the OSCE for more than 20 years. She notably underlined that while they may be a lack of clarity on the formal legal status, there is full clarity on the operational activities the OSCE is expected to perform as an international entity, as if it enjoyed the full legal standing that treaty-based international organisations are normally attributed. The representative of the OSCE pointed out that the consequences have become notably manifest during the efforts of the OSCE in Ukraine, in particular the ceasefire monitoring and verification it has been assigned to carry out under the 2014 and 2015 Minsk Agreements, including the use of all technical means. Since 2009 the issue has been under the purview of an open-ended Informal Working Group on Strengthening the Legal Framework of the OSCE (IWG). The last meeting of the IWG took place on 15 October 2014 and the next meeting will take place on 15 April 2015.

47. 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, the CAHDI noted that to date, 27 delegations (Albania, Austria, Belgium, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Japan, Latvia, Luxembourg, Montenegro, Norway, Portugal, Romania, the Russian Federation, Slovakia, Slovenia, Spain, Sweden, the United States of America) had replied to the questionnaire on this matter (document CAHDI (2014) 22). The CAHDI invited delegations which had not yet done so to submit or update their replies to the questionnaire.

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

48. The Chair reminded delegations that a *Revised questionnaire on the organisation and functions of the Office of the Legal Adviser of the Ministry of Foreign Affairs* had been presented at the 47th meeting of the CAHDI and contained additional questions on gender equality in conformity with the Council of Europe Gender Equality Strategy for 2014-2017. He welcomed the replies submitted by 24 delegations (Albania, Andorra, Armenia, Austria, Belarus, Bosnia and Herzegovina, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, Georgia, Germany, Greece, Latvia, Luxembourg, Mexico, Montenegro, Slovenia, Switzerland, the United Kingdom, the United States of America and NATO) to this revised questionnaire as contained in document CAHDI (2014) 16 prov.

[23] See the State Immunity Act (SIA) 1985 at the following link.
[24] *Eur. Court HR, Jones and Others v. the United Kingdom, Judgment* of 14 January 2014, Applications No. 34356/06 and 40528/06.
[25] Court of Justice of the European Union, Case C-1/15 SA, *La Chaine hôtelière La Frontière, Shotef SPRL v. European Commission*, Application brought on 12 January 2015.

49. The Chair underlined the practical importance of this questionnaire which often served as inspiration for further developing the competences of the Office of the Legal Adviser. In this regard, he also mentioned that a Conference on the "Role of the Legal Advisers in International Law" took place on 26 February 2015 in London. This Conference was co-hosted by the British Institute of International and Comparative Law and the Foreign and Commonwealth Office. It brought together current and former legal advisers, from various countries and a variety of legal and political systems, to discuss a number of issues critical to the role of the Government Legal Adviser. These issues concerned notably the functions of the legal adviser, the organisation and context for legal adviser's work, communication and contact between legal advisers from various countries and the role of public outreach[26].

50. Considering the topicality and the importance of this issue, the CAHDI invited delegations to send to the Secretariat any further information in order to complete their replies (notably with regard to the scope of the competences of the Office of the Legal Adviser and the possible legal basis for acting as an agent before the International Court of Justice or other international courts or tribunals).

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

51. The Chair introduced document CAHDI (2014) 21 on the *Cases that have been submitted to national tribunals by persons or entities included in or removed from the lists established by the United Nations Security Council Sanctions Committees* and invited all delegations to submit information in this respect.

52. The CAHDI took note that the *"High Level Review of United Nations Sanctions"* process, presented at the previous meeting of the Committee and which was conducted from June to October 2014, had been finalised. In this regard, it took note that the final reports prepared by the following three working groups had already been issued or would be issued shortly:

- Working Group 1 chaired by Australia on *UN integration and coordination on the implementation of UN sanctions*;
- Working Group 2 chaired by Sweden on *UN sanctions and external institutions and instruments*;
- Working Group 3 chaired by Greece on *UN sanctions, regional organizations, and emerging challenges*.

53. Delegations were reminded that this process aimed at examining ways to enhance the effectiveness of UN sanctions. Indeed, given that the focus of UN sanctions had narrowed to target specific goods or services, as well as specific individuals and entities, new issues had arisen, such as the need to ensure that UN sanctions were reconciled with the rule of law, in particular respect for due process and human rights. Furthermore, the greater reliance on the private sector for complying with sanctions measures required new modes of partnerships and strategies to assure effectiveness.

54. With regard more specifically to the final report of the Working Group 3, the delegation of Greece chairing this Working Group, informed the CAHDI that a broad range of actors, including Ms Kimberly Prost, Ombudsperson of the United Nations Security Council's Al-Qaida Sanctions Committee, had been consulted in order to prepare this report. Furthermore, the Council of Europe and other regional organisations had also contributed to the report, by providing views on how to enhance collaboration and information sharing among sanctions, monitoring, human rights and humanitarian actors, and on how to improve implementation of UN sanctions through coordination and information sharing between the UN sanctions committee and regional organisations. The delegation of Greece informed the Committee that the most important findings and

[26] See the website dedicated to this event at the following link.

recommendations of the three Working Groups would be consolidated in a Compendium sponsored by Germany and to be published in the course of 2015.

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

55. The CAHDI addressed the topic of the accession of the European Union ("EU") to the European Convention on Human Rights ("ECHR") and took note in this regard of the Opinion 2/13 of the Court of Justice of the European Union ("CJEU") issued on 18 December 2014 on the following question: "Is the draft agreement providing for the accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms compatible with the Treaties of the European Union?".

56. The CAHDI agreed that it would await the outcome of the reflection process within the EU aimed at identifying and defining the further steps to be taken and revert to this issue in due course.

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

57. The Chair introduced the topic of the cases before the European Court of Human Rights ("the Court") involving issues of public international law.

58. The delegation of the Netherlands drew the attention of the Committee to the case of *Jaloud v. The Netherlands*[27] concerning the investigation by the Netherlands authorities into the circumstances surrounding the death of an Iraqi civilian who died of gunshot wounds in Iraq in April 2004 in an incident involving the Netherlands Royal Army personnel in an area under the command of an officer of the armed forces of the United Kingdom. The applicant, the father of the victim, relying on Article 2 (right to life) of the European Convention of Human Rights ("the ECHR"), complained that the investigation into the shooting of his son had neither been sufficiently independent nor effective. The Court established that the complaint about the investigation into the incident – which had occurred in an area under the command of an officer of the armed forces of the United Kingdom – fell within the jurisdiction of the Netherlands within the meaning of Article 1 of the ECHR (contract parties' obligation to respect the rights guaranteed in the ECHR). The Court noted, in particular, that the Netherlands had retained full command over its military personnel in Iraq. Furthermore, the Court came to the conclusion that the investigation had been characterised by serious shortcomings, which had made it ineffective. In particular, records of key witness statements had not been submitted to the judicial authorities, no precautions against collusion had been taken before questioning the Netherlands Army officer, who had fired at the car carrying the victim, and the autopsy of the victim's body had been inadequate. On 20 November 2014, the Grand Chamber therefore held, unanimously, that there had been a violation of Article 2 of the ECHR (right to life – procedural obligations) as regards the failure of the Netherlands authorities to carry out an effective investigation into the death of Mr Jaloud's son.

59. The delegation of Switzerland informed the Committee about developments in the case of *Al-Dulimi v. Switzerland*[28]. 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 ("the UNSC") 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 paragraph 1 of the ECHR (right to a fair trial). In its Chamber judgment of 26 November 2013 the Court held, by four votes to three, that there had been a violation of Article 6 paragraph 1. The Court took the view that the applicants had been deprived of

[27] *Eur. Court HR, Jaloud v. The Netherlands, [Grand Chamber], Judgment* of 20 November 2014, Application No. 47708/08.
[28] *Eur. Court HR, Al-Dulimi and Montana Management Inc. v. Switzerland, Judgment* of 26 November 2013, Application No. 5809/08.

their assets for a considerable period of time and were entitled under Article 6 paragraph 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. On 14 April 2014, the case was referred to the Grand Chamber at the request of the Swiss Government. The Grand Chamber hearing was held on 10 December 2014. During the hearing, legal representatives of the applicants and of the Swiss, British and French Governments presented their submissions. The delegation of Switzerland underlined that it would inform the CAHDI of the outcome at the meeting in September if the judgment of the Grand Chamber was issued by that time.

60. The delegation of Germany referred to the cases of *Klausecker v. Germany*[29] and *Perez v. Germany*[30] concerning complaints related to employment in international organisations – the European Patent Office ("EPO") and the United Nations ("UN") – and the alleged lack of access to the national courts in respect of those complaints.

