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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW
CAHDI

26th meeting
Strasbourg, 18-19 September 2003

MEETING REPORT

Secretariat memorandum
prepared by the Directorate General of Legal Affairs

A. INTRODUCTION

1- 3. Opening of the meeting, adoption of the agenda and communication from the Secretariat

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 26th meeting in Strasbourg, on 18 and 19 September 2003 under the chairmanship of Ambassador Michel (Switzerland), President of the CAHDI. The list of participants is set out in **Appendix I**.

2. The agenda, set out in **Appendix II**, was adopted unanimously. The Committee also approved the draft rapport on the previous meeting (document CAHDI (2003) 8 prov.) and authorised the Secretariat to publish it on CAHDI's website (www.coe.int/cahdi).

3. The Chair thanked the special guests for accepting the invitation and noted that the meeting was being held at a time when the international context gave cause for concern, violent as it was, a violence starkly illustrated by the assassination of the Swedish Foreign Minister; he asked the Swedish delegation to transmit the Committee's condolences to the Swedish authorities.

4. The Head of the Public Law Department, Mr Giovanni Palmieri, addressed the Committee and presented developments regarding the Council of Europe which were of interest for the CAHDI, including:

- Institutional developments in Europe:
 - o Follow-up of the work on the Convention on the future of Europe and the holding of a third summit of Heads of State and Government of member States of the Council of Europe. He expressed satisfaction at the excellent cooperation between the Council of Europe and the European Union, in particular the contribution of the Council of Europe to the work of the Convention chaired by Mr Giscard d'Estaing, the meetings with the Justice and Home Affairs Troika and the regular meetings between the private law department at the Council of Europe and the unit for judicial cooperation in civil matters of Directorate General JHA of the Commission.
- New legislative developments, such as:
 - o the opening for signature of the Additional Protocol to the Criminal Law Convention on Corruption (signed by 21 States) on 15 May 2003;
 - o on the same date, the opening for signature of the Convention on Contact concerning Children (signed by 13 States);
 - o the adoption by the Committee of Ministers at the same session of the Declaration "Safeguarding the long- term efficiency of the European Court of Human Rights"; and in that connection, he reminded the Committee of the entry into force of Protocol n° 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances (signed by 24 States and ratified by 17 others) on 1 July 2003; and
 - o the entry into force of the European Convention on the Non- Applicability of Statutory Limitations to Crimes against Humanity and War Crimes (ETS 082).
- New developments in the fight against terrorism, such as:
 - o the opening for signature at the 112th session of the Committee of Ministers of the Protocol amending the European Convention on the Suppression of Terrorism on 15 May 2003;

- the first meetings in April and June 2003 of the Committee of Experts on special investigation techniques in relation to acts of terrorism (PC-TI), and of the Committee of Experts on the protection of witnesses and "pentiti" in relation to acts of terrorism (PC-PW);
 - the work of the Group of Specialists on identity and terrorism (CJ-S-ID), which it is proposed to follow up by adopting terms of reference of a new committee of experts on identity and terrorism (CJ-S-IT);
 - the 25th Conference of European Ministers of Justice on terrorism, held at Sofia (Bulgaria) in October 2003, during which a progress report on the Council's activities concerning the fight against terrorism was examined;
 - the potential role of the Council of Europe in drawing up a general Convention against terrorism;
 - the Council of Europe's contribution to the activities of the Committee Against Terrorism (CAT) of the Security Council of the United Nations Organisation and
 - the first meeting of the Committee of experts on terrorism (CODEXTER) on 27-30 October 2003. That Committee had been asked to examine the findings of the Conference of Ministers of Justice with a view to proposing follow-up action, in particular the possible drafting of a general convention against terrorism.
- New developments with regard to combating money laundering, cybercrime and corruption, such as:
- adoption of Recommendation Rec (2003) 4 of the Committee of Ministers to the member states on common rules against corruption in the funding of political parties and electoral campaigns, on 10 April 2003;
 - the broadening by the Committee of Ministers of the terms of reference of the Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL), to include issues connected with the funding of terrorism in the light of the special recommendations of the FATF; and
 - the opening for signature in January 2003 of the Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (12 signatures)
- New developments in the field of justice, such as:
- the first meetings of the European Committee for the Efficiency of Justice (CEPEJ) to prepare its work programme for 2003. This will include defining qualitative and quantitative indicators for evaluating the operation of judicial systems and identifying measures for reducing delays in particular judicial procedures;
 - the work of the Consultative Committee of European Judges (CCJE), which had recently delivered an opinion on the initial and continuous training of judges at national and European level, a subject to which the Council of Europe attaches particular importance;
 - the importance of the five draft Recommendations finalised by the European Committee on Legal Cooperation (CDCJ) at its most recent meeting in May 2003 and adopted by the Committee of Ministers on 9 September 2003, relating to:
 - the interoperability of information systems in the justice sector;
 - archiving of electronic documents in the legal sector;
 - the execution of administrative and judicial decisions in the field of administrative law;
 - the enforcement of judicial decisions; and

- requests for legal aid abroad; this recommendation contains a transmission form for legal aid abroad for use under the European Agreement on the Transmission of Applications for Legal Aid (ETS No. 092) and its Additional Protocol (ETS No. 179).

Lastly new developments in the legal field, such as:

- on 16 April 2003, the Deputies adopted Recommendation Rec (2003) 5 of the Committee of Ministers to member states on measures of detention of asylum seekers. On 9 September 2003, the Deputies instructed CAHAR to draw up a code of conduct for member State authorities in deportation procedures;
- the Conference launching the Convention on Information and Legal Cooperation with regard to "Information Society Services", (Strasbourg, 21 May 2003) and the Conference concerning e- justice and Internet strategies (Rome, 13- 14 November 2003).

B. ONGOING ACTIVITIES OF THE CAHDI

4. Decisions by the Committee of Ministers concerning the CAHDI and requests for CAHDI's opinion

5. The Chair reported that, at their 837th meeting on 16 April 2003, the Ministers' Deputies had asked the CAHDI to prepare an Opinion on Recommendation 1602 (2003) on immunities of members of the Parliamentary Assembly (the Assembly) and that written contributions had been submitted by the Georgian, Italian, Turkish and United Kingdom delegations.

6. The Chair invited delegations to exchange views and make proposals on the basis of which the Secretariat would prepare a preliminary draft Opinion of CAHDI.

7. The United Kingdom delegation said that the Assembly Recommendation contained some delicate questions. In the UK, certain questions such as the authentic interpretation of the Agreement on Privileges and Immunities (the Agreement) were matters not for the government but for the national courts. The same went for the interpretation of the concept of the duration of the session of the Assembly (paragraph 5 i), which was the exclusive province of the British judicial authorities. The UK delegation therefore considered that the CAHDI should merely examine the questions of public international law raised by the Recommendation.

8. The Netherlands delegation questioned the interpretation given by the Assembly to the terms "duration of the session" in paragraph 2 of the Recommendation. It also considered that interpretation (paragraph 5) was a matter for States Parties to the Agreement and the domestic courts. Paragraph 5 ii raised practical difficulties, in particular when a national parliament requested that the immunity of one of its members be waived when the Assembly was not in session. Paragraph 5 iii raised no difficulty. As for paragraphs 5 iv and 6 iii, the problems posed were of a political nature and did not therefore come within the ambit of the CAHDI.

9. The Swedish delegation considered that immunity might be waived in the form in which it had been granted. Paragraphs 5 iii and iv did not raise any substantive or procedural difficulty. Essentially, the problematic question remained the Parliamentary Assembly's power to waive parliamentary immunity (paragraph 5 ii). As for the question of interpretation (paragraph 5 i), this delegation agreed with the United Kingdom delegation that courts should be primarily competent to interpret the provisions of an international treaty. States could issue a non-binding opinion, which would be an interpretative tool for a domestic court. Finally, the delegation wondered whether it was possible to extend immunity in the way proposed.

10. The Austrian delegation did not have any difficulties with the Assembly's interpretation. In international law, the interpretation of a treaty aimed to clarify the extent of the obligations but could never amend their scope. Moreover, the Parties to a treaty could be bound by an interpretation, independently of the question of its interpretation by domestic courts. That was why if all the delegations were ready to recognise that the obligation remained the same notwithstanding its extension, the CAHDI could invite the Committee of Ministers to adopt a text to that effect

11. The Swiss delegation agreed with the Swedish position and recommended that decisions be made on a case-by-case basis, by specific agreement before members of parliament were sent on mission. Paragraph 5 ii was unclear especially as regards the connection between cancellation of a parliamentarian's national mandate and cancellation of the European mandate. The other points did not raise any particular difficulties.

12. The Italian delegation agreed with the United Kingdom and the Netherlands that interpretation was a matter for the courts. It also considered that a common interpretation of the Committee of Ministers could be a useful tool for the courts.

13. The Finnish delegation considered that paragraph 5 i did not go much further than Article 14 of the Agreement. Sub-paragraphs ii and vi of paragraph 5 however raised problems of a substantial nature. On the point of principle, this delegation agreed with the position argued by Austria, with the provision that interpretation should not go beyond the limits of the specific provisions of the Agreement. Lastly, the question of the body competent to interpret the Agreement would depend on the context in which it arose.

