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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)

35th meeting
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MEETING REPORT

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A. INTRODUCTION

1. Opening of the meeting by the Chair, Sir Michael Wood

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 35th meeting in Strasbourg on 6 and 7 March 2008. The meeting was opened by Sir Michael Wood, Chair of the CAHDI. The Chair welcomed all the participants, a list of whom is set out in **Appendix I**.

2. Adoption of the agenda

2. Referring to the draft agenda, the delegation of Spain requested the addition, under "Other business", of a sub-item on "Agreed arrangements between Spain and the United Kingdom relating to Gibraltar authorities in the context of mixed agreements and certain international treaties (2007)." The agenda was then adopted as it is set out in **Appendix II**.

3. Approval of the report of the 34th meeting

3. The CAHDI adopted the report of its 34th meeting (document CAHDI (2007) 26), taking into account the suggestions made by the French delegation on paragraph 178, and instructed the Secretariat to publish it on the CAHDI's webpage.

4. Statement by Mr Manuel Lezertua, Director of Legal Advice and Public International Law

4. Mr Manuel Lezertua, Director of Legal Advice and Public International Law, briefed delegations about developments within the Council of Europe since the CAHDI's 34th meeting. His statement is set out in **Appendix III** to the present report.

5. He highlighted the state of relations between the Council of Europe and the United Nations (UN) and European Union (EU) and underlined the importance of strengthening relations between these organisations. As for the relations between the UN and the Council of Europe, he welcomed the participation of Mr Nicolas Michel, Under-Secretary-General for Legal Affairs and UN Legal Counsel in this meeting of the CAHDI.

6. Referring to the Council of Europe Treaties Series, Mr Lezertua informed the Committee about the latest developments concerning a number of legal instruments and referred the Committee to the document CAHDI (2008) Inf 1 containing the information on latest signatures and ratifications. He also expressed his hopes that Additional Protocol No. 14 to the European Convention on Human Rights would enter into force as soon as possible.

7. Finally, Mr Lezertua stressed the significance of the CAHDI's current work and the importance of the forthcoming conference on "International Courts and Tribunals – The Challenges Ahead" (London, October 2008), which will serve as a forum to foster dialogue and exchanges of views between judges and with states.

8. The Chair thanked Mr Lezertua for his extensive overview of the Council of Europe's activities.

B. ONGOING ACTIVITIES OF THE CAHDI

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

a. "Disconnection clause": draft report of the CAHDI

9. The Chair presented the draft report prepared by the Chair and Vice-Chair on the consequences of the so-called “disconnection clause” in international law in general and for the Council of Europe’s conventions containing such a clause (document CAHDI (2008)1), as well as other relevant documents (CAHDI (2008)1 Add, CAHDI (2008)2 and CAHDI (2008)3).

10. He recalled that the report would need to be finalised at the next CAHDI meeting in order to meet the deadline set by the Committee of Ministers. To this end, he proposed that the Committee should conduct a preliminary exchange of views on the draft. On the basis of delegations' comments, the Chair would then draft a revised version, in informal consultation with the most concerned delegations, which would be circulated to delegations by the end of July with a view to its adoption at the next CAHDI meeting.

11. The representative of the Presidency of the Council of the EU reported that COJUR had considered the draft report and had expressed its agreement with the findings of the draft report concerning the validity of the clause. She further recalled the EU’s willingness to provide full transparency to non-EU member states and assured the Committee that the disconnection clauses included in Council of Europe conventions did not go against their object and purpose and that they should not be seen as reservations as provided for under international treaty law. However, the EU did not consider it appropriate that its general willingness to provide information should become an obligation. The Presidency reiterated that the EU's objective was that the institutional structure of the EU should be taken into account and therefore the EU’s constant policy was to request the inclusion of a clause in any draft convention which might affect the EU *acquis,* notably any convention not open to accession by the EU/EC. The delegation concluded that draft report constituted a good basis for discussion.

12. The delegation of the Russian Federation informed the Committee that although the draft had been prepared before its authorities had made their comments, many of the ideas proposed by the Russian Federation were reflected in the draft. However the draft report did not address the most frequent situation with Council of Europe conventions, namely where a convention has been ratified by some EU member states but not by the EU/EC. In such cases, the question of responsibility and accountability for the respect of the object and purpose of a Convention remains unresolved. The delegation of Russian Federation suggested that the Council of Europe could follow the example of the 1982 UN Convention on the Law of the Sea which has a special annex regarding international organisations’ participation. It was proposed to recommend that it be specified in such conventions that the disconnection clause would only become operative if the EU/EC as such became a party. It also proposed that the distribution of rights and obligations between EU/EC member states and the EU/EC should be set out more clearly and that the Committee should consider the advisability of establishing general principles for EU/EC participation in Council of Europe conventions.

13. The observer of the United States echoed the previous contribution with regard to the treaty relationship between non-EU states and EU states, particularly in cases where the EU/EC has not become a party and considered that it would be important to look at the disconnection clause on a case-by-case basis.

14. The delegation of Switzerland agreed on the usefulness of looking at disconnection clauses on a case-by-case basis and underlined the importance of the mechanism of submitting of information to the depositary. Switzerland would prefer a compulsory procedure for the circulation of information on EU law, particularly in view of the fact that treaty law is static whereas EU law is of a dynamic character. The delegation also considered that it was important to rename the clause, since the term "disconnection clause" was misleading.

15. The delegation of Norway echoed the previous comments, and stressed that the most important question was to safeguard the object and purpose of the treaties in question. The delegation suggested that one solution to the problem would be to follow the example used in Annex IX of the 1982 UN Convention on the Law of the Sea, which does not refer to disconnection

clauses but to particular situations where there has been a transfer of competences. Norway stressed the importance of transparency in this process and of adopting a non-Eurocentric vision of regional integration.

16. The observer of Canada agreed with the previous speakers, underlining the importance of ensuring the greatest possible transparency for these clauses.

17. The observer of the European Commission reiterated the importance of transparency and recalled the right of each country or international organisation to become or not to become party to a treaty, referring to the situation highlighted by the Russian Federation.

18. The delegation of France requested minor drafting changes to paragraph 25 concerning the quotation of the 1969 Vienna Convention of the Law of Treaties.

19. The observer of Canada suggested revising the reference to “federal clauses” in paragraph 37.

20. The delegation of the Russian Federation considered the term “mutual relations” in paragraph 28 to be unclear and also highlighted possible problems in defining “conventions standards” as referred to in paragraph 33.

21. In relation to the possible alternatives proposed to the term "disconnection clause", the Chair recalled that the proposal “EU clauses” had not been welcomed, firstly because it would suggest an overly Eurocentric vision and secondly since the term was already used in other circumstances.

22. The Chair said he would take all the comments into consideration and the Secretariat would circulate a revised draft by the end of July.

b. Draft opinion of the CAHDI on Parliamentary Assembly Recommendation 1824 (2008)

23. The Chair recalled the Committee of Ministers' request of 6 February 2008, presented the draft prepared by the Secretariat, and invited delegations to take the floor with general comments.

24. The delegation of France, supported by other delegations, underlined the pejorative connotations of the term “blacklists” and proposed that it should not be used either in the CAHDI's draft opinion or in the CAHDI's agenda, regardless of the fact that it comes from the title of the Parliamentary Assembly Recommendation. The delegation then recalled the commonly recognised usefulness of UN and EU lists.

25. The observer of the United States of America recalled the need to preserve sanctions as a useful tool against terrorism. It expressed its appreciation of the Secretariat’s draft, in particular the fact that it emphasized the utility of targeted sanctions and the significant improvements made in the system, including the establishment of the focal point system.