The first complaint was brought by Mr Klausecker, a physically handicapped person, who was refused employment with the EPO as he was considered not to meet the physical requirements of the post. Both Mr Klausecker's internal appeal within the EPO against that decision and his complaint to the Administrative Tribunal of the International Labour Organisation ("ILO") were rejected as inadmissible, in November 2005 and July 2007, respectively, as job applicant did not have standing to lodge such motions. As the EPO had immunity from jurisdiction of the German labour or civil courts, Mr Klausecker lodged a complaint directly with the Federal Constitutional Court, which was equally rejected, on 22 June 2006, as inadmissible for lack of jurisdiction. The EPO subsequently offered Mr Klausecker to have the dispute determined by an arbitral tribunal, which he eventually refused in 2008, alleging in particular that the arbitration procedure proposed would be in breach of essential procedural guarantees, including the right to a public hearing within reasonable time. Relying on Article 6 of the ECHR (right to a fair trial), essentially complaining about the lack of access to the German courts, Mr Klausecker challenged the refusal of employment. He also complained, in particular, of the lack of access to and the deficient procedures within the EPO and the Administrative Tribunal of the ILO, for which he considered Germany was to be held responsible. On 6 January 2015, the Court found that the organisation's immunity from jurisdiction of the German courts had been proportionate in the circumstances of the case. Mr Klausecker would have had a reasonable alternative means to protect his rights under the ECHR, namely by participating in an arbitration procedure. More specifically, the Court held that:

- *As regards the complaint about his lack of access to the German courts*: the Court was satisfied that granting the EPO immunity from German jurisdiction aimed at guaranteeing the proper functioning of that international organisation and thus pursued a legitimate aim. In addition, limiting Mr Klausecker's access to the German courts had been proportionate to that aim, given that there had been a reasonable alternative means to effectively protect his rights under the ECHR, as he had been offered to participate in an arbitration procedure.

- *As regards the complaint about the lack of access to and the allegedly deficient procedures within the EPO and the Administrative Tribunal of the ILO*: the Court noted that, in line with its previous case-law, Germany could only be held responsible in the circumstances of the case if the protection of fundamental rights offered by the EPO in his case was manifestly deficient. Having regard to the finding that availability of the arbitration procedure constituted a reasonable alternative means to have his complaint examined in substance, the protection of fundamental rights within the EPO had not been manifestly deficient in his case.

[29] *Eur. Court HR, Klausecker v. Germany, Decision* of 6 January 2015, Application No. 415/07.
[30] *Eur. Court HR, Perez v. Germany, Decision* of 6 January 2015, Application No. 15521/08.

The second complaint was brought by Ms Perez, a former staff member of the UN. Having worked for the organisation since 1970, she was promoted several times and, in 1998, moved to the UN Volunteer Programme, based in Bonn, Germany. After her professional performance had previously been rated by consecutive supervisors as fully satisfactory or exceptional, she was included in a reassignment scheme in 2002 after three negative appraisal reports. As she was subsequently unable to find a new post within the organisation, she was dismissed in 2003. Her internal administrative complaints as well as her appeal to the UN Joint Appeals Board and the UN Administrative Tribunal, challenging her dismissal, were unsuccessful. Relying on Article 6 of the ECHR (right to a fair trial), essentially complaining about the lack of access to the German courts, Ms Perez challenged her dismissal. She also alleged that the UN internal appeal proceedings did not meet the requirements of a fair trial by an independent and impartial tribunal and that Germany was to be held responsible for that. On 6 January 2015, the Court concluded that Ms Perez had failed to exhaust the national remedies. She had complained in a substantiated manner that there had been manifest deficiencies in the UN internal appeal proceedings. However, it followed from several decisions of the German Constitutional Court that – despite the immunity of international organisations from the jurisdiction of the German courts – the Constitutional Court had jurisdiction to examine whether the level of fundamental rights protection in employment disputes in international organisations complied with the Constitution. Thus in the circumstances of her case, the German Federal Constitutional Court would therefore have had jurisdiction to examine whether the level of fundamental rights protection in the dispute concerning her dismissal had complied with the Constitution.

61. The delegation of Romania provided information to the Committee on the case of ***Plechkov v. Romania***[31] concerning the sentencing of Mr Plechkov to a suspended prison term together with the confiscation of his boat (including the installations, tools and cargo on board) for allegedly fishing illegally within the Romanian "exclusive economic zone" in the Black Sea. Relying on Article 7 of the ECHR (no punishment without law), Mr Plechkov alleged that his prison sentence and the confiscation of his boat and tools were unlawful, being incompatible with the *United Nations Convention on the Law of the Sea* (UNCLOS). He further argued that such confiscation entailed a violation of Article 1 of Protocol No. 1 (protection of property). On 16 September 2014, the Court found that it was not its role to decide on the interpretation of UNCLOS or the relevant Romanian legislation, or on the application of those instruments by the Romanian courts. It could not therefore rule on the breadth or existence of Romania's exclusive economic zone within the meaning of UNCLOS or on any rights and obligations that Romania might have had with regard to such a zone. However, it had to ascertain that the provisions of domestic law, as interpreted and applied by the domestic courts, had not produced any consequences that were incompatible with the ECHR. The Court noted that Mr Plechkov's conviction had not been based on UNCLOS but on national law, which the domestic courts had had to interpret, and found that the two courts in question had reached totally opposite conclusions. It found that the legislation did not precisely delimit the Romanian exclusive economic zone and that the determination of the zone's "breadth" had been expressly reserved pending an agreement between Romania and the neighbouring States, including Bulgaria. The statutory provision in question could not reasonably be regarded as foreseeable in its application. A precise definition of the limits of the exclusive economic zone proclaimed by Romania within the meaning of UNCLOS had been necessary, having regard to the criminal-law consequences that would arise in the event of a violation of the sovereign rights attached to that zone. Moreover, the Court observed that the courts which had convicted Mr Plechkov had also held that, even if an agreement had been concluded between Romania and Bulgaria, it would not have been favourable to the applicant. However, such an interpretation was not based on any established domestic case-law. Consequently, the Court took the view that neither the domestic legislation nor the interpretation thereof by the domestic courts rendered Mr Plechkov's conviction sufficiently foreseeable and found that there had been a violation of Article 7. Having found that the offence for which Mr Plechkov had had his boat confiscated did not satisfy the conditions of lawfulness for the purposes of Article 7, the Court also took the view that the

[31] *Eur. Court HR, Plechkov v. Romania, Judgment* of 16 September 2014, Application No. 1660/03.

interference with his peaceful enjoyment of his possessions did not satisfy the similar condition of lawfulness under Article 1 of Protocol No. 1. There had thus been a violation of Article 1 of Protocol No. 1.

11. Peaceful settlement of disputes

62. In the context of its consideration of the issues relating to the peaceful settlement of disputes, the Chair presented a document on the *Compulsory jurisdiction of the International Court of Justice* (document CAHDI (2015) 3) and informed the Committee that since its previous meeting Italy had recognised the compulsory jurisdiction of the International Court of Justice ("the ICJ") and Greece and the United Kingdom had amended their respective declarations. The Chair then invited the delegations to submit to the Secretariat any relevant information in order to update it.

63. The delegation of Greece informed the Committee that the new declaration was submitted to the UN Secretary-General on 14 January 2015 and that it replaced the previous declaration made on 10 January 1994. Through this declaration, Greece recognises as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, that is on condition of reciprocity, the jurisdiction of the ICJ with respect to all legal disputes referred to in Article 36, paragraph 2, of the Statute of the Court, with the exception of 1) any dispute relating to military activities and measures taken by Greece for the protection of its sovereignty and territorial integrity, for national defense purposes, as well as for the protection of its national security; 2) any dispute concerning State boundaries or sovereignty over the territory of Greece, including any dispute over the breadth and limits of its territorial sea and its airspace; and 3) any dispute in respect of which any other party to the dispute has accepted the compulsory jurisdiction of the Court only in relation to or for the purpose of that dispute; or where the acceptance of the Court's compulsory jurisdiction on behalf of any other party to the dispute was deposited or ratified less than twelve months prior to the filing of the application bringing the dispute before the Court. The delegation of Greece reaffirmed that its State remained committed to the jurisdictional settlement of disputes and to the crucial role of the ICJ in this regard. It highlighted that this attachment to the ICJ was illustrated by the renewed acceptance of the compulsory jurisdiction of the ICJ but also by the explicit reference in the declaration to the possibility of submitting before the ICJ any exempted dispute through the negotiation of a special agreement (*compromis*).

64. The delegation of the United Kingdom informed the CAHDI that its declaration was the same as the previous one and that there were only slight changes regarding the operative time limit and repetitive disputes.