14. The Greek delegation agreed with the United Kingdom's and Sweden's observations. It considered that paragraph 5 i extended rather than interpreted Article 14 of the Agreement. Since here the subject was an amendment and not an interpretation, the Greek delegation had doubts as to the manner of proceeding envisaged by the Assembly. As for the other provisions, the Greek delegation considered that sub-paragraphs ii and iii of paragraph 5 did not raise any difficulties, that subparagraph iv of paragraph 5 was a question of policy to which the Greek authorities were not opposed and that paragraph 6 did not come within the ambit of the CAHDI.

15. The Portuguese delegation had no problem with the content of the Recommendation in general. It considered that the question of interpretation was one for the judicial and not the political authorities. It considered finally that pursuant to Article 31 *et seq.* of the Vienna Convention, the governments could agree on a common interpretation, on condition that they did not extend the scope of immunities, for to do so would be to amend the Agreement.

16. The Belgian delegation considered that the "Laissez-passer" was a political question. It agreed with the United Kingdom that it was up to the national courts to interpret the Convention. Therefore it thought it was appropriate to have a common interpretation. Finally, the Belgian delegation stated that what was being considered here was an extension of the Agreement and not an interpretation.

17. The Russian delegation said that it was for States Parties and not for the Assembly to interpret an international treaty (paragraph 2), and to choose the form of the interpretation. The Committee of Ministers could, at the request of all the States Parties to the Agreement, provide an interpretation. Finally, it considered that the question of the "Laissez-passer" (paragraph 6 iii) was within the competence of States.

18. At the end of the discussions, the CAHDI decided to set up a drafting group, under the chairmanship of Mr Johan LAMMERS (Netherlands). The Chair of CAHDI invited him to report on the results of its work to the Committee.

19. Further to that request, the delegate from the Netherlands presented a preliminary draft Opinion prepared by the drafting group, which was adopted as it appears in **Appendix III**.

20. It was noted that, in accordance with its terms of reference, the CAHDI had concentrated on the questions which it considered to relate to public international law, and the Chair observed that this preliminary Opinion was reasonable, given the very different views expressed within the Committee.

21. As for the substantive questions raised, in particular paragraph 2 and paragraph 5 i of the Recommendation, the Committee considered that they deserved closer examination than it was able to give this meeting and therefore reserved the right to return to them at the next meeting in the light of further information.

22. The Chair concluded the item by reminding the Committee that it had to decide how matters were to be brought before it and how it wished to be consulted in future. Furthermore, the Chairman asked the Secretariat to prepare additional information on the practice of the Parliamentary Assembly for the CAHDI's next meeting.

5. The law and practice relating to reservations and interpretative declarations concerning international treaties.

a. The European Observatory of Reservations to international treaties

23. In its capacity as European Observatory of Reservations to international treaties, the CAHDI examined a list of declarations and reservations to international treaties, on the basis of the document drawn up by the Secretariat in consultation with the Chair (see documents CAHDI (2003) 10 Parts I and II).

24. The CAHDI first examined the reservations and declarations to treaties concluded outside the Council of Europe (CAHDI (2003) 10 Part I, and CAHDI (2003) 10 add).

25. The Finnish delegation asked for clarification on paragraph 5 of the United States' interpretative declaration of 2 January 2003 to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, New York, 25 May 2000¹.

26. The Austrian delegation had some difficulties with the interpretative declaration of the United Kingdom of Great Britain and Northern Ireland of 24 June 2003 to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, New York, 25 May 2000², and asked for some clarifications in this connection.

¹ "The United States considers that no provision of the Protocol confers jurisdiction on any international tribunal whatsoever, including the International Criminal Court."

² Declaration made upon signature and confirmed upon ratification:

'The United Kingdom of Great Britain and Northern Ireland will take all feasible measures to ensure that members of its armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

The United Kingdom understands that article 1 of the Optional Protocol would not exclude the deployment of members of its armed forces under the age of 18 to take a direct part in hostilities where: -

a) there is a genuine military need to deploy their unit or ship to an area in which hostilities are taking place; and

b) by reason of the nature and urgency of the situation:-

i) it is not practicable to withdraw such persons before deployment; or

ii) to do so would undermine the operational effectiveness of their ship or unit, and thereby put at risk the successful completion of the military mission and/or the safety of other personnel'

Declaration made upon ratification:

... in accordance with Article 3, paragraph 2, of the Optional Protocol:

27. Likewise, the Swiss delegation wondered about the admissibility of the declaration owing to the risk of incompatibility with the obligation to avoid the risk of exposing under-18s to armed conflicts. Its government was currently examining the declaration and wanted to open a dialogue immediately.

28. The United Kingdom delegation explained first that its authorities had considered the question scrupulously and secondly that it was a major consideration for becoming a Party to the Protocol. It concluded by emphasising the legitimacy and admissibility of the declarations.

29. The Swiss delegation considered that the third part of Israel's declaration to the International Convention for the Suppression of the Financing of Terrorism, New York, 9 December 1999, lodged on 21 February 2003, according to which "The Israeli Government interprets the expression "international humanitarian law" which appears in Article 21 of the Convention as meaning fundamentally the same as the expression "laws of war" [and] (...) does not include the 1977 Additional Protocols to the Geneva Conventions, to which Israel is not a party", raised difficulties. The expression "international humanitarian law " must be understood as including the 1977 Additional Protocols. The Swedish, Austrian, Netherlands and Finnish delegates supported the Swiss position and indicated that they had objected to a similar declaration made by a member State of the Council of Europe.

30. As regards the reservation of the Syrian Arab Republic of 7 April 2003, to the Convention on the Elimination of all forms of Discrimination Against Women, New York, 18 December 1979³, the Swiss delegation stated that its government would object owing to doubts as to the compatibility of the reservation with the object and purpose of the Convention. The reservation affected essential aspects of the Convention, and furthermore referred to Islamic Law generally without giving any specific detail.

The minimum age at which individuals may join the UK Armed Forces is 16 years. This minimum broadly reflects the minimum statutory school leaving age in the United Kingdom, that is the age at which young persons may first be permitted to cease full-time education and enter the full-time employment market. Parental consent is required in all cases of recruitment under the age of 18 years.

The United Kingdom maintains the following safeguards in respect of voluntary recruitment into the armed forces:

1. The United Kingdom Armed Forces are manned solely by volunteers; there is no compulsory recruitment.
2. A declaration of age, backed by an authoritative, objective proof (typically the production of an authentic birth certificate) is an integral and early requirement in the recruitment process. Should an individual volunteering to enter the United Kingdom Armed Forces be found either by their own declaration or by inspection of supporting evidence of age to be under 18 years of age, special procedures are adopted. These procedures include:
 - the involvement of the parent(s) or legal guardian(s) of the potential recruits:
 - clear and precise explanation of the nature of duties involved in military service to both the individual and their parent(s)/guardian(s); and
 - as well as explaining the demands of military life to the individual volunteer and establishing that he/she remains a genuine volunteer, the requirement that the parent(s) or guardian(s), having been similarly informed, freely consent to the individual's entry into the Armed Forces and duly countersign the appropriate application or other appropriate recruitment process forms.

³ Reservation of the Syrian Arab Republic :

.... in issuing reservations on Article 2, subparagraph 2 of Article 9 on the conferral of the mother's nationality on her children, subparagraph 4 of Article 15 on the law relating to the movement of persons and the freedom to choose their residence and domicile; subparagraphs c), d), f) and g) of paragraph 1 of Article 16 on the rights and responsibilities during marriage and at its dissolution with regard to guardianship, wardship, trusteeship and adoption of children, paragraph 2 of Article 16 on the legal effect of betrothal and the marriage of a child, as being incompatible with the precepts of Islam and paragraph 1 of Article 29 on arbitration between States in the event of a dispute.

The accession of the Syrian Arab Republic to the Convention does not imply that Syria recognises Israel or that it will have any relations whatsoever with Israel as a result of provisions of the Convention.

31. The delegations of the United Kingdom, Sweden, Germany, the Netherlands, Italy, Ireland, Austria and France declared that their governments had objected to the reservation since the extent of Syria's commitment was not clear. Then, the delegates from Romania, Norway, Russia, Portugal and Greece informed the Committee of their intention to do so shortly.

32. The CAHDI then examined the reservations and declarations in relation to Council of Europe treaties (CAHDI (2003) 10 Part II and CAHDI (2003) 10 add).

b. Reservations and declarations to international treaties applicable to the fight against terrorism

33. The Chair recalled the decisions taken by the Committee of Ministers at its 765 bis meeting at Deputy level (Strasbourg, 21 September 2001) regarding the activities of the Council of Europe in the area of the fight against terrorism. When examining the follow-up to the Declaration of the Committee of Ministers of 12 September 2001 on the fight against international terrorism, the Ministers' Deputies asked the CAHDI's European Observatory of Reservations to international treaties to examine the question of reservations to regional and universal conventions on terrorism and to organise exchanges of views on the conventions being drawn up by the United Nations in order to coordinate the positions of member States.