26. The delegation of Sweden proposed that a reference should be made, in paragraph 4, to the case of *Yusuf and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities* which was pending before the European Court of Justice. Concerning paragraph 7, the Swedish delegation referred to the on-going discussions aimed at further improving the protection of individuals and on the rule of law. It suggested adding, before the last sentence of paragraph 7, the following wording “*notwithstanding the need for consideration of further improvements*”.

27. The delegation of Switzerland suggested that the words “*where possible*” should be deleted from paragraph 4 noting that they were not necessary and could lead to misunderstandings.

28. The delegation of Finland expressed its concern about the first sentence of paragraph 4 which, in its opinion, did not sufficiently reflect the need to preserve the sanctions system, *inter alia,* by introducing further procedural and substantial improvements aimed at safeguarding the rights of targeted individuals.

29. The Chair proposed that paragraph 6 should refer to the "*European Union*" rather than to "*the Council of the European Union*". He further proposed some minor drafting changes in paragraph 7.

30. The delegation of Denmark suggested that the last sentence of paragraph 7 should be reinforced and noted that substantial improvements to EU procedure did not only occur as a result of pressure from the judgments pending before the European Court of Justice.

31. The observer of the European Commission echoed Denmark's remarks, adding that there was indeed no direct link between EU improvements and ECJ judgments because these decisions were under appeal.

32. The delegation of Germany supported the views of Sweden, Denmark and the European Commission.

33. The delegation of Belgium, supported by the French delegation, suggested that the wording "rule of law" could be translated into French as "*l'Etat de droit*".

34. The draft was modified in accordance with delegation's comments and suggestions and the CAHDI adopted the opinion on Recommendation 1824 (2008) of the Parliamentary Assembly as set out in **Appendix IV** to the present report

c. Other Committee of Ministers decisions concerning CAHDI

35. The CAHDI took note of the Ministers' Deputies reply to Parliamentary Assembly Recommendation 1788 (2007) on "The United States of America and international law".

36. The observer of the United States of America did not object to the Committee of Ministers' reply, which draws the Parliamentary Assembly's attention to the fact that the Council of Europe's member States are in dialogue with the United States authorities, *inter alia,* in the framework of CAHDI meetings. However, it recalled the objection of the USA to the original Parliamentary Assembly recommendation and resolution which, in its opinion, are inaccurate and contain erroneous information, for instance on the United States' position on the International Criminal Court (ICC).

37. The CAHDI took note of the other Committee of Ministers decisions concerning CAHDI adopted since its last meeting.

6. Programme of activities of the CAHDI for 2008-2009

38. The CAHDI discussed its programme of activities for 2008-2009 in the light of the *Criteria for launching, discontinuing and evaluating Council of Europe projects*, approved by the Committee of Ministers on 22 January 2007. Following a proposal from the Chair, it decided to include on its agenda for future meetings an additional item on "Topical issues of international law". Delegations were invited to submit further suggestions.

7. State immunities

a. State practice

39. The Chair drew the CAHDI's attention to the database on state practice regarding state immunities (document CAHDI (2008) Inf 2) and invited delegations to submit or update their contributions at their earliest convenience.

40. The delegation of the Russian Federation informed the CAHDI that its authorities regularly monitored judicial decisions and pending cases involving state immunities. The Russian courts' practice in this field is not very broad, with barely a dozen cases identified in the period 2005-2007. Since the Russian Code of Civil Procedure provides for the absolute immunity of foreign states, in most cases the courts reject any action. Even when foreign states are judged, the Foreign Ministry can intervene through the highest judicial bodies which can overrule the judgments in such cases. A recent trend identified concerns immunities of diplomats accredited in third countries. In this regard, the Ministry's position is that immunity is not valid in cases where diplomats' acts are not related to their official functions. For example, the Ministry distinguishes between a diplomat who tries to carry through the border a huge sum of cash intended to pay salaries to Embassy staff and one who tries to smuggle art works over the border. The Russian delegation expressed its intention to submit an updated version of its contribution to the database.

41. The German delegation informed the CAHDI that the Federal Constitutional Court had handed down two decisions (on 6 December 2006 and 8 May 2007) which arose out of Argentina defaulting on its foreign debt which affected numerous German citizens who had bought ArgentinIan bonds. Since Argentina had given a general waiver of immunity in respect of these bonds, a number of German courts handed down judgments in favour of applicants claiming compensation. However, the execution of these judgments raised the question before the Federal Constitutional Court of whether a general waiver of immunity contained in the terms of contract of the ArgentinIan bonds also implied immunity from execution for the diplomatic assets. Relying on customary international law, the Court decided that such a general waiver could not be construed as implying a waiver of diplomatic immunity. The second decision (8 May 2007), related to the question of whether Argentina could invoke the state of necessity as a justification against claims brought by private investors for Argentina's default. Argentina had argued that the country had gone bankrupt and there was a state of necessity resulting in it not being able to honour the bonds vis-à-vis the claimants. The Federal Constitutional Court held that no rule of general international law could currently be ascertained which would entitle a state to suspend the performance of due obligations vis-à-vis private individuals for payment arising under private law by invoking necessity. The Court found no proof of sufficient state practice to conclude that necessity could be invoked, as a defence by a state directly against private individuals in claims rising under private law.

42. The delegation of Switzerland informed the Committee about the entry into force, on 1 January 2008, of a law (*Loi sur l'Etat hôte*) setting out the privileges and immunities of International Organisations established or wishing to be established on Swiss soil (applicable also to diplomatic and consular representations). The law respects the international obligations established in the Vienna Conventions on Diplomatic and Consular Relations and headquarters agreements. The law provides for the possibility to establish other international organisations on Swiss soil, such as quasi-governmental organisations or public-private partnerships.

43. The delegation of the Netherlands commented on relevant recent developments concerning the immunity of international organisations. In 2007, a judgment of the Dutch Supreme Court had upheld the immunity of EURATOM. In 2005 the public prosecutor had decided not to prosecute EURATOM for environmental offences, which Greenpeace and others alleged had been committed by a EURATOM research centre based in the Netherlands, because of its immunity. In December 2005, an Amsterdam Court decided that EURATOM could have fulfilled its tasks without committing these offences and therefore did not enjoy immunity. The Supreme Court concluded that the approach taken by the Amsterdam Court was wrong and that the criterion for accepting immunity should be whether the actions in question were directly related to the fulfilment of EURATOM's tasks. Since this was clearly the case, the action was covered by immunity.

44. The observer of the United States of America mentioned two decisions which were not yet final. The first involved a Chinese minister who had been sued, whilst on an official mission in the US, for acts committed in China against the Falun Gong. The second case was against a former senior Israeli official for acts committed in Israel and the Palestinian territories.

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

45. The Chair referred to the list of signatures and ratifications of the UN Convention on Jurisdictional Immunities of States and Their Property (document CAHDI (2008) Inf 3).

46. The observer of Japan informed the CAHDI about the progress made with the ratification of this Convention. In the opinion of the Japanese authorities, the scope of the immunity enjoyed by the military under international law was not clear and could be greater than the immunity enjoyed by governmental organisations.

47. The delegation of Sweden referred to the submission of a report to the Swedish government at the beginning of 2008 which set out how the Convention could be incorporated, by a special act, into Swedish law. Sweden expected to be ready to ratify this instrument early in 2009.

48. The delegation of Switzerland stated that this instrument had been identified as one of the goals of governmental policy for 2008 and that its ratification was expected before the end of 2008.