65. The delegation of Romania informed the Committee that in February 2015, the Senate had adopted a law containing the declaration of acceptance of the compulsory jurisdiction of the ICJ. The delegation expressed the hope that the declaration would be submitted by the end of 2015.

66. The Chair suggested for future CAHDI meetings to possibly review under this item any national cases submitted to the ICJ.

67. Following this suggestion, the delegation of Serbia drew the Committee's attention to the recent judgment of the ICJ delivered on 3 February 2015 in the case of *Croatia v. Serbia*[32] concerning the application of the 1948 *United Nations Convention on the Prevention and Punishment of the Crime of Genocide* ("Genocide Convention"). On the merits, the ICJ rejected a claim by Croatia instituted in 1999 that Serbia had violated the Genocide Convention in the armed conflict from 1991 to 1995 that arose after Croatia's declaration of independence. The ICJ also rejected Serbia's counter-claim that Croatia had violated the Genocide Convention during the same armed conflict. The ICJ found that despite the fact that the *actus reus* (intent) of genocide had been established on both sides, the *dolus specialis* (specific intent) of genocide was lacking.

[32] International Court of Justice, *Croatia v. Serbia*, Application lodged on 2 July 1999, Judgment delivered on 3 February 2015.

68. In relation to this judgment, the delegation of Croatia underlined that a significant part of the judgment was dedicated to the issue of the jurisdiction of the ICJ testifying consequently the importance of this issue in the reasoning of the ICJ. It furthermore pointed out that Serbia had introduced its objection regarding the jurisdiction of the ICJ in 2001 and that the ICJ issued a partial judgment on this issue in 2008. The ICJ had reached its decision on jurisdiction only as a part of its final judgment of 2015. The delegation of Croatia further noted that the ICJ introduced a gradient legal construction based on a number of assumptions. In this regard, given that the ICJ found that the *dolus specialis* (specific intent) of genocide was lacking, it considered that it did not need to rule on other matters, such as the attribution of the acts found to have been committed, or succession to responsibility. The delegation of Croatia finally underlined that the judgment was important for several reasons and notably in that it established the facts and historical account of the tragic events that took place in the process of dissolution of the former Yugoslavia but also well after the new independent States emerged on the European map, including (as regards the claim) those related to planned, systematic and widespread violence equalling to ethnic cleansing aimed at establishing an ethnically homogeneous nation State on the territory of the Republic of Croatia. Furthermore, it was also important since it build upon and confirmed a number of judgments of the International Criminal Tribunal for the former Yugoslavia (ICTY) by which, *inter alia*, any construction of a joint criminal enterprise on a part of the Croatian leadership aimed at expelling the Serb population from Croatia was definitely refuted.

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

69. 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 (2015) 4 rev and CAHDI (2015) 4 Addendum prov 1) and opened the discussion.

70. With regard to the **declaration from Georgia** to the Convention on the Reduction of Statelessness, several delegations expressed concerns with regard to the reference to national legislation and indicated that they wished to obtain clarifications from Georgia on the scope and content of this declaration.

71. With regard to the **modification of reservation from Denmark** on the International Covenant on Civil and Political Rights, the Danish delegation informed the Committee of the content of its modification of reservation, explaining that it aimed at delineating more precisely the scope of the initial reservation. One delegation expressed doubts with regard to the scope and content of this modification of reservation.

72. With regard to the **partial withdrawal of declaration from Tunisia** on the Convention on the Elimination of All Forms of Discrimination against Women, some delegations welcomed this partial withdrawal which narrowed the scope of the initial declaration. One delegation informed the Committee that its objection made to the initial declaration remained valid.

73. With regard to the **partial withdrawal of reservation from Mauritania** on the Convention on the Elimination of All Forms of Discrimination against Women, some delegations informed the Committee that their objections made to the initial reservation continued to be valid for the remaining part of the reservation and that they therefore did not need to react to this partial withdrawal of reservation.

74. With regard to the **interpretative declaration from the Democratic Republic of the Congo** to the United Nations Convention on the Law of the Sea, it was recalled that Angola had made a similar declaration upon signature which was not confirmed upon ratification. Concerns were voiced by several delegations with respect to scope of this interpretative declaration which

could amount to a reservation. Furthermore, some delegations pointed out the belated character of this interpretative declaration and indicated that they were considering objecting.

75. With regard to the **declarations from Viet Nam** to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, one delegation indicated that the declarations were not problematic as they were envisaged by the Convention itself.

76. With regard to the **reservation from El Salvador** on the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the Abolition of the Death Penalty, concerns were voiced with respect to the crimes that were encompassed by the reservation and whether El Salvador only referred to the most serious crimes, in compliance with the Protocol. Many delegations stated that they were considering objecting.

77. With regard to the **late reservation from Honduras** on the United Nations Convention against Corruption, several delegations informed the Committee that they were considering objecting given the belated character of this reservation.

78. With regard to the **declarations from New Zealand, Liechtenstein and Switzerland** to the Arms Trade Treaty, the delegations of Switzerland and Liechtenstein informed the Committee of the scope and content of their declarations, explaining that they aimed at clarifying the terms of the Treaty. One delegation pointed out that the Treaty had been negotiated and that it was therefore not suitable to interpret its provisions.

79. With regard to the **declaration from Azerbaijan** to the Council of Europe Convention on Mutual Administrative Assistance in Tax Matters, the delegation of Azerbaijan informed the Committee on the scope and content of its declaration.

80. With regard to the **reservation from Monaco** on the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the delegation of Monaco informed the Committee on the scope and content of its declaration. One delegation expressed doubts with respect to the offences that were encompassed by the reservation, notably due to the use of the term “in particular”.

81. Following the suggestion of one delegation, the CAHDI agreed to have an exchange of views at its next meeting on the different national objection procedures and notably on the modalities and competences for making objections.

13. Review of Council of Europe Conventions

82. Following the decision of the Ministers’ Deputies 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 on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes* (ETS No. 82), presented in document CAHDI (2015) 5. The Chair invited the delegations to hold an exchange of views on the practical importance of the Convention.

83. From the outset, the CAHDI noted that the *European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes* entered into force on 27 June 2003, i.e. 29 years after its adoption. At present, the Convention has been ratified by 7 States (Belgium, Bosnia and Herzegovina, Montenegro, Netherlands, Romania, Serbia and Ukraine) and signed by one State (France).

84. Some delegations considered that the limited number of parties to the Convention was due to the entry into force on 1 July 2002 of the *Rome Statute of the International Criminal Court* (the “Rome Statute”) which thus overtook the Council of Europe convention. Indeed, according to

Article 29 of the Rome Statute, *"the crimes within the jurisdiction of the Court shall not be subject to any statute of limitations"*[33]. They had therefore no intentions to sign or ratify it.

85. However, several delegations also underlined that given its purpose, namely to ensure that the punishment of crimes against humanity and the most serious violations of the laws and customs of war was not prevented by statutory limitation, the Convention had its own value and merits. It was therefore pointed out that it should not be regarded as obsolete and that it could constitute evidence of an international custom.

86. Considering the different points of view, the Chair invited all delegations to provide written comments before the next meeting on:

- the impact and efficiency of the Convention;
- the identification of any operational problems and obstacles to ratification of the Convention;
- the declarations which impact substantively on the effectiveness of the implementation of the Convention;
- the necessity or advisability of drafting amendments or additional protocols to supplement the Convention.

[33] According to Article 5 of the Rome Statute, the crimes falling within the jurisdiction of the ICC are the following: the crime of genocide, crimes against humanity, war crimes and the crime of aggression.

III. GENERAL ISSUES OF PUBLIC INTERNATIONAL LAW

14. Exchange of views with Ms Kimberly Prost, Ombudsperson of the United Nations Security Council's Al-Qaida Sanctions Committee

87. The Chair welcomed and thanked Ms Kimberly Prost, Ombudsperson of the United Nations Security Council's Al-Qaida Sanctions Committee 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 again with the presence of the Ombudsperson of the UN, four years after her first exchange of views with the Committee.

88. Ms Prost informed the CAHDI of the successes, the setbacks and the challenges of the Ombudsperson four years after her appointment[34].

89. Ms Prost recalled that her Office was established by *UNSC Resolution 1904 (2009)*[35] and that it became operational in July 2010. It was created as a result of due process challenges related to the use of targeted sanctions, particularly with respect to the Al-Qaida, and also driven by the review of such regimes by the European courts. Its role was to receive requests directly from the listed entities and individuals, gather information, interact with the petitioner, relevant States and organisations with regard to the request and prepare a comprehensive report to the Sanctions Committee.