34. The Chair then referred to the document drawn up by the Secretariat at the CAHDI's request (document CAHDI (2003) 11), setting out the signatures and ratifications of the most important international treaties applicable to the fight against terrorism, together with any reservations to them.

35. The United Kingdom delegation indicated that its government had identified twenty-four (24) reservations to treaties on terrorism which raised difficulties. The list would be transmitted to the Secretariat shortly.

36. The Secretariat was asked to prepare a revised version of the document for the CAHDI's next meeting on the basis of that list. Delegations were asked to forward any other relevant information on this subject to the Secretariat.

37. The Norwegian delegation announced that, on 5 September 2003⁴, its government had objected to the Pakistani declaration to the International Convention for the Suppression of Terrorist Acts, New York, 15 December 1997.

38. The CAHDI finished its examination of the item by deciding to keep it on its agenda. The Chair invited the delegations to let the Secretariat know which reservations should be examined in more depth at the CAHDI's next meeting.

⁴ With regard to the declaration made by Pakistan upon accession:

"The Government of Norway has examined the declaration made by the Government of Pakistan upon accession to the International Convention for the Suppression of Terrorist Bombings.

The Government of Norway considers the declaration to be a reservation that seeks to limit the scope of the Convention on a unilateral basis and which is contrary to its object and purpose, namely the suppression of terrorist bombings, irrespective of where they take place and of who carries them out.

The declaration is furthermore contrary to the terms of Article 5 of the Convention according to which State Parties commit themselves to adopt measures as may be necessary to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or similar nature and are punished by penalties consistent with their grave nature.

The Government of Norway recalls that, according to customary international law, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

The Government of Norway therefore objects to the aforesaid declaration made by the Government of Pakistan to the Convention between the Kingdom of Norway and Pakistan."

6. Pilot Project of the Council of Europe on State practice regarding State immunities

39. The Chair recalled that at its 21st meeting (Strasbourg, 6-7 March 2001) the CAHDI had decided to carry out an activity entitled "Pilot Project of the Council of Europe on State practice regarding State immunities" focusing particularly, although not exclusively, on practice in the member States of the Council of Europe and aimed at collecting the most relevant judicial decisions involving foreign States and their property.

40. The Secretariat reported that to date 25 contributions had been submitted to the Secretariat and that, in accordance with the Committee's wishes, the Secretariat had entered into an agreement with the British Institute of International and Comparative Law, the Centre for International Law of Vienna University and the Graduate Institute of International Studies of Geneva for the preparation of an analytical study to be examined at the Committee's next meeting.

41. The French delegation told the CAHDI that the French contribution was ready and would very soon be sent to the Secretariat.

42. The Norwegian delegation welcomed the Secretariat document, describing it as a valuable working tool, and asked for a consolidated version to be published soon.

43. The Chair concluded this item by inviting delegations to submit any further information as soon as possible.

C. GENERAL ISSUES IN PUBLIC INTERNATIONAL LAW

7. The work of the Sixth Committee (6C) of the General Assembly (GA) of the United Nations and of the International Law Commission (ILC)

44. The CAHDI started by considering the work of the UN on State immunities, and in particular the Ad hoc Committee on Jurisdictional Immunities of States chaired by Professor Hafner (Austria). The Committee's objective was firstly to draw up an instrument that could be generally accepted on the basis of the draft articles on jurisdictional immunities of States and their property, adopted by the ILC and the discussions and conclusions of the Sixth Committee's working group, and secondly to recommend the form which this instrument should take. The Committee referred the question of the final form of this instrument to the GA.

45. On the question of the form of the instrument, the Italian delegation submitted a draft preamble and draft final clauses for a Convention on Immunities of member States, on behalf of the European Union, (Doc. (2003) 13, only in English). The draft text, which was distributed for illustrative purposes, covered only the addition of a preamble and traditional final clauses to the text adopted by the ad hoc group.

46. The Italian delegation also indicated that the EU wanted a Convention to be adopted soon. It proposed that a working group examine the preamble and final clauses in order to enable the 6C to adopt a definitive draft Convention which would then be sent for adoption by the GA this year.

47. The Russian Federation delegation said that its government supported the adoption of such a convention and was pleased with the common position adopted by the EU. Furthermore, it emphasised the importance of expeditious adoption during the next GA, and considered that the draft convention had the merit of being a balanced compromise. Discussion on some of its provisions should not be re-opened. However, some questions

which were still pending on dispute resolution, reservations and the form in which they should be adopted (for example as annexes to the Convention) had yet to be discussed.

48. The Norwegian delegation favoured a convention and said that discussion should not be re-opened on the draft article, which was the result of a compromise reached in February 2003. The model proposed by Italy seemed at first sight to be realistic.

49. The Austrian delegation supported the Italian delegate's proposal and suggested that consultations be organised on the fringe of the GA and that a draft be presented directly to the 6C.

50. The Japanese representative also supported the idea of a convention and was pleased with the consensus agreement reached by the ad hoc committee in February 2003. His delegation had proposed a two-step approach at the 6C 2003, with a resolution being adopted by the GA first and then a convention. He then set out the views of the Asian countries on the question as expressed at the Seoul meeting in 2003 (see document (2003)Inf. 10).

51. The Slovenian delegation stated that its government supported the codification exercise in general and the idea of a convention, with the amendments proposed by the Italian delegation.

52. The Swiss delegation announced that in principle its authorities were ready to begin negotiations on a convention on the basis of a compromise text resulting from the negotiations.

53. The Mexican representative was pleased that the EU had adopted a common position, and indicated that his government was ready to adopt a convention. He agreed with the observations of the Russian Federation especially as regards the need for a dispute resolution procedure. An additional protocol would be a useful alternative for finishing the work already prepared by the working group. A convention on immunities of States would enable various lacunae to be filled. Thus in Mexico, for example, the issue was currently resolved by way of administrative circular.

54. The representative of the United States thought it premature to examine the question, and indicated that there were certain practical difficulties raised by the UN Secretariat. The delegation considered that the EU text could not – as it stood – be deemed to be final or the subject of consensus.

55. The United Kingdom delegate stated that his government was sceptical about drawing up conventions but had been convinced by some delegations' arguments, in particular those of the Norwegian delegation, and supported the EU common position. The question was ultimately one for national courts and a convention would be a useful tool for judges. As for the discussion on unresolved questions such as dispute resolution, it should never jeopardise the compromise agreed between States or the adoption of a convention. He therefore invited delegations to examine the different options available, in particular in the form of an additional protocol to the convention.

56. The Portuguese delegation supported the adoption of a convention because it would lead to greater legal certainty and would be a tool for national courts.

57. The Spanish delegation supported the EU common position and the adoption of a convention in order to facilitate the work of Spanish courts in relation to immunity.

58. The CAHDI then considered the ILC's report.

59. The CAHDI then examined the working methods of the Sixth Committee of the General Assembly and, in particular, the Austrian and Swedish proposal to restructure discussions on the ILC report.

60. The Austrian delegation presented a proposal designed to make the ILC's work, and especially discussion of the ILC's report, more fruitful, and to enhance the dialogue between the ILC and representatives of the 6C. The Legal Advisers of Sweden and Austria in New York had proposed a two-stage approach: making the member States' contributions more interesting by making a clear distinction between the written contribution and the oral presentation. For the time being, the ILC was not obtaining responses from member States to its report since they were receiving it too late and did not have time in practice to study it in depth. The Swedish delegation emphasised that this was a recommendation.

61. The Finnish delegation thanked Austria and Sweden for their proposals, which were practical and realistic, and hoped that the 6C would approve them. The relationship between the ILC and the 6C was essential because the 6C was the expression of political will and served as a guide for the work of the ILC.

62. The United Kingdom delegation wondered to what extent it was feasible to carry out a radical change, and whether it was not preferable to improve things progressively. No amendment could be envisaged this year because most of the items on the agenda of the ILC, other than reservations to international treaties, were at an advanced stage of preparation. The UK delegation therefore suggested combining two aspects: shorter formal reports and a certain amount of interactivity in debates. It found the two weeks of meeting were useful in allowing governments to take the time to work intensively on the report, especially if they had not been able to finish the preparatory work.

63. The Norwegian delegation agreed that this proposal was useful and would not disagree with the United Kingdom's approach.

64. The Spanish delegation explained that the absence of real dialogue between the ILC and the 6C was sometimes the result of disagreement between the special rapporteur and delegations; this, for example, had been the case with the report on diplomatic protection when the *Barcelona Traction* case was being considered.

65. The German delegation supported the initiative and agreed that the discussions could prove delicate. It would also like reports to be sent earlier in order to give delegations enough time to prepare their contribution, and thanked the Council of Europe for providing a copy of the ILC report in advance.

66. The Greek delegation supported the two-stage approach. However, it did not agree with paragraph 4 because the question was not so much one of having an interactive discussion but rather of giving the ILC instructions.

67. The Mexican representative supported the proposal and thought that the two options were reconcilable. He suggested including the Chairman of the ILC and the special rapporteurs in the discussions in order to promote a wider dialogue.

68. The Canadian representative welcomed the Austrian and Swedish initiative and emphasised the importance of the oral declarations and written reports. Several attempts in the past to improve the 6C's methods had failed, owing, in particular, to obstacles inherent in the nature of the work of the Committee and the ILC.