49. The Chair suggested, and the CAHDI agreed, to conduct a *tour de table* on acceptance of the UN Convention on Jurisdictional Immunities of States and Their Property at its next meeting.

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

a. Situation in member and observer states

50. The Chair drew delegations' attention to the database on the Office of the Legal Adviser (OLA) (document CAHDI (2008) Inf 4) and welcomed the 41 responses which had been received and made available on the website. He suggested that this could serve as a good example for the setting-up of a similar database at UN level.

51. The delegation of Georgia informed the CAHDI that a new law on diplomatic services had entered into force in January 2008 and the delegation of Bulgaria reported that a new Diplomatic Service Act had been adopted in 2007. Both delegations would update their contributions to the database accordingly.

52. The delegations that had not replied were invited to submit their contributions and the other delegations were invited to update their contributions at their earliest convenience.

b. The role of the OLA in national implementation of international law

53. The Chair recalled the documents previously submitted by the United Kingdom, Mexico and Switzerland (respectively documents CAHDI (2006) 27, CAHDI (2007) 13 and 22).

54. The observer of Japan informed the CAHDI that the Japanese OLA Bureau, formerly the "Treaties Bureau" with the responsibility for making and interpreting treaties, had recently become the "National Legal Office Bureau" with the objective of ensuring respect for international law and increased organisational functions. The observer agreed with the paper submitted by the United Kingdom, underlining the importance of ensuring adequate financial support to the OLA. It also raised the question of the role played by NGOs, which often have a single agenda and whose interests are often difficult to coordinate with the overall interests of the state. The observer of Japan invited other delegations to share their experiences in this field.

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

55. The Chair introduced the agenda item by presenting relevant documents, including a database description (documents CAHDI (2008) Inf 5, CAHDI (2008) Inf 6 and CAHDI (2008) 13).

56. The observer of the European Commission presented the EU listing system and the latest relevant decisions of the European Court of Justice (ECJ). It distinguished between the lists established on the basis of Security Council (SC) resolution 1390 (2002) and the EU autonomous procedure. Concerning the first type of list, it mentioned two important judgments delivered by the Court of First Instance: the *Kadi* and *Yusuf* cases,[1] which recalled the principle that SC resolutions cannot be impugned even when translated into European norms, unless they violate *jus cogens*. These judgments were under appeal to the ECJ which was expected to deliver its judgments on the two cases in the coming months.

57. With regard to the EU autonomous listing procedure, the observer of the EC explained that the legal basis for the freezing of assets was taken into account. There was a fundamental difference between a decision taken within the framework of the second pillar (common foreign and security policy (CFSP) covered by Title V of the Treaty on the European Union) and a decision based on an EC regulation. By way of an example, the observer presented three cases brought before the Court of First Instance: PPK, KNK and PMOI.[2] In the last of these three cases, the Court found that fundamental rights had not been respected during the listing procedure and the PMOI was removed from the EU autonomous list.

58. The observer of the United Nations presented the action carried out by the Al-Qaida and Taliban Sanctions Committee[3] on due process issues, detailing among others the requirements of Security Council resolutions 1730 (2006) and 1735 (2006) and the Committee's own guidelines. The Al-Qaida and Taliban Sanctions Committee's Monitoring Team had been involved extensively at all stages. One of its suggestions was that the Committee should introduce some form of periodic review of listings, for example every name on the list could be reviewed on the fourth anniversary of its listing, and at the same or shorter intervals thereafter, in order to ensure that the list remained as up to date and relevant as possible. The observer of the United Nations underlined that both the recent opinions delivered by the ECJ Advocate General in this field and CAHDI's work had served to focus the Committee's attention on due process issues. Creative ideas on how to improve due process, particularly in relation to a possible review mechanism, were now being sought, both by the Committee and further a field. The observer of the United Nations urged the CAHDI and its member and observer states to consider proposals in this field and suggested that the Monitoring Team could act as a liaison with the Committee.

59. The delegation of Switzerland informed the CAHDI about the Swiss Federal Tribunal's decision in the case of Youssef Mustapha Nada v. State Secretariat for Economic Affairs of 14 November 2007. Mr Nada, who lived in Campeone d'Italia, an Italian enclave surrounded by Swiss territory, had his assets in Swiss banks frozen by the Swiss authorities, in accordance with UN SC resolution 1267. The applicant complained that this resolution violated his fundamental rights. The Federal Tribunal held that Switzerland was obliged to comply with SC Resolutions, by virtue of Article 103 of the UN Charter. Mr Nada had decided to appeal the Federal Tribunal's decision before the European Court of Human Rights (ECtHR).

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[1] Yassin Abdullah Kadi v Council of the European Union and Commission of the European Communities (Case T-315/01) and Ahmed Ali Yusuf and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities (Case T-306/01).

[2] Osman Ocalan, on behalf of the Kurdistan Workers' Party (PKK) v Council of the European Union (Case T-229/02), Kurdistan National Congress (KNK) v Council of the European Union (Case T-206/02) and People's Mojahedin Organization of Iran (PMOI) v Council of the European Union (Case T-256/07).

[3] The Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and Associated Individuals and Entities.

60. The delegation of Sweden drew the CAHDI's attention to a report drafted by Professor Bothe in response to a joint initiative by Lichtenstein, Switzerland, Denmark and Sweden. The report advocated a more elaborate de-listing procedure, including the setting-up of a review panel composed of independent, impartial and judicially-qualified persons.

10. Cases before the ECtHR involving issues of public international law

61. The Chair presented the contributions submitted by Romania and Slovenia and gave the floor to those two delegations.

62. The delegation of Romania presented two cases delivered by the European Court of Human Rights (*Iosub Caras v. Romania*, No. 7198/04, Judgment of 27 July 2006 (English only) and *Manoilescu and Dobrescu v. Romania and Russia, No. 60861/100,* Decision of 3 March 2005, Report of Judgments and Decisions 2005-VI) (see document CAHDI (2008) 11). The first dealt with the application by the Romanian authorities of the Hague Convention on the Civil Aspects of International Child Abduction. The second concerned the immunity of diplomatic buildings in Bucharest.

63. The delegation of Romania briefly presented another case pending before the European Court of Human Rights concerning the law of the sea. The applicant was a captain who was fishing in the Romanian exclusive economic zone (EEZ) during a prohibition period. The applicant contended that since Romania had not signed treaties on the delimitation of maritime boundaries with its neighbours, the relevant areas of sea must be considered "free sea"; therefore the Romanian authorities could not exercise sovereign rights over these waters and consequently could not prosecute him or his boat.

64. The delegation of Slovenia drew the CAHDI's attention to the case pending before the ECtHR of *Kovačić and Others v. Slovenia* (Nos. 44574/98, 45133/98 and 48316/99, Chamber judgment delivered on 6 November 2006 and then referred to the Court's Grand Chamber) which included legal issues relating to the protection of human rights, state succession and foreign currency deposits. Although the Chamber judgment had not solved any of the substantial legal issues, the procedural decision of the ECtHR contained some important points (see document CAHDI (2008) 12.)

65. The delegation of Switzerland referred to the case of *Stoll v. Switzerland,* delivered on 10 December 2007, concerning Article 10 (Freedom of expression) of the European Convention on Human Rights. In 1996, a Swiss ambassador in the US had established a strategic document about the indemnification of Holocaust victims within the framework of negotiations between the World Jewish Congress and Swiss banks. The document was classified confidential and sent to 19 members of the Swiss government. The applicant, a journalist, was fined 800 CHF (approximately 500 Euros) for publishing an extract of the document. Although a Chamber judgment initially found there had been a violation of Article 10, in its judgment of December 2007, the Grand Chamber of the ECtHR held that it was crucial, to ensure the good functioning of diplomatic missions and international relations, that diplomats could exchange confidential information. Although such confidentiality should not be protected in all circumstances, the potential danger that publishing such information can cause must be taken into account. Therefore the ECtHR ruled that there and not been a violation of Article 10.