90. Regarding the main successes, Ms Prost firstly highlighted that the existence of the delisting mechanism became known not only due to the Office's dissemination work, but also thanks to individual States informing and encouraging their citizens and residents about the existence of the Office. Secondly, Mr Prost underscored that the mechanism was widely used by the listed persons and entities. In this respect, she pointed out that 63 petitions had been submitted in the last 4 years, including 48 concluded through the Ombudsperson, resulting in 42 granted petitions. In Ms Prost's view, this wide use was attributable not only to the simplicity of the petition procedure and to the Ombudsperson being regarded as qualified and experienced, but mainly to the process acquiring reputation of being fair and independent. Ms Prost stressed the importance of maintaining this confidence and trust which was highly dependent on the Ombudsperson's reputation, qualification and experience.

91. Regarding the delivering of fair process, Ms Prost underlined the two critical steps taken by the UN Security Council with the adoption of *UNSC Resolution 1989 (2011)*[36], which modified *UNSC Resolution 1904 (2009)* and extended the mandate of the Ombudsperson. Firstly, the Security Council decided that the Ombudsperson should present to the Sanctions Committee observations and a recommendation on the delisting of those individuals, groups, undertakings or entities that have requested removal from the Al-Qaida Sanctions List through the Office of the Ombudsperson. The recommendations would either be a recommendation to retain the listing or a recommendation that the Committee consider delisting – giving thus the Ombudsperson a "recommendation power". Secondly, the *UNSC Resolution 1989 (2011)* also provided that where the Ombudsperson recommends that the Sanctions Committee consider delisting, the individual or entity will be delisted unless, within 60 days, the Committee decides by consensus to maintain the listing. However, if there is no such consensus, during that 60 day period, a Committee member may request the matter to be referred to the Security Council for a decision on the question of whether to delist. In this regard, Ms Prost welcomed that neither of these eventualities had occurred since her appointment meaning that the independent review mechanism governed all the petitions to date. In addition, the mechanism was also strengthened by the *UNSC Resolution 1989 (2011)* in that it mandated the Ombudsperson to meet the petitioners in person. This, according to

[34] The speech of Ms Prost will be published on the website of the CAHDI, at the following link.
[35] See the United Nations Security Council Resolution 1904 (2009), adopted by the Security Council at its 6247th meeting, on 17 December 2009, at the following link.
[36] See the United Nations Security Council Resolution 1989 (2011), adopted by the Security Council at its 6557th meeting, on 17 June 2011, at the following link.

Ms Prost, combined with the effective remedy of delisting, ensured in practice that the Ombudsperson mechanism delivered fair process.

92. Ms Prost also shared her reflections on one of the most significant setbacks, notably that the creation of the Ombudsperson failed thus far to eliminate intervention by the national and regional courts to assess the sufficiency of the listings, which undermined the effectiveness of the sanctions regimes and created potential for conflict of States obligations. In this respect, Ms Prost referred to two judgments of the Court of Justice of the European Union ("CJEU"). In the so-called *"Kadi I"* judgment of 3 September 2008[37], the CJEU considered that it could decide on this specific issue as there existed no international mechanism. Five years later in the so-called "*Kadi II"* judgment of 18 July 2013[38], the CJEU did not mention the existence of an Ombudsperson despite all the submissions on steps taken at international level.

93. Finally, Ms Prost underlined some of the key challenges. Firstly, access to classified and confidential information remained the most significant challenge in terms of gaining access to the material from countries. While some progress had been made with agreements for access, there was still more which needed to be done. There was also the challenge to fair process if such information was obtained and relied on given that it was not disclosed to the Petitioner. To date the confidential material had not been such so as to affect overall fairness but that could become an issue in future cases. Ms. Prost also highlighted the significant challenge arising from the fact that despite the language of *UNSC Resolution 1904 (2009)*, calling for an Office of the Ombudsperson, no such office had ever been established within the UN structure. In addition, the contractual arrangements put in place to engage an Ombudsperson – essentially a consultancy contract – were extremely problematic in terms of the management of staff and resources and were fundamentally inconsistent with the independent role of the Ombudsperson. Finally, because of these contractual and structural issues, there were no institutional protections for the independence of the Office of the Ombudsperson; independence was maintained solely on the basis of the personalities involved. The fragility of this was of significant concern as the Office of the Ombudsperson moved forward. Ms. Prost also noted that the question of the extension of the Ombudsperson's mandate to other sanctions regimes remained topical.

94. In conclusion, Ms Prost emphasised that the progress made over the last 4 years was very important for individual rights involved, but equally significant in terms of bringing credibility and strength to the targeted sanctions regimes.

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

96. Delegations welcomed the presence of Ms Prost in the Council of Europe and commended her important, efficient and independent work. Many delegations highlighted that her functions contributed to the strengthening, effectiveness and credibility of the Al-Qaida sanctions regime. Moreover, several delegations expressed support for her continuation in the post of the Ombudsperson. The decrease in a number of challenges before the European courts due to her excellent work and the dissemination work of her Office were also applauded.

97. Delegations voiced their view that despite Ms Prost's outstanding efforts, the mandate needed to be further reformed and strengthened. In this respect, many delegations referred to the proposals of the Group of Like-Minded States on Targeted Sanctions[39] advocating for, amongst other, the institutional stability of the Office of the Ombudsperson, the extension of the mandate to

[37] Court of Justice of the European Union, Case C-402/05 P, *Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities*, Grand Chamber Judgment of 3 September 2008.
[38] Court of Justice of the European Union, Case C-548/10 P, *European Commission and Others v. Yassin Abdullah Kadi*, Grand Chamber Judgment of 18 July 2013.
[39] The Group of Like-Minded States comprises Austria, Belgium, Costa Rica, Denmark, Finland, Germany, Liechtenstein, the Netherlands, Sweden, Switzerland and Norway.

other sanctions regimes and the need for transparency[40]. With regard to transparency, many delegations underlined that all decisions, regardless of whether they maintain or discontinue a listing of an individual or entity, should provide adequate and substantial reasons. Moreover, those reasons as well as a redacted version of the comprehensive report of the Ombudsperson should be published, allowing for legitimate privacy, security and confidentiality interests to be adequately protected. Delegations welcomed in this regard the steps taken in *UNSC Resolution 2161 (2014)*[41] as far as provision of reasons for delisting and retention as well as transparency of the process were concerned and expressed the hope that the UN Security Council considered further steps in this regard. Ms Prost commended these proposals and further indicated that in order to ensure that targeted sanction regimes satisfy basic due process guarantees and are in conformity with internationally recognized human rights standards, the listed individual or entity should be adequately informed about the listing and a narrative summary of reasons could, for example, be communicated.

98. Regarding regional and national courts, several delegations underlined that considerable due process concerns persisted and that legal challenges had been filed in those courts. They pointed out that the judgments, to which Ms Prost referred, illustrated how member States' implementation of UN measures, including sanctions, were being subjected to full judicial review. They stressed that States, when implementing UN sanctions, had indeed to adhere to fundamental due process standards such as the right to be heard, the right to have access to information, subject to legitimate confidentiality limitations, the right to be informed about the reasons of a decision, the right to an effective remedy and the right to have cases decided within a reasonable time. They further noted that as long as national and regional courts considered UN sanctions to fall short of internationally recognized due process standards, national authorities could find themselves in the undesired situation of being unable to fully implement UN sanctions at the national level. In this regard, Ms Prost agreed that a reflection should be devoted to these issues in the near future as they touched upon the relationship between international, regional and national systems.

99. With regard to the possible extension of the mandate of the Ombudsperson to other sanctions regimes, several delegations welcomed such proposal which would improve due process guarantees in other targeted sanctions regimes. Acknowledging that each sanctions regime and its underlying political situation was unique and that some sanctions regimes were more suitable for such extension than others, several delegations however took the view that this process should be undertaken, on a case by case basis and with the possible need to adapt the Ombudsperson's mandate.

100. In relation to the possible transposition of the Ombudsperson's process to international organisations notably in dealing with disputes of private character, Ms Prost took the view that such process could constitute a preliminary mediation step before the assessment of a tribunal and that it would thus comply with the need to provide "reasonable alternative means" within an international organisation.

15. Consideration of current issues of international humanitarian law

101. The Chair invited the delegations to discuss current issues concerning international humanitarian law and present any relevant information, including on forthcoming events.

102. The delegation of Switzerland as well as the representative of the International Committee of the Red Cross (ICRC) provided an update to the CAHDI members on the work mandated by Resolution 1 of the *31st International Conference of the Red Cross and Red Crescent* on

[40] The Group of Like-Minded States also advocates for improved information sharing between Member States and the Ombudsperson as well as between the Sanctions Committee and Member States, national and regional Courts, and other authorities, enhanced transparency, and timely provision of information and reasoned decisions about the listings.
[41] See the United Nations Security Council Resolution 2161 (2014), adopted by the Security Council at its 7198th meeting, on 17 June 2014, at the following link.