69. The Chair concluded the discussion by thanking the delegations for their contributions and inviting them to consider this question further at subsequent meetings.

8. Developments concerning the International Criminal Court (ICC)

70. The Chair welcomed the Secretary General of the Council of Europe, Mr Walter Schwimmer, and the President of the ICC, Mr Philippe KIRSCH. The Secretary General made a statement in support of the ICC in the presence of members of the Committee and the President of the ICC. The text of his statement is reproduced in **Appendix IV**.

71. The Secretary General began by emphasising the constant support of the Council of Europe for the entry into force of the Rome Statute, the creation of the ICC and its efficient functioning. He then noted that any attempt to undermine the integrity of the ICC was unacceptable and that therefore bilateral agreements pursuant to Article 98 were only acceptable if the agreements complied with the letter, the object and the purpose of the Statute. Likewise, the Council of Europe encouraged the signature and ratification of the Agreement on Privileges and Immunities of the ICC, which was essential for its proper functioning.

72. The Chair of CAHDI thanked the Secretary General warmly for honouring the Committee with his presence and assured him that the Committee would continue to follow the new developments concerning the ICC very closely.

73. The Chair then gave the floor to the President of the ICC, whom he thanked for agreeing to take part in the meeting in order to exchange views with members of the CAHDI on the ICC's activities.

74. Mr Kirsch thanked the CAHDI for inviting him and said how much he appreciated the Council of Europe's unwavering support. He set out the recent developments in relation to the ICC, its current priorities and finally the challenges which it would have to meet. The text of his statement is reproduced in **Appendix V**.

75. The Chair then referred to the conclusions of the third Multilateral Consultation on the Implications for Council of Europe member States of the Ratification of the Statute of the ICC. He then gave the floor to Ambassador Juan-Antonio Yañez-Barnuevo (Spain), who presented the conclusions adopted by the participants (see **Appendix VI**).

76. The consultation had brought together experts from 40 member States, observer States and representatives of international organisations. Mr Politi, a judge at the ICC, started by presenting the implementing rules for the ICC statute and then two working sessions were devoted to the "concept of universal jurisdiction and obligations under international law, the extension of jurisdiction to include the prosecution of genocide, war crimes and crimes against humanity and the interaction between universal jurisdiction at the national level and cooperation with the ICC (scope of universal jurisdiction, the advantage of transferring cases to the ICC, transfer to the ICC in case of immunity impending criminal prosecution at national level)". A number of delegations then presented the state of play as regards their work (ratification and/or implementation), including developments occurring in other regions.

77. The discussion moved on to the distribution of tasks between courts at the national and international levels, the need for States to have practice and legislation for implementation and the bilateral agreements agreed under Article 98 of the Statute, to which the Secretary General had referred. He noted lastly how useful it was to have exchanges of views with and the support of the Council of Europe in order to facilitate and assist the member States via the documents and work produced by the competent bodies and also via its website.

78. The Norwegian delegation pointed out how important it was for States to comply with the undertakings they had given, in particular in relation to the budget, when drawing up national implementing legislation and when ratifying the Agreement on Privileges and Immunities of the Court. Norway was the only country to have ratified the Agreement on

Privileges and Immunities. Lastly, this delegation stressed the important role that regional organisations could play, in particular the Council of Europe.

79. The United Kingdom delegation reported that the British Parliament had passed the International Criminal Court Act in 2001 and was on the point of ratifying the Agreement on Privileges and Immunities. It also asked States to pay their contributions to the Court's budget and expressed its satisfaction with the very positive developments at the Assembly of States Parties, the ICC Victims Trust Fund to be set up for victims and their families and the appointment of a Deputy Prosecutor. On the question of bilateral agreements, the UK government supported the guidelines issued by the EU and hoped that others would take a similar line. Lastly, it emphasised the importance of the credibility of the Court in order to ensure efficient justice and asked how the Court intended to handle the arrival of a high number of applications to it: might it operate a selection system based for example on a criterion of seriousness?

80. Mr Kirsch pointed out that the adoption by States parties of appropriate legislation was just as fundamental as ratification of the Agreement on Privileges and Immunities. He regretted that the Assembly of States Parties had not been able to adopt a resolution on the system of defending the accused. In that connection, he informed participants that the Court was currently in contact with several associations and defence lawyers and that it would carry on with that cooperation.

81. The German delegation recognised the importance of the Court's adopting its rules of procedure. As for the third Multilateral Consultation, Germany noted that the conclusions did not mention the crime of aggression, which showed the work which remained to do on the subject. It also called upon delegations to debate the report prepared by the coordinator of the Working Group on the crime of aggression, which had been adopted by the Preparatory Commission. A legal provision on the crime of aggression was essential in order to ensure that the ICC worked efficiently.

82. The representative from Japan stated that his country supported the work in progress even if it was not a party to the Rome Treaty. Japan, like a number of Southeast Asian countries, was currently assessing the compatibility of the Rome Statute and its national law before becoming a party. Bilateral consultations had been carried out with countries in East Asia and Europe. He wondered about the ICC Victims Trust Fund.

83. The Austrian delegation pointed to the importance of the Council of Europe's support for the ICC, as evidenced by the presence of the Secretary General at the CAHDI. It was important to ensure the credibility of the Court, and it was up to States to convince other States to become Parties. It was also important not to forget the role played by NGOs and civil society in general in the process of creating the Court and as relays for fostering public awareness. As for the rules of procedure of the Court, States should be kept informed and receive relevant documentation. Lastly, it considered that the crime of aggression was certainly an important missing item but one that did not need internal implementing measures. It was a practical question that should be resolved quickly.

84. Mr Kirsch pointed out that it was for the Assembly of States Parties and not for the Court to consider the question of the crime of aggression. He welcomed Japan's interest in the Court and reiterated the need for ratification as soon as possible. He said that he was available to discuss the implementation of the Statute with national authorities. As for the ICC Victims Trust Fund, a board of directors had been elected for three years. Experts would continue to work on specific aspects of the broader question of victims. As for the rules of procedure, it was planned to organise hearings before November and to make proposals to a panel of experts. He counted on the support of States in areas other than finance, such as the collection of evidence and testimony. Recently, for example, States parties had made a team of investigators available to the Court.

85. The Greek delegation thanked the Secretary General for his speech and expressed its satisfaction with the progress achieved to date, in particular within the Assembly of States Parties. It also reported on its authorities' support for the Council of the EU's common position. A national implementing law had been passed, and the Agreement on Privileges and Immunities would be signed shortly. It supported the German delegation's appeal concerning the crime of aggression and considered that that item should not be marginalised on the agenda. It therefore proposed to follow the example set by the Preparatory Commission and to continue the work on the basis of the draft proposal prepared by the coordinator of the working group.

86. The Mexican representative described the progress of legislative work since the last CAHDI meeting. He thanked the Council of Europe warmly, and in particular the Secretary General, for the invaluable help which had been provided in order to convince the national parliament to legislate on the Rome Statute. He reiterated his reservations concerning bilateral agreements and the anxieties previously expressed by the Mexican authorities. Lastly, his country had made a voluntary contribution to the Court's budget and hoped to be able to do so again this year.

87. The Swiss delegation considered that the creation of the ICC had generated a degree of euphoria but also substantial expectations. That was why the most difficult work lay ahead for the ICC because it had to assert its authority in the cases it would be called upon to solve. The aspects referred to by Mr Kirsch in his speech – efficiency, justice and transparency – were key ones for ensuring the ICC's credibility. The Swiss delegation would like to know how the Court assessed the risk of a huge influx of applications, and also the means, *inter alia*, of communication for explaining the limits of its action to the public.

88. The Canadian representative thanked the Secretary General and the President of the ICC for their statements and expressed his satisfaction at the progress already accomplished, while pointing out that there was still work to be done, and especially in relation to ratification and implementing legislation. Canada was going to ratify the Agreement on Privileges and Immunities as soon as possible. Lastly, Canada thanked the EU for having adopted guidelines on bilateral agreements concluded pursuant to Article 98 of the Rome Statute; these guidelines were very helpful for other countries.

89. Mr Kirsch said that the problem of the expectations raised by the Court was a very real one, especially since NGOs had already submitted a number of cases to the Prosecutor. However, although some did meet the requirements, it was evident that not all expectations could be met. As for the ICC's communication policy, it had not yet been fully drawn up, but it would be very active. However, given the Court's limited resources, the role of States in raising awareness and disseminating information was essential in order to explain what the Court was able to do and its inherent limitations.

90. The Chair concluded the item by thanking the President of the ICC for attending the meeting and noted that the CAHDI would carry on examining the questions raised.

9. Developments concerning the European Court of Human Rights (ECHR): Exchange of views with the Vice-President of the ECHR

91. The Chair welcomed the Vice-President of the ECHR, Mr Costa, and thanked him for accepting the Committee's invitation.

92. Mr Costa described recent developments concerning the ECHR and mentioned three points: the relationship between the ECHR's case-law and international law, the problems faced by the ECHR and the possible solutions for overcoming them.