11. Peaceful settlement of disputes:

a. Compulsory jurisdiction of the International Court of Justice (ICJ) (Article 36 (2)): Preliminary draft recommendation of the Committee of Ministers to Member States on the acceptance of the jurisdiction of the ICJ

66. The Chair presented the documents prepared by the Secretariat (CAHDI (2008) 7 and 8), recalling that at its last meeting the CAHDI had deferred consideration of the draft

Recommendation while awaiting the ICJ's decision on jurisdiction in the case of *Nicaragua v. Colombia*, which might have shed light on an aspect of Optional Clause declarations. The ICJ's judgment of December 2007 did not in fact deal with the question.

67. He further recalled changes which had been made in the new version of the draft Recommendation. In paragraph 7, the words “Taking note” had been replaced by “bearing in mind”. In paragraph 9, the draft had been updated by adding a reference to General Assembly resolution 62/70 of 6 December 2007. A new paragraph 11 had been drafted on the basis of comments submitted by the Russian delegation. It was noted that the Russian delegation's comments would also be reflected in the explanatory memorandum to the draft recommendation. The wording of paragraph 12 had been adjusted to follow more closely the wording of the consensus reached in the General Assembly resolutions referred to earlier in the Recommendation. In line with normal practice for recommendations of interest to the UN, paragraph 13 requested that the Secretary-General would forward the recommendation to the UN.

68. The Chair then presented the changes made to the Appendix: two variations to additional clause B had been suggested by the Russian Federation; the English title of additional clause C had been revised to bring it into line with the French version, which was more accurate; and the word “ambushing” in the title of additional clause D had been replaced by the more diplomatic formula “clause to avoid surprise”. With these explanations, the Chair opened the floor for discussion.

69. The delegation of the Russian Federation noted that, although it was mainly based on the delegation's comments, the revised wording of paragraph B of the appendix to the Recommendation omitted a phrase (“even if such facts or situations may continue to have effects thereafter”) which it considered a useful specification. It asked the Chair to clarify this point.

70. The Chair explained that if a dispute related to facts or situations which had occurred prior to the date of acceptance then it would be excluded, whether or not the facts continued to have an effect thereafter. He suggested, as an alternative, that the omitted phrase could be dealt with in the explanatory memorandum. This suggestion was accepted by the Russian Federation.

71. Moreover, following the request from the delegation of Greece about the explanatory memorandum, the Chair confirmed that the Secretariat would prepare the explanatory memorandum as a separate document and suggested that the draft explanatory memorandum should be circulated to delegations four weeks before its transmission to the Committee of Ministers.

72. The Secretariat clarified that recommendations do not always have an explanatory memorandum and that recommendations and their explanatory memoranda do not have the same authority: the Committee of Ministers adopts the recommendations but merely authorises the publication of their explanatory memoranda which, although a principal guide to the interpretation of the recommendations, remain under the responsibility of the Secretariat.

73. The Chair suggested and the CAHDI agreed that, once adopted by the Committee of Ministers, a delegation, preferably the delegation representing the Chairmanship of the Committee of Ministers, could have the recommendation circulated as an official document of the UN General Assembly under the Rule of Law item, with a view to encouraging the UN or other regional organisations to conduct similar exercises.

74. The CAHDI approved the draft Recommendation as set out in **Appendix V** to the present report and decided to transmit it to the Committee of Ministers for adoption.

b. Overlapping jurisdiction of international tribunals

75. The delegation of Portugal observed that the issue of disconnection clauses, in particular, could lead to overlapping jurisdiction between the European Court of Human Rights and the European Court of Justice. Consequently, the delegation suggested and the CAHDI agreed to keep this item on the agenda.

c. Lists of arbitrators and conciliators nominated by states: preliminary draft Recommendation of the Committee of Ministers to Member States on the nomination of international arbitrators and conciliators

76. The Chair presented the draft recommendation on arbitrators and conciliators and comments from the delegation of Sweden on this draft (documents CAHDI (2007) 20 rev & CAHDI (2008) 6).

77. The delegation of Sweden underlined that depositaries could play a more active role in alerting states to the need to nominate arbitrators and conciliators when mandates were due to expire.

78. The Chair proposed that this suggestion be included in the explanatory memorandum to the recommendation. The Chair recalled that the purpose of the draft recommendation was to highlight the importance of states using the opportunity provided under various instruments to nominate suitably qualified people to lists of arbitrators. It had become apparent that many states often did not do so or did not keep their lists up to date. The draft described the issue and set out the current state of affairs with regard to a number of these lists.

79. The delegation of Austria agreed with the Swedish proposal. It reported that Austria had nominated arbitrators in relation to the 1982 United Nations Convention on the Law of the Sea (List of arbitrators under Annex VII) on 9 January 2008 and requested that Point 5 of Appendix 3 of CAHDI (2007) 20 rev be updated.

80. The delegation of Portugal recalled that its authorities had initiated the process for the nomination of arbitrators or conciliators in relation to the Convention on Conciliation and Arbitration within the OSCE, the Vienna Convention on the Law of Treaties and the UN Convention on the Law of the Sea. Portugal also supported the Swedish proposal.

81. The delegation of the United Kingdom underlined the importance of this exercise and informed the CAHDI that since the last meeting it had initiated the internal processes necessary to make new nominations. The delegation expressed its intention to report on this item at the next CAHDI meeting.

82. The CAHDI requested the Secretariat to prepare an explanatory memorandum to accompany the recommendation, which could be based on the introduction and Appendices 1 to 4 to CAHDI (2007) 20 rev. The Chair suggested that the memorandum should emphasize the Swedish proposal for a more active role to be played by depositaries and that the document should be circulated for information to delegations. He further proposed that, once adopted, the recommendation should be transmitted to the UN Secretary-General.

83. The CAHDI approved the draft Recommendation as set out in **Appendix VI** to the present report and decided to transmit it to the Committee of Ministers for adoption.

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

a. List of outstanding reservations and declarations to international treaties

84. The Chair presented the documents related to this item (CAHDI (2008) 5 rev & Add). He also referred to the document CAHDI (2008) 5 rev Add 2 which contained a letter from the

Australian Embassy and Mission in Brussels, regretting that it was unable to participate in the meeting and setting out Australia's views on the reservations to be considered by the CAHDI.

85. The Chair informed the Committee that document CAHDI (2008) 5 rev now only contained reservations and declarations that were not expressly permitted by the treaty in question. He also drew the CAHDI's attention to the fact that five of the reservations and declarations included for consideration under this sub-item had been made upon signature. He recalled that at the last meeting, the issue of objecting to reservations made upon signature, as opposed to made upon ratification, had been raised in the CAHDI's discussion with Professor Pellet. Professor Pellet had been of the opinion that it was useful and important for states to make their objections known even in the case of reservations made upon signature in hope of encouraging the states in question not to confirm them upon ratification. The Chair asked delegations to indicate whether they had reflected on this issue in the course of their discussions under this item.

86. Regarding the reservation made upon signature by El Salvador to the Convention on the Rights of Persons with Disabilities, the delegation of Germany said that, according to its information, El Salvador had confirmed its reservation upon ratification. Germany confirmed its intention to object to the reservation.