"Strengthening Legal Protection for Victims of Armed Conflicts". They recalled the two tracks of this work, namely: on the one hand, strengthening international humanitarian law (IHL) compliance mechanisms co-facilitated by Switzerland and the ICRC, and on the other hand, strengthening legal protection of persons deprived of liberty in non-international armed conflict (NIAC).

103. Regarding the first track, the delegation of Switzerland informed the Committee that following three years of consultations, the project entered a decisive stage. It was noted that the outlines of a future IHL compliance system were discernible and would notably comprise the creation of an institutional forum dedicated to IHL[42]. The delegation of Switzerland informed the Committee that the questions relating notably to the establishment and the institutional structure of a Meeting of States with a possible periodic reporting system as well as thematic discussions on IHL issues would be examined at the *Fourth Meeting of States* scheduled to take place in Geneva on 23-24 April 2015. A concluding report on the consultation process with a range of options and recommendations would then be submitted by the ICRC to the *32nd International Conference of the Red Cross and Red Crescent* scheduled to take place in Geneva on 8-10 December 2015. During this Conference, the adoption of a resolution endorsing the results of the consultations is foreseen.

104. Regarding the second track of the work, the representative of the ICRC informed the Committee that following the four regional consultations held by the ICRC in 2012 and 2013, the ICRC had decided to hold two centralised thematic discussions. These discussions focused on assessing the modalities to strengthen the law to address the four main substantive areas identified as priorities, namely: 1) conditions of detention, 2) particularly vulnerable groups of detainees, 3) grounds and procedures for internment and 4) transfer of detainees. He informed the Committee that the first two areas were addressed during the first thematic consultation (29-30 January 2014) and that the two others were discussed during the second thematic consultation (20-22 October 2014).

On the occasion of the second thematic consultation, the participating experts had underlined, with regard to the grounds and procedure for internment that:

- internment was an exceptional measure in NIAC;
- the purpose of internment was distinct from that of criminal detention;
- any articulation of the acceptable grounds for internment had to be broad enough to allow detention of persons to prevent future imperative threats from materialising, but narrow enough to exclude internment of persons whose detention would go beyond what was militarily necessary;
- the key components of an effective procedural safeguards regimes were: 1) procedures for forces to follow from the point of capture; 2) an initial opportunity to challenge the lawfulness of internment; and 3) periodic review of continued detention;
- the body (or bodies) conducting the initial and periodic review had to be capable of acting as a true check on the decision-making power of the detaining authority.

With regard to transfers, the participating experts considered, insofar as classical NIAC detention operations were concerned, that the protections found in existing international human rights and refugee law were both adequate and practicable in the circumstances generated by NIAC. However, it transpired that in the realm of extraterritorial transfers – cases in which forces operating outside their own territory detain persons and subsequently transfer them to the territorial State or to other States – protections tailored to the circumstances generated by such NIAC were most needed. The representative of the ICRC furthermore informed delegations that, following this second thematic consultation, a final consultation meeting would take place on 27-29 April 2015, during which States would be asked to evaluate concrete options to strengthen the law in relation to detention in NIAC.

[42] This forum would notably aim at promoting the knowledge of rules of IHL; identifying the challenges in implementing and promote "good practices"; identifying the needs of the States for technical assistance and to strengthen the cooperation in this field; and lastly strengthening the exchanges between the officials and experts at the national level in the implementation of the IHL.

105. The representative of the ICRC finally informed the delegations that the track devoted to strengthening international humanitarian law (IHL) compliance mechanisms and the track on detention would be among the main topics at the *32nd International Conference of the Red Cross and Red Crescent*. States would also be invited to update by mid-2015 the ICRC on the actions they had taken to implement the four-year action plan for the implementation of IHL, adopted in Resolution 2 of the *31st International Conference*.

106. The delegation of Switzerland further informed the Committee that the "Montreux Document Forum" – an informal platform for consultations – was established on 16 December 2014 in Geneva and aimed at encouraging the national implementation of 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"* ("Montreux Document"). In this respect, the delegation of Switzerland encouraged the States which had not yet done so to support the Montreux Document[43]. It highlighted that a meeting of the Working Group on the International Code of Conduct for Private Security Providers' Association would be held in Spring 2015, that the website of the Montreux Document Forum would be launched in May 2015 and that the next meeting of the Montreux Document Forum would take place in January 2016.

107. The delegation of Belgium informed the CAHDI that a conference of experts on the topic "Mechanism of fact-finding and international humanitarian law" would be organised by Belgium in partnership with the United Kingdom on 2 June 2015 in Brussels. This event will continue the discussion launched during the side event co-organised by Switzerland and the United Kingdom in the margin of the Twelfth Session of the Assembly of States Parties to the Rome Statute in 2013, entitled "Enquiry and fact-finding commissions: a potential role for the IHFFC?". It will pursue three objectives: 1) to consider the utility of a fact-finding function in the context of the implementation of the IHL and the specificities of such a function in the IHL context; 2) to consider the potential role of the International Humanitarian Fact-Finding Commission in this respect; and 3) to consider the opportunities to strengthen the fact-finding functions in situations where IHL applies.

108. The delegation of Belarus informed the Committee that the *Fifth Regional Seminar on Implementation of International Humanitarian Law* was held on 18-20 March 2015 in Minsk. The event was organised with the support of the ICRC and aimed at promoting awareness and understanding of IHL. It focused notably on the legal protection afforded to persons deprived of their liberty, sexual violence in armed conflicts, the creation of a legal framework concerning missing people and the IHL compliance mechanism.

109. The representative of NATO informed the Committee that on the occasion of the NATO Summit of Heads of State and Government held in Wales on 4-5 September 2014, the NATO endorsed an Enhanced Cyber Defence Policy recognising, *inter alia*, that international law, including IHL and the UN Charter, applied in cyberspace. It furthermore decided to establish a permanent position of NATO Special Representative for Women, Peace and Security. The representative of NATO finally informed the Committee that the NATO was in the final stages of implementing *UNSC Resolution 1612 (2005)*[44] related to the issue of children in armed conflicts.

16. Developments concerning the International Criminal Court (ICC) and other international tribunals

i. *The International Criminal Court (ICC)*

110. The CAHDI took note of the ratification of the two amendments to the Rome Statute adopted at the Review Conference of the Rome Statute held in Kampala (Uganda) on 31 May –

[43] To date (27 March 2015), 51 States and three international organisations have supported the Montreux Document. The Montreux Document Forum was composed of one plenary meeting, two working groups (ICoCa and Maritime Safety), a Group of Friends and the Secretariat (DCAF).
[44] See the text of the Resolution at the following link.

11 June 2010, also known as the "Kampala amendments"[45], by Latvia, Spain and Poland on 25 September 2014, by Malta on 30 January 2015, by Costa Rica on 5 February 2015 and by the Czech Republic on 12 March 2015. It further took note that San Marino and Georgia ratified the Kampala amendment on the crime of aggression respectively on 24 November 2014 and on 5 December 2014. Furthermore, the CAHDI took note that:

- Switzerland would probably ratify both Kampala amendments in the course of the year 2015 given that the parliamentary procedure for the ratification had ended;

- the proposal for ratification by Finland of the Kampala amendments was currently being discussed in the Parliament.

111. The Chair reminded delegations that the Thirteenth Session of the Assembly of States Parties to the Rome Statute (ASP) took place from 8 to 17 December 2014 in New York, during which:

- six new judges were elected[46];

- Mr Sidiki Kaba, Minister of Justice of Senegal, was elected President from the Thirteenth to the Sixteenth Session of the ASP (2014-2017);

- the ASP held its general debate and a plenary segment to discuss cooperation which focused on two topics: "Cooperation in the field of Sexual and Gender Based Crimes" and on cooperation in general.

112. Furthermore, delegations were informed that on 11 March 2015, the judges of the ICC, sitting in a plenary session, elected Judge Silvia Fernández de Gurmendi (Argentina) as President of the ICC for a three-year term with immediate effect. Judge Joyce Aluoch (Kenya) was elected First Vice-President and Judge Kuniko Ozaki (Japan) Second Vice-President.

113. The Committee also took note of recent developments concerning the activity of the ICC:

- On 9 October 2014, the Appeals Chamber dismissed Mr Ruto's (who serves currently as the Deputy President of the Republic of Kenya) and Mr Sang's (the Head of operations at Kass FM in Nairobi (the Republic of Kenya)) appeals against the Trial Chamber decision requiring witnesses to appear[47]. They face charges for crimes against humanity.