93. On the first question, Mr Costa mentioned by way of example the ECHR's recent judgments showing the international environment in which the Court operated: *Matthews v.*

United Kingdom on a member State's duty to respect the Convention notwithstanding another international commitment, *Waite and Kennedy v. Germany* on an intergovernmental organisation's immunity from legal proceedings justifying the lack of access to domestic courts, *Cyprus v. Turkey* on an interstate application relating to the occupation of the northern part of the island, *Streletz and Krenz v. Germany* on non-violation of the principle that only the law can define a crime and prescribe a penalty in relation to sentences passed on former leaders of the DDR, *Hans Adam II of Liechtenstein v. Germany* on State immunity from legal proceedings on the basis of from an international treaty excluding jurisdiction of domestic courts, *Al Adsani v. United Kingdom* concerning State immunity before the courts of another State and justifying the lack of jurisdiction of a court despite the *jus cogens* nature of the rules relied upon, *Bankovic v. the NATO States* on the ECHR's lack of jurisdiction in relation to bombings carried out outside the geographical territory covered by the Convention, *Pellegrini v. Italy* on liability of a State Party for violations of the Convention committed by the courts of a third State in respect of whose decisions an enforcement order had been granted.

94. In a similar vein, he referred to a few pending cases, in particular: *Slivenko v. Latvia* on the problem of Russians in Latvia, *Ilaşcu v. Moldova and Russia* on the question of Transnistria, *Shamayev v. Georgia and Russia* on the extradition of Chechens, *Senator Lines v. the member States of the EU* on State liability in respect of acts of EU institutions. Lastly, he pointed to the way in which the case law of the ECHR and other international courts influenced each other.

95. As for the second question on the problems faced by the ECHR, Mr Costa referred first of all to the new mechanism set up by Protocol n°11 which came into force on 1 November 1998 aiming to simplify procedures, make economies of scale and finally make member States' compliance with the Convention subject to review by a purely judicial body. However, owing to the enlargement of the Council of Europe and the increase in the number of applications, the number of cases before the ECHR was growing exponentially: 1,000 new applications in 1988, 10,000 in 2000 and finally 22,000 in 2002.

96. Of the two objectives, that is to say on the one hand maintaining the quality of the Court's judgments whilst maintaining its role as a quasi-constitutional court in Europe, and on the other hand considerably increasing its productivity whilst enabling it rapidly to reject inadmissible or manifestly unfounded applications, which currently made up between 90% and 95% of the total number of applications received, only the first is being achieved at present. Despite increases in human resources and a considerable effort as regards productivity, the backlog was steadily increasing and currently more than 60.000 applications were pending.

97. In this situation, doing nothing would be the worst solution. The number of applications would continue to grow, and a human rights Court could not be content merely with discouraging applicants. To increase resources for dealing with the demand indefinitely would be an illusory solution since it would run into physical limits and would not solve the true problem. Thus, the only solutions would be to carry on increasing productivity and to operate a more severe system for filtering applications, of which a very large number had no chance for success.

98. Against this background, the Steering Committee for Human Rights (CDDH) had submitted proposals concerning an increased role for States, the ECHR's internal mechanisms, reform of the Convention and enforcement of judgments. This reform also included other possibilities: an enhanced role for the committees of three judges, decisions taken by Chambers in principle on admissibility and merits at the same time, more friendly settlements, more severe conditions for admissibility, a possible increase in the number of judges by unanimous decision of the Committee of Ministers and an enhanced role for the Committee of Ministers in the enforcement of judgments, including making findings of failure to act.

99. The ECHR took a very favourable view of the reform, with, however, a few reservations on the last three points.

100. Mr Costa considered that reforming the Convention was essential, but that the key was a more efficient filtering system.

101. Lastly, he raised a question of symbolic importance, which would not be expensive and would be beneficial in terms of human rights protection: the European Union's accession to the Convention.

102. He concluded his statement by calling upon delegations to act so as to remedy the current difficulties. The ECHR was the biggest human rights court in the world and without it, the human rights situation in Europe would undoubtedly be less good.

103. The members of the CAHDI thanked Vice-President Costa for his presentation.

104. The Swedish delegation was concerned about the Court's overload, and asked whether the addition of an admissibility criterion was an efficient solution. In that connection, it wondered about the future role of the ECHR: to act as a constitutional court or to discourage future cases while concentrating on questions which would have an impact in the media.

105. The Austrian delegation pointed out that the ECHR should not operate on the model of the US Supreme Court and should concentrate on the right of individual petition. The question of the current workload and the backlog could be resolved. The enlargement of the Council of Europe was nearly at an end and the number of cases was actually falling at the moment, showing that the reforms undertaken to date had had some effect. Adopting domestic measures would certainly further improve the situation, and that solution seemed preferable to amending the Convention, and in particular Article 35. Finally, it ardently supported the EU's accession to the Convention.

106. According to Judge Costa, Article 35 of the Convention encompassed, under the term "inadmissibility" very different legal concepts which entailed different filters. The six-month deadline after the final domestic decision was an objective rule which was easy to apply. Conversely, exhausting domestic remedies was a subjective condition which was more difficult to assess because the concept referred back to general principles of international law but the ECHR case law had evolved with regard to the concept of an effective remedy. Likewise, the admissibility criterion did not automatically reflect the workload: in the case of *Bankovic and others v. Belgium and 16 other Contracting States*, the Grand Chamber of the ECHR had declared the application inadmissible, but that had involved a considerable amount of work. Adding a new admissibility criterion would only have an effect in a small number of cases since, in any event, the merits of the application had first to be examined in order to determine whether the problem raised was important or not. As regards its future role, the ECHR was charged with interpreting and applying the Convention, but the Convention protected very heterogeneous rights such as procedural rights or the integrity of the human being in individual cases or cases of massive violations of human rights. In the latter case, the ECHR's role was particularly difficult, especially since the Court was dependent on applications made to it. The EU's accession to the Convention would be beneficial in terms of consistency and harmonisation of the case law. The technical drawbacks raised in that connection were solvable and the additional workload would not be substantial owing to the role at an earlier stage of the Court of First Instance and the Court of Justice of the European Communities.

107. The Norwegian delegation pointed out how useful it would be to have regular exchanges of views on developments relating to the ECHR.

108. Judge Costa also mentioned the importance of dialogue between the ECHR and the member States. Regular meetings took place with judges from the Court of Justice of the European Communities and national courts, but it was important for the ECHR also to strengthen its relationship with States. He therefore hoped to be able to establish a regular dialogue with the CAHDI given the role and influence of the Legal Advisers within their States and the growing importance of questions of public international law in the ECHR's work.

109. The Chair thanked Judge Costa warmly for his presence and hoped that the Committee would hold regular exchanges of views on the ECHR.

10. Implementation of international instruments protecting the victims of armed conflicts

110. The Swiss delegate reported on the XXVIIIth International Conference of the Red Cross and Red Crescent to be held between 2 and 6 December 2003 in Geneva. The conference would bring together representatives of 191 States Parties to the Geneva Conventions, of the 179 national Red Cross and Red Crescent organisations, of the International Committee of the Red Cross, of the International Federation of Red Cross and Red Crescent Societies and a number of observers to discuss "Protecting human dignity". The results should enable the conference participants to accept responsibility for complying with the law and for reducing the risks linked to armed conflicts, disasters and diseases. The long-term aim was to draw up a declaration, an agenda for humanitarian action and individual or collective commitments to be entered into by conference members. Ten workshops would be organised by different members of the conference on subjects linked to the conference theme, for example disappeared persons, a matter raised at the last meeting, and the current challenges facing international humanitarian law.

111. In preparation for the XXVIIIth Conference, the ICRC had organised 5 regional meetings of experts, from May 2003 onwards, in Cairo, Pretoria, Kuala Lumpur, Mexico and Bruges in order to discuss measures to improve the implementation of international humanitarian law. The results of those meetings would be presented in a report of the International Committee of the Red Cross (ICRC) at the XXVIIIth Conference.

112. The representative of Japan said that his country had adopted legislation enabling Japan to ratify the two protocols to the 1970 Geneva Conventions. The legislation included principles for future laws on emergency national security, the treatment of prisoners of war and measures to protect civilians during armed conflicts.

113. The Italian delegation reported on the meeting of the General Affairs and External Relations Council of the EU on 28 July 2003 when a cooperation agreement for crisis management between the EU and the UN had been adopted, relating more specifically to relations as regards the protection of civilian populations in peacekeeping operations. Furthermore, the Committee for Civilian Aspects of Crisis Management had been charged with drawing up operational guidelines on the protection of civilian populations.

114. The Spanish delegation explained the reform currently being undertaken of its Criminal Code in order to widen the provisions on war crimes and the protection of victims of armed conflicts. The Spanish delegate invited States to make a declaration pursuant to Article 90 of the Additional Protocol in order to recognise the jurisdiction of the International Fact-Finding Commission. Lastly, he suggested that the Council of Europe be associated with the work of the Conference, given the organisation's experience in the field of protecting human rights.

11. Implementation and functioning of the Tribunals established by UN Security Council Resolutions 827 (1993) and 955 (1994).