87. The delegation of Finland expressed positive interest in Professor Pellet's opinion on reservations made upon signature and confirmed its intention to object to this reservation, even though it was made upon signature.

88. The delegation of Austria also informed the Committee of its intention to object.

89. Regarding the reservation made upon signature by Mauritius to the same Convention, the delegation of Portugal addressed its policy on making reservations. Due to a lack of resources, Portugal did not have a consistent policy towards reservations from other countries. However its policy on making and objecting to reservations was being updated and the possibility of also objecting to reservations made upon signature was also being considered.

90. The delegation of Sweden stated that it was considering making an objection as a matter of principle since the reservation was based on the content of national law.

91. Regarding the reservation made by Bahrain to a specific provision in the Covenant on Economic, Social and Cultural Rights, the delegation of France informed the CAHDI that it had asked Bahrain for an explanation of the wording "essential utilities". The Directorate for Legal Affairs of Bahrain's Foreign Office was expected to issue an answer shortly. France was of the opinion that it should be possible, and was sometimes even necessary, to react to a reservation made upon signature, since this would be a way of establishing a effective dialogue with a state concerned.

92. Regarding the reservation made upon ratification by Bahamas to the Corruption Convention, the delegation of Austria stated that since this reservation was expressly permitted by the treaty, it did not intend to object.

93. Regarding the declaration made upon ratification by Israel to Additional Protocol III to the Geneva Conventions, the observer of Israel emphasized that this declaration related to the period of time before the entry into force of the Protocol and that it would not have any effect on Israel's obligations under the new Protocol. The observer drew the CAHDI's attention to the statement made by the Israeli Ambassador to the UN in Geneva, while addressing the 30th International Conference of the Red Cross and Red Crescent, in which he reiterated that "we [the delegation of Israel] are committed to full implementation of the Third Protocol and [was] working with the relevant Israeli authorities to ensure full compliance with its provisions."

94. In its capacity as a party, and not as depositary, the delegation of Switzerland underlined that, though it was reassured by the statement of the Israeli delegation, it would continue its dialogue with Israel regarding this declaration to clarify the questions it raised.

95. Regarding the reservation upon signature made by Egypt to the Nuclear Terrorism convention, the delegation of the Russian Federation recalled that this reservation had previously been made by Egypt to another anti-terrorist convention, the Terrorist Bombing convention. In that case, the Russian Federation had made a declaration of political nature which was reflected in the CAHDI documentation and it informed the CAHDI that it might follow the same procedure with this reservation.

96. The observer of the United States of America expressed the view that, while the United States does not intend to object to the unilateral declaration by Egypt, it intends to issue an interpretative statement that Egypt cannot, by unilateral declaration, extend the obligations of other parties, including the United States, beyond these obligations set out in the Convention without their express consent, and therefore, Egypt's declaration can have no legal effect on other parties.

97. The observer of Japan requested that the Secretariat modify the description of its position with regard to this reservation and change the relevant table accordingly. The Egyptian reservation consisted of two parts and the reservation in paragraph 2 was consistent with the treaty. .

98. The delegation of Sweden expressed its wish to have a clarification from Egypt concerning the reservation.

99. The Chair noted that the reservation made by Turkey upon signing the Nuclear Terrorism Convention was permitted by the treaty.

100. Regarding the reservation by the United Arab Emirates to the Nuclear Terrorism Convention made upon ratification the Chair noted that this reservation seemed to be expressly permitted by the convention and wondered if reservations expressly permitted by treaties should be on the list at all. With a view to saving time, he suggested that reservations related to very straightforward cases, such as those related to dispute settlement, should not be included.

101. A table summarising the position of delegations on this sub-item is set out in **Appendix VII** to the present report

b. Consideration of reservations and declarations to international treaties applicable to the fight against terrorism

102. The Chair presented document CAHDI (2008) 10 which had been updated to include information provided by Latvia. Latvia introduced its contribution.

103. The Chair thanked the delegation of Latvia and called upon the CAHDI to complete and update this document in relation to all the relevant conventions, with a view to resubmitting it to the Committee of Ministers.

104. The observer of Japan addressed the interpretative declaration of Iran on the International Convention on the Taking of Hostages, which it had concluded was not to be regarded as a *de facto* or substantial reservation; it did not therefore intend to lodge an objection with the government of Iran. At the same time, it had decided to make a declaration in the form of a "*note verbale*" to the UN Secretariat, which read: "The Government of Japan does not consider that the aforementioned interpretative declaration made by the Government of the Islamic Republic of Iran purports to exclude or to modify the legal effects of certain provisions of the Convention in the application to the Islamic Republic of Iran. The Government of Japan does regard the interpretative declaration by the Islamic Republic of Iran as having no effect on the application of the Convention between the two countries". The observer of Japan underlined that although it did not consider it to

be a reservation, in order not to narrow the scope of the application of the convention in question between Japan and Iran, it had made a declaration in order to avoid other countries resorting to the same practices.

105. The observer of the United States of America echoed the statement made by Japan and informed the CAHDI that its authorities had filed an identical statement with the UN stating that Iran's declaration did not affect the convention.

106. The CAHDI agreed to pursue consideration of this sub-item at its next meeting with a view to submitting an updated version of the aforesaid list to the Committee of Ministers.

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

13. Exchange of views with Mr Nicolas Michel, UN Under-Secretary-General for Legal Affairs and UN Legal Counsel

107. The Chair welcomed Nicolas Michel and thanked him, on behalf of the Committee, for having accepted its invitation to hold an exchange of views. He underlined the importance of recent United Nations initiatives to promote the rule of law and on developments relating to the Special Tribunal for Lebanon.

108. Nicolas Michel stated that it was a pleasure and an honour to take part in a CAHDI meeting again, having been Chair of the Committee from 2003 to 2004.

109. Nicolas Michel addressed three topics: firstly, the promotion of the rule of law by the UN; secondly, the challenge of bringing an end to impunity; and finally the challenges facing the UN and the international community in making the responsibility to protect operational. He underlined in particular that the solution to these three key points lay simply in the fulfilment by states of their international legal obligations. The full text of his statement is set out in **Appendix VIII** to the present report.

110. The Chair thanked Mr Michel and opened the floor for discussion. The observer of the United States of America enquired what were the difficult legal issues and operational challenges facing the recently established Lebanon Tribunal.

111. The French delegation said that the question of 'responsibility to protect' was a difficult one and asked whether, in Mr Michel's opinion, this responsibility also covered preventive action.

112. The German delegation recalled that there was a long tradition of the UN and its Member States to build a better system of targeted sanctions and also for individual legal protection and wondered which steps should be taken next. The German delegation added that its Government was reflecting on the possibility of having an independent body appointed by the Security Council to review its decisions, similar to the system adopted with regard to Kosovo[4] which provided the possibility to review positions taken by the UNMIK.

113. With regard to the Special Tribunal for Lebanon, Mr Michel informed the CAHDI that the UN had managed to find a host country ─ the Netherlands ─ and that it was close to selecting the registrar. It was not known how or when the tribunal would start functioning. The Tribunal needed funds to cover its establishment and functioning for the first year. The investigations were extremely complicated and the security of the commission was of great concern. The UN and the international community needed to give a clear signals that the Tribunal was a fact, but at the same time should not rush into a process that would put at danger respect for international standards of

[4] All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice of the status of Kosovo.

international criminal justice. There was a risk that the Tribunal would be perceived as a political tool in the hands of one party against the other which would affect its credibility.