- On 1 December 2014, the Appeals Chamber delivered its judgment in the case of *The Prosecutor v. Thomas Lubanga Dyilo*[48], confirming, by majority, the guilty verdict and sentence of 14 years of imprisonment for war crimes in Ituri (Democratic Republic of the Congo).

- On 27 February 2015, the Appeals Chamber delivered its judgment in the case of *The Prosecutor v. Mathieu Ngudjolo Chui*[49], alleged former leader of the "Front des nationalistes et intégrationnistes" in Congo, confirming, by majority, the Trial Chamber II's decision acquitting him of charges of crimes against humanity and war crimes.

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[45] To date (27 March 2015), 24 States have ratified the Amendment to Article 8 of the Rome Statute of the ICC and 23 States have ratified the Amendment on the crime of aggression to the Rome Statute of the ICC.
[46] Chang-ho CHUNG (Republic of Korea), Piotr HOFMAŃSKI (Poland), Péter KOVÁCS (Hungary), Antoine Kesa-Mbe MINDUA (DRC), Marc Pierre PERRIN DE BRICHAMBAUT (France) and Bertram SCHMITT (Germany).
[47] International Criminal Court, *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, case No. ICC-01/09-01/11.
[48] International Criminal Court, *The Prosecutor v. Thomas Lubanga Dyilo*, case No. ICC-01/04-01/06.
[49] International Criminal Court, *The Prosecutor v. Mathieu Ngudjolo Chui*, case No. ICC-01/04-02/12.

- On 3 March 2015, the Appeals Chamber delivered its judgment in the case of *The Prosecutor v. Abdallah Banda Abakaer Nourain*[50] rejecting Mr Nourain's appeal against Trial Chamber IV's decision replacing the summons to appear by a warrant of arrest. Mr Nourian, Commander-in-Chief of one of the components of the United Resistance Front, faces three counts of war crime committed in Darfur (Sudan).

ii. Other international criminal tribunals

114. The CAHDI took note of recent developments concerning the functioning of other international criminal tribunals.

115. As regards the International Criminal Tribunal for the former Yugoslavia (ICTY), the CAHDI took note that:

- In the case *Radovan Karadžić*[51], former President of Republika Srpska ("RS") facing several counts of genocide and crimes against humanity committed on Bosnian Muslims and Bosnian Croat nationals, the Trial Chamber denied the accused's motion for withdrawal of charges (the Rule 73 *bis*, charges upon which the Prosecution has voluntarily decided not to provide evidence as well as charges on which, in the opinion of the accused, there was "plainly insufficient evidence"), made at the end of the defence case, on the grounds that the request was moot and without merit. The trial judgment is expected in October 2015.

- In the case of *Vojislav Šešelj*[52], former President of the newly founded Serbian Radical Party and elected member of the Assembly of the RS facing charges of crimes against humanity and violations of law and customs of war, Trial Chamber III, by a majority, on 6 November 2014 ordered *proprio motu* release of the accused to the Republic of Serbia pending delivery of the judgment, and lifted the confidentiality of the annex to this order setting out conditions of the release. On 13 January 2015, the Trial Chamber denied the Prosecution's request to revoke his provisional release, ruling that no violation of the conditions of the provisional release had occurred (although the accused's statements to the press were regrettable, they did not constitute the threatening of witnesses).

- In the case of *Popović et al.*[53], the Appeals Chamber delivered its judgment on 30 January 2015, concerning five senior Bosnian Serbian military officials for crimes perpetrated by Bosnian Serb forces in July 1995, following the takeover of the protected areas of Srebrenica and Žepa. The final convictions stand as follow:

    - Vujadin Popović and Ljubiša Beara were found guilty of genocide, conspiracy to commit genocide, violations of the laws or customs of war, and crimes against humanity, through their participation in a Joint Criminal Enterprise (JCE). Their sentences of life imprisonment were affirmed.
    - Drago Nikolić's convictions for aiding and abetting genocide, crimes against humanity and violations of the laws or customs of war through his participation in a JCE were upheld. His sentence of 35 years of imprisonment was affirmed.

[50] International Criminal Court, *The Prosecutor v. Abdallah Banda Abakaer Nourain*, case No. ICC-02/05-03/09.
[51] International Criminal Tribunal for the Former Yugoslavia, *The Prosecutor v. Radovan Karadžić*, Decision on Accused's Motion for Withdrawal of Charges, Decision of 13 October 2014, Case No. IT-95-5/18-T.
[52] International Criminal Tribunal for the Former Yugoslavia, *The Prosecutor v. Vojislav Šešelj*, Order on the Provisional release of the Accessed *Proprio Motu*, Order of 6 November 2014, Case No. IT-03-67-T.
[53] International Criminal Tribunal for the Former Yugoslavia, *The Prosecutor v. Popović et al.*, Judgment of 30 January 2015, Case No. IT-05-88-A.

- Radivoje Miletić was found guilty of crimes against humanity and violations of the laws or customs of war, through his participation in a JCE. His sentence of 19 years of imprisonment was reduced to 18 years of imprisonment.
- Finally, Vinko Pandurević was found guilty of aiding and abetting violations of the laws or customs of war and crimes against humanity. He was also found guilty of failing to prevent and punish the crimes of his subordinates. His sentence of 13 years of imprisonment was affirmed.

116. As regards the International Criminal Tribunal for Rwanda (ICTR), the CAHDI took note of three judgments delivered by the Appeals Chamber on 29 September 2014, which left only one case[54] remaining on appeal before the Tribunal seizes to function. The defendants are politicians and military officer responsible for genocide, war crimes and crimes against humanity committed against Tutsi and moderate Hutu civilian population in Rwanda:

- In the case of *Édouard Karemera and Matthieu Ngirumpatse*[55]*,* the Appeals Chamber affirmed convictions for direct and public incitement to commit genocide, extermination and rape as crimes against humanity, and murder as a serious violation of Article 3 common to the Geneva Conventions and Additional Protocol II. It reversed certain findings of the Trial Chamber, which, however, did not result in the overturning of any of their convictions. The Appeals Chamber affirmed their sentences of life imprisonment.

- In the case of *Ildéphonse Nizeyimana*[56], the Appeals Chamber affirmed convictions for genocide, murder as a crime against humanity, and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II. It reversed certain findings of the Trial Chamber which resulted in reversal of convictions for genocide, extermination and murder as crimes against humanity, and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II in relation to the attack on Cyahinda Parish and the killing of Karenzi. In view of these reversals, their sentence was reduced from life to 35 years imprisonment.

- In the case of *Callixte Nzabonimana*[57], the Appeals Chamber affirmed convictions for instigating genocide and extermination as a crime against humanity, for direct and public incitement to commit genocide, as well as his conviction for conspiracy to commit genocide. It reversed his convictions for other offences of direct and public incitement to commit genocide, for conspiracy to commit genocide and weapons distribution. It affirmed his sentence of life imprisonment.

117. The CAHDI also took note of the first judgment on appeal, lodged by *Augustin Ngirabatware*[58], Minister of Planning of Rwandan government during the atrocities in Rwanda, delivered by the Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (MICTR), which was established by the UN Security Council to take over functions of the ICTY and ICTR, which are in the process of completing their mandates:

- The Appeals Chamber affirmed convictions for direct and public incitement to commit genocide and for instigating and aiding and abetting genocide. It reversed his conviction for rape as a crime against humanity under the extended form of joint

[54] International Criminal Tribunal for Rwanda, *Nyiramasuhuko et al. (Butare) v. Prosecutor,* Judgment of 24 June 2011, Case No. ICTR-98-42.
[55] International Criminal Tribunal for Rwanda, *Karemera et. al. v. Prosecutor*, Judgment of 29 September 2014, Case No. ICTR-98-44.
[56] International Criminal Tribunal for Rwanda*, Ildéphonse Nizeyimana v. Prosecutor,* Judgment of 29 September 2014, Case No. ICTR-00-55C.
[57] International Criminal Tribunal for Rwanda*, Callixte Nzabonimana v. Prosecutor,* Judgment of 29 September 2014, Case No. ICTR-98-44D.
[58] Mechanism for International Criminal Tribunal, Appeals Chamber*, Augustin Ngirabatware v. Prosecutor,* Judgment of 20 December 2014, Case No. ICTR-99-54.

criminal enterprise, and reduced his sentence to a term of 30 years (from 35 years) of imprisonment.

118. With regard to the Extraordinary Chambers in the Courts of Cambodia (ECCC), the CAHDI took note that:

- In the case 002/01[59], the accused Nuon Chea and Khieu Samphan, both highly ranked officials of the Khmer Rouge, lodged appeals on 29 September 2014 against their convictions for crimes against humanity committed between April 1975 and December 1977, resulting in sentences of life imprisonment.