115. Nothing to report.

12. Fight against terrorism – information about the work carried out by the Council of Europe and other international bodies

116. The Secretariat reported on recent developments concerning the work of the Council of Europe in this area. The Committee of Ministers had decided to implement six essential activities, namely: special investigation techniques and the protection of witnesses and "pentiti" in relation to acts of terrorism, the fight against the financing of terrorism, questions relating to identity documents which arose in the context of terrorism, research into the concepts of "*apologie du terrorisme*" and "incitement to terrorism" and international cooperation on suppression of terrorism⁵. Furthermore, the European Ministers of Justice would consider the work of the Council of Europe on terrorism at the 25th conference in Sofia⁶.

117. The representative of Japan welcomed the work being done by the Council of Europe and presented the developments which had occurred in Asia. His country had ratified 12 conventions on the fight against terrorism and was giving technical assistance to other States in the region in order to develop their institutional capacity, in particular on the question of border control and the fight against terrorism.

118. The Spanish and Turkish delegations welcomed the negotiation of a general convention on terrorism within the Council of Europe as a contribution to currently blocked work on the subject at the United Nations.

D. OTHER

13. Election of the Chair and Vice-Chair

119. In accordance with the statutory procedure in force, Ambassador Nicolas Michel (Switzerland) was re-elected unanimously to serve as Chair for a one-year term. The Estonian delegation, which had nominated Ms Phani Dascalopoulou-Livada (Greece) for the post of Vice-Chair, was supported by the delegations of Austria and "the former Yugoslav Republic of Macedonia". The Greek delegate was elected Vice-Chair of the Committee unanimously for one year.

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

120. CAHDI decided to hold its 27th meeting in Strasbourg on 18 and 19 March 2004. The Chair proposed that the 28th meeting be held in Switzerland.

121. The Greek delegation proposed that the question of national measures for the application of UN sanctions be on the agenda of the next meeting. An exchange of views of the question would be valuable for its authorities and beneficial. The Netherlands delegation supported the proposal but also invited the Committee to study the question of compliance with obligations imposed by the UN and respect for human rights. The delegates of Portugal and Ireland supported the proposal and wanted also to examine the state of the case law of the European Court of Human Rights on the question. The Chair considered that a comparative law approach would be useful and consequently invited national delegations to present information on national situations at the next meeting.

122. The CAHDI adopted the preliminary draft agenda for its next meeting as set out in **Appendix VII**.

⁵ See www.coe.int/gmt

⁶ See www.legal.coe.int

15. Other business

123. The Chair referred to the requests of the European Organisation for Nuclear Research (CERN) and the International Committee of the Red Cross (ICRC) for observer status with the CAHDI.

124. The Secretariat informed members of the procedure to follow under Resolution (76) 3 of the Committee of Ministers.

125. Subject to confirmation by the Committee of Ministers, the CAHDI agreed to grant the ICRC observer status with the CAHDI and decided to resume consideration of CERN's request at its next meeting, in the light of additional information to be supplied to it.

126. The abridged report of the meeting appears in **Appendix VIII**.

Appendix I**LIST OF PARTICIPANTS****ALBANIA/ALBANIE:**

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AUSTRIA/AUTRICHE:

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Mr Rashad ASLANOV, International Law and Treaties Department, Ministry of Foreign Affairs

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Mme Anne-Marie SNYERS, Conseiller Général, Service public fédéral Affaires Etrangères, Direction Générale des Affaires Juridiques

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Apologised/Excusé

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DENMARK/DANEMARK:

Mr Hans KLINGENBERG, Ambassador, Head of the Legal Service, Ministry of Foreign Affairs

ESTONIA/ESTONIE:

Mrs Marina KALJURAND, Deputy Under-Secretary of the Legal Department, Ministry of Foreign Affairs

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Mrs Irma ERTMAN, Ambassador, Director general for Legal Affairs, Ministry of Foreign Affairs

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THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW/CONFERENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVE:

Apologised/Excusé

SPECIAL GUESTS/INVITES SPECIAUX

M. Philippe KIRSCH, Président de la Cour pénale internationale, LA HAYE

M. Jean-Paul COSTA, Vice-président de la Cour Européenne des Droits de l'Homme, STRASBOURG

SECRETARIAT GENERAL

M. Walter SCHWIMMER, Secretary General of the Council of Europe/Secrétaire Général du Conseil de l'Europe

Ms Eida MORENO, Private Office of the Secretary General/Cabinet du Secrétaire Général

DIRECTORATE GENERAL OF LEGAL AFFAIRS/DIRECTION GENERALE DES AFFAIRES JURIDIQUES

M. Giovanni PALMIERI, Head of the Department of Public Law/Chef du Service du droit public

Mr Rafael A. BENITEZ, **Secretary of the CAHDI/Secrétaire du CAHDI**, Deputy Head of the Department of Public Law/Chef adjoint du Service du droit public

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Ms Saskia DANIELL, Assistant/Assistante, Department of Public Law/Service du Droit public

Appendix II

AGENDA

A. INTRODUCTION

1. Opening of the meeting by the Chairman, Ambassador Nicolas Michel
2. Adoption of the agenda and approval of the report of the 25th meeting (Strasbourg, 17-18 March 2003) **CAHDI (2003) OJ 2 rev & CAHDI (2003) 8 prov**
3. Communication by the Head of the Department of Public Law, Mr Giovanni Palmieri **CAHDI (2002) Inf 6**

B. ONGOING ACTIVITIES OF THE CAHDI

4. Decisions by the Committee of Ministers concerning the CAHDI and requests for CAHDI's opinion **CAHDI (2003) 9**
5. The law and practice relating to reservations and interpretative declarations concerning international treaties : European Observatory of Reservations to international Treaties
 - a. Consideration of outstanding reservations and declarations to international Treaties **CAHDI (2003) 10 (Parts I, II and Addendum) & CAHDI (2003) 8 prov**
 - b. Consideration of reservations and declarations to international Treaties applicable to the fight against terrorism **CAHDI (2003) 11**
6. Pilot Project of the Council of Europe on State practice regarding State immunities **CAHDI (2003) 3 rev**

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

7. The work of the Sixth Committee of the General Assembly of United Nations and of the International Law Commission (ILC)
 - 55th Session of the ILC **CAHDI (2003) Inf 7 & 10**
8. Developments concerning the International Criminal Court:
 - Statement by the Secretary General of the Council of Europe, Mr Walter Schwimmer
 - Exchange of views with the President of the International Criminal Court, Mr Philippe Kirsch **CAHDI (2003) Inf 9**
 - Third Multilateral Consultation on the Implications for Council of Europe member States of the Ratification of the Rome Statue of the International Criminal Court **3rd Consult/ICC (2003) Concl**
9. Development concerning the European Court of Human Rights (ECHR): Exchange of views with the Vice-President of the ECHR, Mr Jean-Paul Costa
10. Implementation of international instruments protecting the victims of armed conflicts
11. Implementation and functioning of the Tribunals established by United Nations Security Council Resolutions 827 (1993) and 955 (1994)
12. Fight against Terrorism - Information about work undertaken in the Council of Europe and other international Fora
13. Election of the Chair and the Vice-Chair **CAHDI (2003) 5 rev 2**

D. OTHER

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

15. Other business

CAHDI (2003) 12

Appendix III

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

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 26th session in Strasbourg, 18-19 September 2003. The agenda included an item on « Decisions of the Committee of Ministers concerning the CAHDI and request for CAHDI's opinion».

2. In the framework of this item, pursuant to the Committee of Ministers' decision at their 837th meeting (Strasbourg, 16 April 2003), the CAHDI examined Parliamentary Assembly Recommendation 1602 (2003) on immunities of Members of the Parliamentary Assembly.

3. In accordance with its specific terms of reference, the CAHDI concentrated on what it considered to be issues of public international law.

4. The CAHDI considered that the issues dealt with by this Recommendation, in particular paragraphs 2 and 5.i required an in depth analysis which it could not carry out during the present meeting, and therefore it reserved its consideration of these issues and to return to them at its next meeting in the light of further information.

5. However, in order to meet the request of the Committee of Ministers, the CAHDI wished to provide it with the following preliminary considerations.

6. The CAHDI recalls the relevant provisions of the Vienna Convention on the Law of the Treaties, including Articles 31-33 and in particular Article 31 that provides that

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

[...]

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.

7. Without prejudice to the further consideration of the substantive points referred to in paragraph 4 above, the CAHDI notes that, from a procedural point of view, the Committee of Ministers could, if considered appropriate, adopt unanimously a position concerning the interpretation of the General Agreement on Privileges and Immunities of the Council of Europe. The effect of such a position would have to be seen in the light of the above-mentioned provisions.

8. Concerning paragraph 5, iii of the Recommendation, the CAHDI stresses that, in accordance with Article 6, paragraph 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, at all stages when parliamentary immunity is waived the presumption of innocence must be maintained.

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

Mr Chairman,
Ladies and Gentlemen,

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

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

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

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

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

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

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

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

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

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

Appendix V**STATEMENT BY MR PHILIPPE KIRSCH
PRESIDENT OF THE INTERNATIONAL CRIMINAL COURT***Part One: Update on the work of the ICC*

- In the last few months, the ICC has become a reality. The Court is no longer an aspiration, but is a functioning institution built on the foundations laid by the Rome Statute.
- The institutional groundwork has already been completed: the Court's most senior officials have been appointed and the Court is in the process of building its structures and devising its procedures.