114. Regarding 'responsibility to protect', Nicolas Michel underlined that the concept still needed to be defined and recalled its evolution. Referring to measures that do not include armed force, there was a risk that the progress of international law would be forgotten, for example the obligation to always give notice of any action. It was not only up to the Secretariat to establish the scope of the concept of responsibility to protect, which should be established in close interaction with the Member States.

115. Nicolas Michel confirmed that the question of sanctions was particularly sensitive but stressed that progress towards an increase in the independence of the mechanism needed to be achieved.

116. The delegation of the United Kingdom stressed the importance of the Rule of Law Unit and supported its work. It also asked the opinion of Nicolas Michel on the dispute between the Fifth Committee and the ICJ, which had caused great discomfort.

117. The Dutch delegation, following up the previous question by the German delegation, asked how the establishment of the focal point regarding sanctions have been implemented over the past years.

118. The delegation of the Russian Federation recalled the work of the UN leading to the establishment of the Special Tribunal for Lebanon, and informed the Committee that it disagreed with the way in which the Tribunal was put into action: a bilateral agreement between the Secretariat and the Government of Lebanon had been imposed by resolution of the Security Council. It expressed the hope that in the future the Security Council would be avoid repeating such a practice. Regarding the responsibility to protect, it added that, in implementing relevant and well-balanced texts, the Russian Federation would nevertheless caution against any broad interpretation of the formulation in the Outcome Document, which would otherwise ruin the whole concept.

119. The delegation of Serbia referred to the declaration of Kosovo's independence by the Albanian provisional authorities and asked whether such an illegal act, followed by recognition of that state, was justified as a *sui generis* case. It expressed the opinion that, legally speaking, a *sui generis* case would set a precedent and asked for the opinion of Nicolas Michel on this issue.

120. Regarding 'responsibility to protect', the delegation of Portugal noted that the legal aspects of this concept needed to be developed. It asked Nicolas Michel whether he thought that the Sixth Committee of the General Assembly would be a good forum to develop this concept on its legal aspects.

121. Nicolas Michel shared the concerns of the delegation of the United Kingdom. He recalled that delegations to the various committees acted under the authority of their head of mission and underlined that there was a discrepancy between the wishes and concerns expressed by the Court and what delegations to the Fifth Committee actually said; this should be followed closely.

122. Replying to the Dutch delegation with regard to sanctions, Mr Michel insisted that the Secretariat had no role other than to act as the focal point. He noted that there had so far been no negative echoes on how it was working, and asked whether any delegations had comments about the new focal point.

123. In relation to the Russian comments, Mr Michel expressed his gratitude for the constructive co-operation of the Russian Permanent Mission in New York and for the financial contribution made by the Russian Federation. In relation to 'responsibility to protect', he stressed that simply

implementing what had been adopted in 2005 was already a big enough challenge and that adding anything to this objective would “sink the boat”.

124. On the declaration of independence of Kosovo, he recalled that his mandate was to advise the principal organs of the UN upon request and that, in this particular case, he had to keep his advice for the Secretary-General.

125. By way of a conclusion, Mr Michel reiterated the importance of the responsibility to protect, underlining that the main task now was implementation, but expressed doubts as to how successful the Sixth Committee would be in its attempt to include this issue on its agenda.

126. The Chair thanked Mr Michel for his valuable intervention and his explanations, and wished him well for the future.

14. Consideration of current issues of international humanitarian law

127. The observer of the International Committee of the Red Cross (ICRC) referred to the last International Conference of the Red Cross and Red Crescent, which had adopted by consensus a resolution that would reinforce humanitarian law. Furthermore, 340 commitments had been made concerning participation in humanitarian law conventions, the adoption of national implementation legislation and the diffusion of studies concerning customary international humanitarian law. Concerning the ICRC's study on customary international humanitarian law, it had been decided that the ICRC would issue an interpretative guide including several notions. The observer referred to another ICRC project investigating the impact of sanctions on respect of international humanitarian law. This project was intended not only to stress the importance of the application of sanctions but also to analyse the circumstances that would permit sanctions to have a more significant impact on combatants’ behaviour. The ICRC was also concerned that the laws applicable to non-international armed conflicts seemed to be quite undeveloped.

128. The Swiss delegation informed the CAHDI that from 14 to 16 April 2008 Switzerland would organise in Montreux an intergovernmental expert meeting. The aim would be to clarify the existing obligations related to private military companies. The aim would be to adopt commonly agreed principles and a list of good practices. The initiative aimed neither to legitimise nor to prohibit private military companies. Switzerland would also organise an expert meeting in July 2008 on access to humanitarian aid in the context of armed conflicts with the aim of bringing together military, governmental and NGO experts to establish dialogue and recall existing law.

15. Developments concerning the International Criminal Court (ICC): statement by Mrs Herta Däubler-Gmelin

129. The Chair welcomed Ms Däubler-Gmelin, Chair of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe (PACE) and Rapporteur on the ICC. He drew attention of the CAHDI to the Introductory Memorandum “Co-operation with the ICC and its universality” prepared by Ms Däubler-Gmelin and distributed in the meeting room (AS/Jur (2007) 34).

130. Ms Däubler-Gmelin recalled that 105 states had so far become party to the Rome Statute; Japan had acceded very recently. She called on the eight Council of Europe member States which had not yet done so to reconsider their inactivity and to adopt the national legal instruments required to join the Rome Statute. She furthermore invited the United States of America (“hostile”) and Israel, both observer states, to reconsider their respective positions towards the ICC.

131. Ms Däubler-Gmelin reported that her Committee had sent out questionnaires asking Council of Europe member States not yet having become party to the Statute to explain their reasons, such as specific constitutional issues. The answers were very different in nature. She encouraged those states which had not yet answered to reply to the questionnaire, with the help of

the CAHDI if necessary. Ms Däubler-Gmelin called upon those CAHDI delegations concerned to encourage their authorities to ratify the Rome Statute.

132. The Chair thanked Ms Däubler-Gmelin, underlining that the work of CAHDI and the work of the aforesaid Committee were closely related and that it was important to have direct contact between the two entities.

133. The Japanese delegation reported that Japan would contribute to the ICC, especially in terms of human resources. The ICC was perceived among many Asian countries as being Europe-oriented and Japan was working to promote the cause of the ICC.

134. The delegation of Turkey recalled that it had participated actively in the creation of the ICC and supported the principles and objectives enshrined in the Rome Statute. The Turkish Prime Minister Erdogan had reaffirmed Turkey's intention to become a party to the Rome Statute in his speech before the PACE in October 2004. Turkey considered it a serious omission that terrorism was not covered by the jurisdiction of the ICC and proposed that this should be rectified as a priority. Turkey was reviewing its national legislation regarding crimes falling within the scope of the jurisdiction of the Court, in line with the principle of complementarity, and would acced to the ICC Statute as soon as this process was completed.

135. The delegation of Germany recalled its support for the Council of Europe's efforts to promote the work of the ICC and welcomed the accession of Japan. Germany was working with some governments in order to enable them to speed up their procedures for acceptance of the Rome Statute and was ready to give advice to governments who need it. The German delegation commented that Germany's perception of the United States of America's position *vis-à-vis* the ICC was that it was "pragmatic" and certainly not as "hostile". For example, the support of the five permanent members of the Security Council had been necessary in order for the Security Council to refer the situation in Darfur to the ICC. Germany then reported that, on 5 December 2007, the Prosecutor of the ICC had informed the Security Council that Sudan was not co-operating with the ICC. The ICC had issued arrest warrants in more than 50 cases involving crimes against humanity and war crimes, however these persons were appointed to high-ranking posts in Sudan. Germany found this unacceptable and considered that the Security Council should do more. It called upon the Council of Europe's member states to work hard to ensure that Sudan realised that the international community could not accept its lack of co-operation with the ICC. The delegation of Germany also referred to the situation in Uganda and the fact that the ICC had issued three arrest warrants which had not been executed. The international community should also put pressure on Uganda to co-operate with the ICC. Finally, commenting on Turkey's intervention, Germany was aware that there was no definition of terrorism in the Rome Statute and informed the CAHDI that without any agreement within the General Assembly, Germany would be more than hesitant to negotiate on this issue at the revision Conference.