- In the cases 003[60] and 004[61], on 3 March 2015, the International Co-Investigating Judge charged Meas Muth and Im Chaem *in absentia* with a number of offences under the 1956 Cambodian Penal Code and under the Grave Breaches of the Geneva Conventions of 1949.

119. With regard to the Special Tribunal for Lebanon (STL), the CAHDI took note that:

- In the case STL-14-06 (pre-trial stage), relating to the assassination of Rafiq Hariri and others on 14 February 2005, against *Akhbar Beirut S.A.L. and Mr Ibrahim Mohamed Ali Al Amin*[62], the Appeals Panel ruled that the Tribunal had jurisdiction to hear cases of obstruction of justice against legal persons (corporate entities), reversing decision of the Contempt Judge and reinstating charges against Al Akhbar Beirut S.A.L.

iii. Other issues related to international criminal law

120. The delegation of Germany informed the Committee of the establishment of the International Nuremberg Principles Academy[63] in Nuremberg (Germany). It is dedicated to the advancement of international criminal law and is conceived as a forum for the discussion of contemporary issues in this field. The Academy will hold its Official Opening Event "Accountability and the Nuremberg Principles – 70 years after the Nuremberg Trials" on 6-7 June 2015.

121. The delegation of Latvia informed the Committee that on 16 March 2015, the Latvian Presidency of the Council of the European Union organised together with the Trust Fund for Victims and in collaboration with the Hague Institute for Global Justice a seminar on “Psychological Rehabilitation of Victims”.

122. The delegation of Japan informed the Committee that Japan had submitted a voluntary contribution to the Trust Fund for Victims.

17. Topical issues of international law

- *Drones and targeted killings*

123. The Chair recalled that during the last two meetings of the Committee, the Secretariat had provided information to the CAHDI on the work of the Parliamentary Assembly of the Council of Europe (PACE) on *“Drones and targeted killings”* under agenda item 15 related to “Consideration of current issues of international humanitarian law”. As agreed during the last meeting of the CAHDI, the Report of the Committee on Legal Affairs and Human Rights of the PACE on *“Drones*

[59] Extraordinary Chambers in the Courts of Cambodia, *Case 002/01*, Judgment of 7 August 2014, Case File No. 002/19-09-2007/ECCC/TC.
[60] See the Statement of the International Co-Investigating Judge regarding Case 003 at the following link.
[61] See the Statement of the International Co-Investigating Judge regarding Case 004 at the following link.
[62] Special Tribunal for Lebanon, *Akhbar Beirut S.A.L. and Mr Ibrahim Mohamed Ali Al Amin,* Case No. STL-14-06.
[63] See the website of the International Nuremberg Principles Academy at the following link.

and targeted killings: the need to uphold human rights"[64] had been made available to all delegations for information. The Chair pointed out that this Report had been circulated under agenda item 17 related to "Topical issues of international law" due to the fact that it related to questions beyond humanitarian law.

124. It was recalled that a hearing took place on 30 September 2014 and that the PACE Rapporteur for this subject, Mr Arcadio Diaz Tejera, prepared a report including a draft preliminary resolution and a draft preliminary recommendation. This report was submitted for approval to the Committee on Legal Affairs and Human Rights of the PACE which adopted unanimously the draft resolution and the draft recommendation on 27 January 2015. The Chair informed delegations that this report, together with the draft resolution and draft recommendation, would be examined on 23 April 2015 by the PACE at its Spring Session (Strasbourg, 20-24 April 2015).

125. Delegations agreed that considering the topicality of this issue and the lack of time to examine in debt this recent report, the question should be included in the agenda of the next meeting of the CAHDI during which an exchange of views should take place.

[64] The text of the Report is available at the following link.

IV. OTHER

18. Date and agenda of the 50th meeting of the CAHDI

126. The CAHDI decided to hold its 50th meeting in Strasbourg on 24-25 September 2015. The Committee instructed the Secretariat, in liaison with the Chair of the Committee, to prepare in due course the provisional agenda of this meeting.

19. Other business

i. Possible review and updating of the "Amended Model Plan for the Classification of Documents concerning State Practice in the Field of Public International Law" adopted by the Committee of Ministers in Recommendation No. R (97) 11 of 12 June 1997

127. Following the proposal of the delegation of the United Kingdom, the CAHDI held an exchange of views on the possibility to revise and update the *"Amended Model Plan for the Classification of Documents concerning State Practice in the Field of Public International Law"* adopted by the Committee of Ministers in Recommendation No. R (97) 11 of 12 June 1997.

128. The Chair reminded delegations that this Model Plan had been prepared at the initiative of the CAHDI. Indeed, with the aim of contributing to the Decade of International Law of the United Nations (1990 – 1999), the CAHDI instituted in 1992 a working group (DI-S-PR) with a mandate to consider ways of dealing with and exchanging information concerning State practice in the field of public international law. Following the work of the group, the CAHDI launched a pilot project in order to gather contributions of States. On the basis of these consultations, the CAHDI approved a model plan of classification. On 12 June 1997, the Committee of Ministers adopted *Recommendation No R(97)11 on the amended model plan for the classification of documents concerning State practice in the field of public international law*.

129. The delegation of the United Kingdom informed the Committee that the United Kingdom used the Model Plan for the publication of the Annual Digest of State Practice in the *British Yearbook of International Law*. It underlined the usefulness of such a shared structure facilitating comparative research and availability of best practice. However, the delegation pointed out that the existing plan appeared to be outdated as it did not include important issues of contemporary practice. It therefore proposed to engage in a reflection to possibly revise and update it.

130. Despite some delegations recognising that they did not use this Model Plan, the CAHDI agreed that the proposal merited further attention and that it would be examined at its next meeting. It therefore invited the delegation of the United Kingdom to provide for the next meeting a working document outlining the reasons for such revision and the advantages of an updated Model Plan.

ii. Other issues

131. Following the proposal of the delegation of Armenia, the CAHDI invited delegations to provide to the Secretariat any relevant information and documents regarding upcoming activities in their respective States related to international law, in order for the Secretariat to circulate them to all other delegations.

132. One delegation requested information to other delegations on their national system of publication and notification concerning international conventions. This delegation announced that it would send an email to all CAHDI participants for this purpose.

APPENDICES

APPENDIX I

LIST OF PARTICIPANTS

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

ALBANIA / ALBANIE

Mr Armand SKAPI
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Treaties and International Law Department
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ANDORRA / ANDORRE

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Mr Helmut TICHY
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Mr Samir SHARIFOV
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Treaty Department
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M. Paul RIETJENS
Chair / *Président*
Directeur général des Affaires juridiques
Service Public Fédéral des Affaires étrangères
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APPENDIX II

AGENDA

I. INTRODUCTION

1. Opening of the meeting by the Chair, Mr Paul Rietjens

2. Adoption of the agenda

3. Adoption of the report of the 48th meeting

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

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

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. Topical issues related to immunities of States and international organisations

   - Settlement of disputes of a private character to which an international organisation is a party
   - Immunity of State owned cultural property on loan
   - Immunities of special missions
   - Service of process on a foreign State

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

   c. State practice, case-law and updates of the website entries

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 Kimberly Prost, Ombudsperson of the United Nations Security Council's Al-Qaida Sanctions Committee

15. Consideration of current issues of international humanitarian law

16. Developments concerning the International Criminal Court (ICC) and other international criminal tribunals

17. Topical issues of international law

IV. OTHER

18. Date and agenda of the 50th meeting of the CAHDI

19. Other business

APPENDIX III

OPINION OF THE CAHDI

ON RECOMMENDATION 2060 (2015) OF THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE – "THE IMPLEMENTATION OF THE MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNCIL OF EUROPE AND THE EUROPEAN UNION"

1. On 11-12 February 2015, the Ministers' Deputies communicated Recommendation 2060 (2015) of the Parliamentary Assembly of the Council of Europe (see Appendix I) to the Committee of Legal Advisers on Public International Law (CAHDI) for information and possible comments by 23 March 2015. The Ministers' Deputies also communicated this Recommendation to the Steering Committee for Human Rights (CDDH).

2. The CAHDI examined the abovementioned recommendation at its 49th meeting (Strasbourg, 19-20 March 2015) and made the following comments which concerned aspects of the recommendation which were of particular relevance to the terms of reference of the CAHDI.

3. From the outset, the CAHDI recalled its opinion on *Recommendation 2027 (2013) of the Parliamentary Assembly of the Council of Europe – "European Union and Council of Europe human rights agendas: synergies not duplication!"* (see Appendix II) adopted in November 2013 through a written consultation. This opinion of 2013 contained comments which were of relevance for the present Recommendation.