- In light of its responsibility to ensure that the Judiciary is prepared for its first cases, the Presidency will call on Judges of the different Divisions to serve on a full-time basis, in view of the workload of the Court (in accordance with Article 35 of the Statute).
- Both the Pre-Trial and Appeals Divisions will be in place by the end of the first quarter of 2004. The Trial Division will be set up once proceedings have reached a more advanced stage.
- Considerable tasks remain in terms of administration, infrastructure and organisation in Chambers which will also necessitate the presence of Judges at the Court.

- The Court must be ready for its first case, and an essential part of that preparation involves the drafting of the Regulations of the Court.
- The drafting process began soon after the inauguration of the Court on 11 March; the Judges organised themselves early on into Working Groups to prepare the different chapters of the Regulations which address the following issues: General Provisions; Composition and administration of the Court; Proceedings before the Court; Participation of victims and reparations; and Defence counsel and Detention matters.

- The Judges will meet for another plenary session in November to discuss the Regulations. The Prosecutor and the Registrar will likewise present their observations in the elaboration of the Regulations; both are closely involved in the process. Our objective is, if possible, to finalise the document by the end of the year. After the adoption of the Regulations, they will be circulated to States Parties for their comments.

- Through this process, the Judges strive to guarantee that all stages of the criminal process, Pre-Trial, Trial and Appeal, are carried out as efficiently as possible, and to maintain the highest standards of justice.
- In both areas, effectiveness and due process, the Judges have tried to draw relevant lessons from past practice, including that of the international *ad hoc* tribunals, while examining carefully the implications of a number of features that are particular to our Court. The preparation of Regulations is no routine task. It is extremely important, for the proper functioning of the Court, to achieve the right results.

- The Judges are fully aware that transparency and inclusiveness are important for this process. We are currently working on ways to enhance public awareness, credibility, and ensure a wider participation in the process. As a first step, the draft Regulations will be available on the Court's website.
- The Presidency is also organising a public forum immediately before the Plenary. This forum will discuss the Regulations and in particular three topics which deserve a greater degree of public discussion and awareness: issues related to victims; issues related to the Defence; and the development of procedures before the Pre-Trial Chamber.

- The idea is to bring together experts on each of the three topics, and have them discuss, in the form of a panel, specific issues and questions which will be put before them. The seminar is also expected to allow for direct interaction between the panel, the Judges and a wider public including experts, academics, diplomats, the media, and representatives of inter-governmental and non-governmental organisations.
- I will now turn to the Second Assembly of States Parties to the ICC which, as you know, took place last week in New York. I am happy to report that the ICC continues to enjoy strong support among the States represented in New York.
- Several important decisions were taken at the ASP:
 - One of the foremost issues at the ASP was the consideration and adoption of the budget for the second financial year of the ICC.
 - The Court proposed a budget which, due to the increases in staffing and infrastructure associated with the establishment of a new organisation, was almost double that for the first financial period. The Committee on Budget and Finance (CBF) examined the budget and then made certain recommendations to the ASP.
 - The ASP followed most of the CBF recommendations. On certain points it retained the budget proposals made by the Court. The Court is satisfied with the results of this process.
 - I am confident that the relationship between the CBF, the ASP and the Court will continue to be one of cooperation and dialogue, all the while respecting the mutual independence of the bodies.
 - The Court will now require flexibility in the execution of the budget, in order to respond to necessities as they unfold.
- Another decision of great importance to the functioning of the Court was the election of the Deputy Prosecutor (Investigations). Mr. Serge Brammertz, currently Federal Prosecutor of Belgium and Deputy to the Prosecutor-General at the Liège Court of Appeal, was elected as Deputy Prosecutor for a term of six years, starting on 3 November.
- The Prosecutor, in his statement to the Assembly, outlined the work that his office is pursuing in following up on hundreds of communications sent by non-governmental organisations and individuals from many different countries. While some communications have fallen outside the jurisdiction of the court and cannot be investigated, others will merit the Prosecutor's continued attention. As a first situation, the Prosecutor is closely following the urgent situation in Ituri, in the Democratic Republic of Congo.
- A very distinguished group of persons was elected to the five-member Board of Directors for the Victims Trust Fund of the ICC. The Board consists of: Archbishop Desmond Tutu, former Chairman of the Truth and Reconciliation Commission of South Africa; Her Majesty Queen Rania of Jordan; His Excellency Mr. Tadeusz Mazowiecki, former Prime Minister of Poland; His Excellency Mr. President Oscar Arias Sánchez, former President of Costa Rica; and Madame Simone Veil, former Minister of Health of France and former President of the European Parliament.
- The Trust Fund will be an important step for the benefit of victims of crimes within the jurisdiction of the Court, and for families of such victims.

All of these developments have strengthened the Court, and mean that it is well-placed to meet its challenges. I will now elaborate a little on these challenges.

Part Two: The challenges facing the ICC

- The underlying challenge for the Court is the need to establish its credibility. This will be done through ensuring the fairness and efficiency of its proceedings.

- Fairness means the Court has to maintain the highest standards of justice and respect the rights of victims, witnesses and the accused.
- The Rome Statute establishes a system in which the rights of all parties are fully protected.
- It is now the duty of the Court to bring this system into operation. The Court's credibility will depend in large part on the fairness and integrity of its proceedings.

- Credibility on the international scene cannot come only from due process.
- We must strive for the highest levels of efficiency in both court proceedings and the internal workings of the institution.
- It is imperative that the Court demonstrate the ability to try defendants expeditiously. International criminal law cases involve many factors which are not found in any other type of litigation: the complexity of the cases, the scope of the crimes, the number of victims and the sheer volume of documentary and other evidence.
- The Regulations of the Court, which I discussed earlier, will play a vital role in managing proceedings before the Court and ensuring efficiency throughout.

- In order to properly establish its credibility, it is not enough that the Court act fairly and efficiently. It must also be seen to do so.
- Thus, the Court must be transparent in its operations. This applies both to proceedings before the Court and to its internal organisation.
- The Court must be open to States Parties, civil society and to the public at large. The Court needs to maintain its support for years to come.
- The Court should remain attentive to public opinion and respond to its expectations without giving in to pressure and untimely demands.
- We will be looking to civil society to help us meet the challenge of building a transparent and accessible Court.

External challenges

- There are also other, external challenges that the Court will face:
 - The ICC is a new institution, and it must find its place in the institutional landscape.
 - We need to define our relations with other international actors, first and foremost, with States:
- Cooperation
 - The support of States is necessary in the search for evidence and witnesses, and for the arrest of suspects, since the Court does not have enforcement mechanisms of its own.
 - The Agreement on Privileges and Immunities of the Court must also be advanced; this has a very low rate of adhesion thus far.
- Complementarity
 - We must give life to the notion of complementarity, ensure that States play their role in prosecuting breaches of international criminal law.
 - To that end, we have already developed projects to increase knowledge of and exposure to the Court among students, lawyers and other professionals in the field.
- Also, relations with international organisations
 - Most obviously the UN;
 - UN Relationship Agreement
 - But also other actors in post-conflict situations.
 - NGOs, IGOs, such as Council of Europe

Conclusion

- Not so many years ago, the idea of a permanent International Criminal Court could be dismissed as a dream. Even after the Rome Treaty was created, many predicted that the Court would not be operational for many years.
- Any yet, the Court is now a reality. This has only been possible because of the strong support of States, including many of the States represented here at the Council of Europe. Not only individual States, but the Council of Europe itself, has been one of the Court's most vocal supporters.
- Now is not the time to let this support wane. The Court is now operational, but this does not mean it can act alone. It needs, more than ever, the practical, political and moral support of countries like yours. It is only with this support that the Court can succeed in the struggle against impunity.

Appendix VI**THIRD CONSULTATION ON THE IMPLICATIONS FOR COUNCIL OF EUROPE MEMBER STATES OF THE RATIFICATION OF THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT**

1. Following the Consultation Meetings in May of 2000 and September 2001, which had been the joint initiative of the European Committee on Crime Problems (CDPC) and the Committee of Legal Advisers on Public International Law (CAHDI), the Council of Europe organised a Third Consultation Meeting on the implications for Council of Europe member States of the ratification of the Rome Statute of the International Criminal Court (ICC) in Strasbourg, on 17 September 2003.
2. This meeting was held in the framework of the intergovernmental programme of activities of the Council of Europe with a view to facilitating an exchange of views and information among the member and observer States of the Council of Europe and considering the role that the Council of Europe can play in this respect.
3. Experts from 36 member States, 4 observer States and observers from EUROPOL, INTERPOL, ICRC, ICC and NATO took part in the meeting, which was opened by the representative of the Secretary General of the Council of Europe, Mr Roberto Lamponi, the representative of the Presidency of the Committee of Ministers, Ms Victoria Iftodi and the representative of the Presidency of the European Union, Mr Roberto Bellelli. Ambassador Juan-Antonio Yañez-Barnuevo of Spain was elected by participants to chair the Meeting.
4. Participants first heard an intervention from Mr Mauro Politi, Judge of the ICC, who addressed the Conditions for the application of the Statute of the ICC.
5. The meeting then turned to the presentation of developments in the ratification and implementation of the ICC Statute in the member and observer States of the Council of Europe, including to references to developments elsewhere. Written national reports from a number of countries formed the basis for preparation for the meeting and were made available to the participants via a website.
6. Two specific topics were addressed in the detailed discussions of the meeting, namely:
 - a. Universal jurisdiction and obligations under international law – the extension of jurisdiction to include the prosecution of genocide, war crimes and crimes against humanity, which was presented by Mr Pål Wrange (Sweden) and
 - b. the Interaction between universal jurisdiction at national level and co-operation with the ICC, in particular the scope of universal jurisdiction, the advantage of transferring cases to the ICC, transfer to the ICC in cases of immunity impeding criminal prosecution at national level, which was presented by Mr Josef Brink and Mr Eberhard Desch (Germany).