136. The observer of the United States of America reiterated that its authorities were not hostile to the ICC and that there was a profound misunderstanding of US position. It recalled that the United States of America had made statements in the UN respecting other countries' decisions to ratify the ICC Statute and it shared the main goals of the ICC. However when he signed the Rome Statute, former President Clinton had already said that it was fatally flawed and would not be submitted to the Senate until it was corrected. It was underlined that the United States of America worked co-operatively and pragmatically with the ICC and stood ready to assist the Prosecutor with his investigations in Darfur.

137. The delegation of the United Kingdom echoed the delegation of Germany's perception of the US's pragmatic approach to the ICC and paid tribute to the US's efforts in particular with respect to Darfur where pragmatic approach had been very positive. The delegation recalled that July would mark the 10th anniversary of the signature of the Statute and yet the ICC was still at a critical phase with the Lubanga trial. The United Kingdom encouraged the CAHDI to give its full support to Prosecutor Ocampo on that front. With regard to Germany's observations, the United

Kingdom reported that the pre-trial chamber had requested the views of the government of Uganda under Article 19 relating to admissibility issues. This would be the first test of the admissibility complementarity issues in respect of an ongoing investigation. With respect to Darfur, the United Kingdom informed the Committee that one person targeted by an arrest warrant had been promoted to an even more prominent position within the administration in Khartoum since it had been issued. The delegation of the United Kingdom expressed the hope that the Sudanese Government would understand that this was not the way to engage in issues of domestic reconciliation or in the pursuit of international criminal justice.

138. The delegation of the Czech Republic informed the CAHDI that a proposal with regard to the ratification of the Rome Statute had been approved by the Czech Government in January 2008 and had been sent to the Czech Parliament. The proposal was that the Rome Statute would apply as *lex specialis* and no amendments would be necessary to the Czech Constitution. The Czech Republic underlined that it participated regularly in the special working group on the definition of the crime of aggression and was an observer to the Assembly of States Parties to the Rome Statute.

139. The delegation of Norway stressed that the majority of the states present in the CAHDI meeting were putting all their efforts into eliminating the culture of impunity concerning the most serious offences in international law. There was an international consensus on this issue and the international community need to increase the dialogue in this field: it considered the scarcity of information and lack of dialogue to be the principal obstacles to solving this problem. The Norwegian delegation also reminded the CAHDI about the review conference for the ICC Statute, scheduled for the first half of 2010, and provided information about on-going discussions in the Assembly of States Parties on this issue.

140. The delegation of Georgia informed the Committee about Georgia's intention to ratify the Agreement on Privileges and Immunities in the coming months. Georgia reported that it had undertaken a number of projects with various beneficiaries and target groups, on humanitarian law in general and on the ICC with the support of the USA.

141. The delegation of Denmark supported the United States of America's description of its position as one of a "pragmatic" co-operation.

142. The delegation of Italy welcomed Japan's accession to the Rome Statute and underlined the efforts of the United States of America in support of the work of ICC.

143. The delegation of Sweden referred to the document AS/Jur (2007) 34 which referred to the action of the CAHDI and underlined that the Committee of Ministers would be in a better position to act on PACE recommendations.

144. Ms Däubler-Gmelin asked the CAHDI to promote the Rome Statute and thanked the delegations for their encouraging comments. It was the intention of the PACE Committee on Legal Affairs and Human Rights to bring the United States of America into the ICC context, even if USA is not a party to the Rome Statute. She urged the delegation of the USA to answer the questionnaire submitted by the PACE.

145. The Chair thanked Ms Däubler-Gmelin for her valuable intervention and her explanations. The CAHDI welcomed the possibility of holding such exchanges with the Parliamentary Assembly in the future.

16. Implementation and functioning of the Tribunals established by United Nations Security Council Resolutions 827 (1993) and 955 (1994) and the Special Tribunal for Lebanon

146. The CAHDI took note that Portugal had signed an agreement on the execution of sentences with the ICTY on 19 December 2007 which would soon be subject to internal approval procedures. The Committee agreed to keep the item on its agenda.

17. Follow-up to the outcome document of the 2005 UN World Summit – Advancing the international rule of law

147. The delegation of Switzerland welcomed measures taken within the UN to reinforce the coherence of the Organisation's activities regarding the Rule of Law. In particular, Switzerland expressed its satisfaction at the creation of the Rule of Law Coordination and Resource Group and its secretariat: the "Rule of Law Unit". The Swiss delegation was in favour of the inclusion of the Unit's costs in the Organisation's ordinary budget. It expressed its disappointment at the discussions which had taken place within the Sixth Committee in autumn 2007, but hoped that the debate would be more substantial in 2008, thanks to the Secretary-General's report.

148. The CAHDI agreed to pursue its consideration of this matter at its next meeting.

18. Fight against terrorism - Information about work undertaken in the Council of Europe and other international bodies

149. The head of the Finnish delegation, also the former Chair of the Council of Europe Committee of Experts on Terrorism (CODEXTER), gave an overview of the 13th meeting of CODEXTER in October 2007. The CODEXTER had carried out a monitoring exercise with regard to the 2007 Recommendation on the co-operation against terrorism between the Council of Europe and its member States and the International Criminal Police Organization (ICPO-Interpol). In this context, the Committee had stressed the importance of the consistent use of Interpol's databases and other tools. Secondly, the CODEXTER had held a panel discussion on possible areas for co-operation between the Council of Europe and the EU, following the adoption of the Memorandum of Understanding between the EU and the Council of Europe in May 2007. The issue of disconnection clauses had not been discussed, although legal means of co-operation had been addressed. Thirdly, the CODEXTER had adopted an opinion on the use of the Internet for terrorist purposes and the notion of cyberterrorism, which assessed the proposals contained in an expert report prepared on this subject and identified priority areas for further action.

150. The Secretariat referred to the UN Global Counter-Terrorism Strategy, and recalled the ad hoc meeting of the chairs of various Council of Europe committees held on 25 April 2007 to discuss how the Council of Europe could contribute to the implementation of the Strategy. The CAHDI had already been informed about the road map adopted on this occasion. The Council of Europe Counter-Terrorism Coordinator would continue to follow the implementation of this road-map, in particular in relation to the decisions expected to be taken by the Committee of Ministers on this subject.

151. The delegation of Austria said that its authorities were working intensively towards the ratification of the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196). The instrument of ratification was expected to be submitted to the Austrian government in June 2008.

152. The delegation of Switzerland informed the CAHDI that its authorities, together with Costa Rica, Japan and Slovakia, were working on the improvement of the UN counter-terrorism capacity. In this connection, a workshop had been organised in Zurich in January 2008 to discuss the institutional challenges of the UN fight against terrorism. This initiative was expected to be continued at a subsequent seminar in Bratislava later in March 2008.

153. The delegation of Germany informed the CAHDI that it hoped to complete the process for the ratification of CETS No. 196 before the end of 2008.