4. The CAHDI reiterated that the Memorandum of Understanding concluded in 2007 between the Council of Europe and the European Union (hereinafter the "EU") remained the relevant applicable framework for the cooperation between both organisations and notably with regard to the protection and promotion of human rights. It recalled that the EU recognised in this Memorandum the role of the Council of Europe as the Europe-wide reference source of human rights, both with respect to the relevant norms developed by the Council of Europe as to the decisions and conclusions of its monitoring structures which the EU undertook to take into account where relevant.

5. Pursuant to this Memorandum, the Council of Europe and the EU had agreed that *"legal cooperation should be further developed […] with a view to ensuring coherence between Community and European Union law and the standards of Council of Europe conventions"*[1]. To this end, the CAHDI noted that regular, institutionalised dialogue with the EU institutions was already well-established in the practice of the Council of Europe and aimed at avoiding unnecessary duplication of norms in the area of shared values: human rights, democracy and the rule of law. This cooperation took the form of both high-level political contacts and joint activities. The CAHDI welcomed notably the long cooperation experience between both organisations in the area of criminal matters through the regular meetings between the EU's Troïka of the Article 36 Committee (CATS) and the Council of Europe. The CAHDI further noted that cooperation was subject to regular review by the Committee of Ministers, in particular on the occasion of the annual Ministerial Sessions. The latest Session held in Vienna on 5-6 May 2014[2] highlighted that *"since the signing of the Memorandum of Understanding, there has been an unprecedented qualitative change in mutual relations, which have been transformed into a true, strategic partnership in the areas of political dialogue, legal cooperation and concrete cooperation activities, as illustrated by the continuous high-level consultations with EU representatives"*[3]. Mention was made in particular for illustrative purposes to the adoption by the Foreign Affairs Council of the EU of the *EU Priorities for cooperation with the Council of Europe* which included "political dialogue" as a main feature of the cooperation, together with its legal and assistance dimensions.

[1] Paragraph 24 of the Memorandum of Understanding.
[2] 124th Session of the Committee of Ministers (Vienna, 5-6 May 2014).
[3] *Summary Report on the Cooperation with the European Union*, document CM(2014)38 of 30 April 2014.

6. Regarding more specifically the active cooperation with the EU in the implementation of the new "Framework to strengthen the rule of law" in EU member States, the CAHDI recalled that according to the Statute of the Council of Europe, the principle of the rule of law formed the basis of all genuine democracy and had therefore been one of the three pillars of the Council of Europe since its creation. This organisation therefore had a long established experience in dealing with rule of law issues and could consequently provide valuable input to the EU in implementing this new framework. The CAHDI recommended that any initiative pertaining to the area of cooperation between the Council of Europe and the EU took into account the principles for cooperation under the Memorandum of Understanding of 2007, in particular the concern to avoid duplication and promote complementarity in view of ensuring their added value.

7. With regard to the accession of the EU to Council of Europe conventions, the CAHDI noted that the EU was already party to ten Council of Europe conventions[4], that it had signed but not yet ratified four other conventions, that it could become party to twenty three more conventions and that it could be invited to accede to twelve other conventions after their entry into force. The CAHDI therefore welcomed the existing active participation of the EU to Council of Europe conventions and noted with satisfaction the encouraging prospects for future participation. To facilitate these future accessions, the CAHDI agreed however with the analysis of the Secretary General in his *Report on the review of Council of Europe conventions*[5] according to which *"this accession, alongside with or instead of its member States, may, in fact, have a number of implications on the functioning of the conventions concerned […] and the co-ordination of the action by the EU and its member States when taking positions and/or expressing a vote"*[6]. In this regard, the CAHDI therefore reiterated that it stood ready to assist the Committee of Ministers with respect to the examination of legal issues raised by the participation of the EU in Council of Europe conventions such as those identified in paragraph 77 of the Secretary General's abovementioned report (adaptation of final and interpretation clauses, modalities of EU participation in follow-up mechanisms, financial participation).

8. To the extent that the accession of the EU to the European Convention on Human Rights (hereinafter the "ECHR") became a legal obligation under the Treaty of Lisbon which entered into force on 1 December 2009, the CAHDI could only reaffirm the importance of this accession and encourage, following the Opinion 2/13 of the European Union Court of Justice, the finalisation of the process at the earliest opportunity. It recalled that it had closely followed the negotiations aimed at this accession through the participation of an observer of the CAHDI to the meetings of the CDDH and the informal working group 47+1 in charge of finalising the draft agreement on the accession of the EU to the ECHR as well as its draft explanatory report. The CAHDI also underlined that the Memorandum of Understanding, signed by both organisations, stipulated that *"early accession of the [EU] to the [ECHR] would contribute greatly to coherence in the field of human rights in Europe"*[7] and stood therefore ready to provide its expertise in the perspective of creating a unique European legal area concerning the protection of fundamental rights.

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[4] European Agreement on the Exchange of Therapeutic Substances of Human Origin (ETS No. 026) as completed by its Additional Protocol (ETS No. 109), Agreement on the Temporary Importation, Free of Duty, of Medical, Surgical and Laboratory Equipment for Use on Free Loan in Hospitals and other Medical Institutions for Purposes of Diagnosis or Treatment (ETS No. 033) as completed by its Additional Protocol (ETS No. 110), European Agreement on the Exchange of Blood-grouping Reagents (ETS No. 039) as completed by its Additional Protocol (ETS No. 111), Convention on the Elaboration of a European Pharmacopoeia (ETS No. 050) as amended by its Protocol (ETS No. 134), European Agreement on the Exchange of Tissue-typing Reagents (ETS No. 84) as completed by its Additional Protocol (ETS No. 89), European Convention for the Protection of Animals kept for Farming Purposes (ETS No. 087), Convention on the Conservation of European Wildlife and Natural Habitats (ETS No. 104), European Convention for the Protection of Vertebrate Animals used for Experimental and other Scientific Purposes (ETS No. 123), Protocol to ETS 123 on the Protection of Animals used for Experimental and Scientific Purposes (ETS No. 170), Convention on information and legal co-operation concerning « information Society Services » (ETS No. 180).

[5] *Report by the Secretary General on the review of Council of Europe conventions*, 16 May 2012, document SG/Inf(2012)12.

[6] Paragraph 74 of *Report by the Secretary General on the review of Council of Europe conventions*

[7] Paragraph 20 of the Memorandum of Understanding.

9. Regarding the Council of Europe monitoring mechanisms and bodies, the CAHDI noted that over almost sixty five years, the Council of Europe had developed a considerable acquis encompassing not only standards on human rights, rule of law and democracy but also active European monitoring of these standards. These mechanisms are either treaty-based monitoring mechanisms (independent monitoring mechanisms or conventional committees) or monitoring mechanisms carried out directly by Council of Europe bodies such as the Committee of Ministers. In this regard, the CAHDI welcomed the continuous efforts of the Committee of Ministers to guarantee the long term efficiency of the European Convention on Human Rights system notably through its periodic supervision of the execution of judgments, which had become more effective and transparent since the "Interlaken – Izmir – Brighton process". The CAHDI furthermore indicated that it looked forward to the High-level Conference on the "Implementation of the European Convention on Human Rights, our shared responsibility" (Brussels, 26-27 March 2015). The CAHDI also took note of the recent report of the Secretary General of the Council of Europe on the "State of democracy, human rights and the rule of law in Europe" issued in 2014 which highlighted a number of challenges identified by the Council of Europe monitoring mechanisms. It underlined in particular the essential function of these mechanisms aimed at helping member States to identify and remedy shortcomings in their compliance with Council of Europe standards and proposed solutions to improve and enhance them.

10. Regarding more specifically the participation of the EU in these monitoring mechanisms, the CAHDI noted that pending completion of the accession process of the EU to the ECHR, contacts had intensified with a view to furthering synergies between the EU and Council of Europe monitoring and advisory bodies, and between Council of Europe standards and EU legislation. As highlighted by the Committee of Ministers at its 124th Session in May 2014, synergies between both organisations had notably been established in the framework of the negotiations for the modernisation of the *Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (ETS No. 108). The EU participated in a bid to ensure a high level of data protection and consistency between EU data protection rules and the rules of the Council of Europe amended instrument, with a view to acceding to such a modernised instrument. Furthermore, the CAHDI also welcomed the good cooperation with regard to the collection and analysis of data on the functioning of judicial systems in the EU carried out by the Secretariat of the European Commission for the Efficiency of Justice (CEPEJ) as well as the ongoing discussions on the possible accession of the EU to the *European Social Charter* (revised) and the full participation in the Group of States against corruption (GRECO).