C O N C L U S I O N S

7. Bearing in mind the conclusions adopted at the two prior consultation meetings, participants welcomed the significant and encouraging developments in the field of the ratification and implementation process since the holding of the second Consultation Meeting in September 2001, in particular the entry into force of the Rome Statute on 1 July 2002 and the setting up of the organs of the ICC in 2003.

8. Participants noted that since the second Consultation Meeting the number of member States of the Council of Europe which have ratified the Rome Statute has grown from 16 to 38. Participants recognised that this task requires thorough consideration by the competent national authorities and that exchanges of information and views among member States, observer States and Organisations mentioned above have benefited this process and will continue to do so.
9. Participants noted that in order to ensure compliance with the obligations derived from the Rome Statute various approaches are possible for the Statute's implementation, taking into account different legal systems and traditions.
10. Participants stressed the importance for the proper functioning of the ICC of the Agreement on Privileges and Immunities of the International Criminal Court and called upon States to become Parties to it and to adopt, where necessary, national implementing legislation at the earliest opportunity.
11. Participants further stressed the importance of putting in place the necessary legislation and procedures for effective and swift co-operation with the ICC, in particular as regards compliance with requests from the ICC for the surrender of persons, and noted the broad acceptance of a distinction between this type of transfer procedure and traditional extradition procedures.
12. Participants bore in mind Council of Europe Parliamentary Assembly Resolution RES (2003) 1336 - Threats to the International Criminal Court and the reply of the Committee of Ministers to Parliamentary Assembly Recommendation REC 1581 (2002) - Risks for the integrity of the Statute of the International Criminal Court, according to which "any efforts to undermine the integrity of the ICC are not acceptable and [...] bilateral agreements under article 98 of the Statute may only be acceptable if they respect the letter, object and purpose of the Statute", while taking note of EU General Affairs Council Conclusions on the ICC of 30 September 2002.
13. Participants agreed that any bilateral agreement regarding a State's co-operation with the ICC must be in conformity with the Rome Statute and other relevant provisions of international law. In this context, participants agreed that States Parties to the Statute could exchange information and support and assist each other in their efforts to meet their treaty obligations emanating from the Statute, particularly where the integrity of the Statute is being challenged.
14. Participants acknowledged that the ICC is complementary to national criminal jurisdictions and that, taking into account the relevant rules of international humanitarian law, primary responsibility for prosecution of these crimes lies with States. To this effect, national legislation and practices should enable States to bring to justice the persons responsible for crimes under Articles 6-8 of the Statute. Participants noted that national law already exists in several States, while other States are in the process of introducing legislation to this effect.
15. In this connection, participants further stressed that, as regards immunities provided for by national and international law, solutions ought to be found in order to secure full compliance with the ICC Statute.
16. The development of universal jurisdiction in accordance with international conventions and other applicable norms was noted. Various aspects of universal jurisdiction were discussed, including legal, practical and other problems. In particular, participants noted the importance of the development of universal jurisdiction in the fight against impunity for grave crimes of international concern.

17. Participants addressed the issue of a reasonable division of labour between the national and international levels of jurisdiction. Whereas the ICC will have to develop criteria for the types of cases it takes on or leaves to national jurisdictions, national judicial authorities must consider that the ICC may ultimately have to give priority to dealing with cases of international importance. It is to be hoped that, from this perspective, mutual cooperation and a division of labour between the ICC and national prosecutors and courts will develop. This will help alleviate such problems as simultaneous investigations at both international and national levels, and related evidentiary problems and delays.
18. Participants noted the entry into force on 27 June 2003 of the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes (ETS 082).
19. Participants noted the necessity to finalise the Relationship Agreement between the ICC and the United Nations.
20. Participants recalled the important role that the 45 member States of the Council of Europe can play in supporting the ICC and the efforts of the Council of Europe in facilitating the exchange of information and views among its member States and observers, thereby providing assistance to its member States in the ratification and implementation process, and supporting the universality and effective functioning of the ICC.
21. Participants thanked the Council of Europe for organising this third Multilateral Consultation and called upon it to pursue its efforts in support to the ICC, in particular through its ICC website, the network of country liaison officers and by holding further consultations as appropriate. For that purpose, provision should continue to be made in the programme of activities of the Council of Europe, in particular to enable the participation of all member and observer States in such activities. Furthermore, co-ordination of the Council of Europe's efforts with other organisations should also be ensured, in particular with the European Union, which has issued a revised Common Position on the ICC on 16 June 2003.
22. Bearing in mind the above-mentioned reply of the Committee of Ministers to Parliamentary Assembly REC 1581 (2002), participants invited the Committee of Ministers to lend further support to the ICC and decided to submit these conclusions to the Committee of Ministers asking it to forward them to the CDPC and CAHDI so that they can take them into account in their work.

Appendix VII**PRELIMINARY DRAFT AGENDA OF THE 27th MEETING****A. INTRODUCTION**

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

B. ONGOING ACTIVITIES OF THE CAHDI

4. Decisions by the Committee of Ministers concerning the CAHDI and requests for CAHDI's opinion
(Opinion on Recommendation 1602 (2003) on Immunities of members of the Parliamentary Assembly)
5. The law and practice relating to reservations and interpretative declarations concerning international treaties : European Observatory of Reservations to international Treaties
 - a. Consideration of outstanding reservations and declarations to international Treaties
 - b. Consideration of reservations and declarations to international Treaties applicable to the fight against terrorism
6. Pilot Project of the Council of Europe on State practice regarding State immunities

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

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

D. OTHER

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

Appendix VIII**ABRIDGED REPORT OF THE 26th CAHDI MEETING**

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 26th meeting in Strasbourg, 18-19 September 2003. The meeting was chaired by Ambassador Michel (Switzerland), Chairman of the CAHDI. The list of participants can be consulted in the meeting report (doc. CAHDI (2003) 14 prov) and the agenda appears in Appendix I.
2. The CAHDI was informed by the Head of the Public Law Department about recent developments concerning the Council of Europe.
3. In accordance with the request by the Committee of Ministers, the CAHDI adopted a preliminary opinion on Recommendation 1602 (2003) on Immunities of members of the Parliamentary Assembly as it appears in Appendix II and decided to revert to the matter at its next meeting in the light of further information.
4. In the context of its operation as *European Observatory of Reservations to International Treaties*, the CAHDI considered a list of outstanding declarations and reservations to international treaties and several delegations advised the Committee about the follow-up they envisaged to give some of the reservations and declarations considered. In the context of this activity, the CAHDI also considered reservations to international treaties applicable to the fight against terrorism in accordance with the decision of the Committee of Ministers of 21 September 2001 (CM/Del/Dec (2001) 765 bis, Item 2.1).
5. The CAHDI considered the implementation of the *Pilot-Project on State practice regarding State immunities* and took note that a preliminary draft analytical report, elaborated by three Research Institutes, will be submitted to it at the next meeting. Moreover, it invited delegation to provide any complementary information as soon as possible.
6. The CAHDI considered the work of the 55th session of the International Law Commission (ILC) and the preparation of the forthcoming session of the Sixth Committee of the General Assembly of the United Nations.
7. The CAHDI considered developments concerning the International Criminal Court (ICC). In this context, Mr Walter Schwimmer, Secretary General of the Council of Europe made a statement reproduced in Appendix III. Further to that, the CAHDI had an exchange of views with Mr Philippe KIRSCH, President of the ICC whose statement is reproduced in Appendix V of document CAHDI (2003) 14 prov. Finally, the CAHDI also considered the conclusions of the third Multilateral Consultation on the Implications for Council of Europe member States of the Ratification of the Rome Statute of the ICC.
8. The CAHDI also had an exchange of views with Mr Jean-Paul Costa, Vice-Chair of the European Court of Human Rights (ECHR) on recent developments in the ECHR.
9. The CADHI considered developments concerning the implementation of international instruments protecting the victims of armed conflicts, and those concerning the implementation and the functioning of the Tribunals established by UN Security Council Resolutions 927 (1993) and 955 (1994).
10. The Secretariat informed the members of the CAHDI about developments concerning the work undertaken by the Council of Europe in the field of the fight against terrorism.
11. The CAHDI re-elected Ambassador Michel (Switzerland) and elected Mrs Dascalopoulou-Livada (Greece) respectively Chair and Vice-Chair for one year.

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

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