D. OTHER

19. Preparation of the 36th meeting of the CAHDI (London, 7-8 October 2008) and information concerning the International Conference on International Courts and Tribunals (London, 6-7 October 2008)

154. The Chair recalled that, at the invitation of the British authorities, the next CAHDI meeting would take place in London on 7 and 8 October and informed the Committee about the preparations for the Conference "International Courts and Tribunals – The Challenges Ahead" (London, 6-7 October 2008).

155. The Conference was an initiative of the Council of Europe, under the Swedish Chairmanship of the Committee of Ministers and would bring together the CAHDI's members and observers with a significant number of presidents, prosecutors and registrars from international courts and tribunals. The aim was to provide a forum for exchanges of views between those who represent international justice on a daily basis and representatives of the governments which initiated and established these bodies.

156. The CAHDI welcomed the preparations for both events and adopted the draft agenda of its next meeting, as set out in **Appendix IX** to the present report.

20. Other business:

- **Status of ratification of Protocol 14 to the ECHR**

157. The CAHDI took note of the relevant documents (CAHDI (2008) Inf 8, AS/Jur (2007) 09, AS/Jur (2007) 31) and reiterated that it strongly encouraged every effort to made with a view to ensuring the entry into force of the Protocol.

- **Agreed arrangements between Spain and the United Kingdom relating to Gibraltar authorities in the context of mixed agreements and certain international treaties (2007)**

158. The Spanish delegation recalled that Spain had been unable to ratify certain Council of Europe conventions containing clauses which potentially affected communications with the Gibraltar local authorities. In December 2007 Spain and the United Kingdom had reached an agreement in concerning the local authorities of Gibraltar in the form of mixed agreements (agreements to which the European Union/Community and its member states are party) and relevant international treaties (multilateral agreements to which the European Union/Community is not party). The delegation informed the CAHDI about these agreements and briefly described their content. The 2007 agreement complements the 2000 agreement on the regime applicable to the Gibraltar local authorities with regard to acts by European Union institutions and with regard to treaties adopted within or in the framework of the Union. According to the 2007 agreement, any communication between the Spanish authorities and the local authorities of Gibraltar resulting from a mixed agreement and/or another relevant international agreement, should pass through the intermediary of the centralised UK authority (FCO), via the *post-box* system established by the 2000 agreement. In addition the Spanish delegation informed the CAHDI that each time Spain ratified any of these conventions, it would always make a unilateral declaration on this procedure.

159. Having signed a number of United Nations Conventions since the conclusion of this agreement, Spain would now enter the process for the ratification of the relevant Council of Europe conventions. In this context it had started to make unilateral declarations in respect of the conventions signed previously. It had also undertaken the necessary steps with a view to signing other conventions, notably the 2005 Convention on Action against Trafficking in Human Beings. The Spanish delegation declared that by this process of signing and ratifying conventions, Spain

wished to underline its willingness to co-operate with the very important codification action conducted by the Council of Europe.

- **Request of the Organisation for Democracy and Economic Development – GUAM for observer status in the CAHDI:**

160. The delegation of Georgia made a request on behalf of the Organization for Democracy and Economic Development (GUAM) to be invited as a special guest to attend CAHDI meetings and, ultimately, granted observer status to the CAHDI. In this respect, it distributed the information about GUAM and informed the CAHDI that the organisation was established in 2006 by Azerbaijan, Ukraine, Moldova and Georgia with the aims of promoting human rights, democracy and the Rule of Law in the region, by strengthening regional co-operation and ensuring development in its member states.

161. It was stated that GUAM had recently started to create its own *acquis*, its members states having adopted a Convention against terrorism and organised crime. Additional protocols and additional international legal treaties were expected to be drafted and adopted in the near future. GUAM had also created a platform to bring together its members, international partners and other states at ministerial level on an annual basis. The delegation of Georgia also informed the CAHDI that the Organization met in the "GUAM+" format with Japan, the United States of America and the European Commission; the Presidency of the Baltic States also attended most of GUAM's summits. GUAM was currently chaired by Azerbaijan and would be chaired by Georgia from the summer of 2008. The delegation of Georgia reiterated that the idea of the letter was to inform the CAHDI about GUAM's intention and willingness to obtain observer status. He recalled that GUAM had recently been granted observer status to the CODEXTER and confirmed that an official request for observer status to the CAHDI would be submitted in due course.

162. The thanked the delegation of Georgia for the advanced information, which would be carefully examined by CAHDI members.

163. The Secretariat informed the CAHDI about the procedure to be followed, underlined that a formal request should be submitted to the Secretariat General and suggested that the CAHDI take note of this request.

164. The delegation of Azerbaijan expressed its hope that there would be a favourable response to GUAM's request.

165. The observer of the United States of America recalled the long standing support for the GUAM from its authorities, which would review this letter with great interest.

166. The observer of Japan informed the CAHDI that its authorities were following the development of this region with great interest.

167. The delegation of the Russian Federation took note of the information and of the fact the decision would be taken in due course according to the established procedures. It further drew the CAHDI's attention to the limited number of observers in the CAHDI and to the fact that these observers were mainly organisations with well-established authority and experience and expertise in the field of public international law. The Russian delegation was not entirely convinced that GUAM fully met these requirements, underlining that all of GUAM's member states were represented in the CAHDI.

168. The delegation of Georgia thanked the delegations which had expressed their opinions and support.

169. The CAHDI agreed that the Committee was not expected to take any decision on this matter in this meeting and took note of the request of the GUAM for observer status in the CAHDI.

- **List of items discussed and decisions taken**

170. The CAHDI adopted the abridged report of the meeting as set out in **Appendix X**.

171. The Chair informed the CAHDI that the Secretariat would circulate the abridged report by e-mail shortly after the meeting and declared the 35th meeting of the CAHDI closed.

APPENDIX I

LIST OF PARTICIPANTS

ALBANIA/ALBANIE:
Mme Ledia HYSI, Director of Legal Affairs and Treaties Department, Ministry of Foreign Affairs

ANDORRA/ANDORRE: **-**

ARMENIA/ARMENIE:
Mrs Nelly SAROYAN, Head of desk of International Treaties of Law Department, Ministry of Foreign Affairs

AUSTRIA/AUTRICHE:
Mr Helmut TICHY, Deputy Legal Adviser, Federal Ministry for European and International Affairs

AZERBAIJAN/AZERBAIDJAN:
Mlle Tahmina YOLCHIYEVA, Attaché, Département du Droit et des Traités Internationaux, Ministère des Affaires Etrangères

BELGIUM/BELGIQUE:
M. Paul RIETJENS, Directeur général, Direction générale des Affaires juridiques, Service public fédéral des Affaires Etrangères

M. Patrick DURAY, Conseiller, Direction du droit international public, Service public fédéral des Affaires Etrangères

BOSNIA AND HERZEGOVINA/BOSNIE-HERZEGOVINE : -

BULGARIA/BULGARIE:
Ms Emilena POPOVA, Director, International Law Directorate, Ministry of Foreign Affairs

CROATIA/CROATIE: Apologised/Excusé

CYPRUS/CHYPRE:
Mrs Elena PAPAGEORGIOU, Counsel of the Republic, Law Office

CZECH REPUBLIC/REPUBLIQUE TCHEQUE:
Mr Milan DUFEK, Counsellor-Minister, International Law Department, Ministry of Foreign Affairs

DENMARK/DANEMARK:
Mr Thomas WINKLER, Department of International Law, Ministry of Foreign Affairs, Ministry of Foreign Affairs

Mr David Michael KENDAL, Department of International Law, Ministry of Foreign Affairs

ESTONIA/ESTONIE:
Mrs Kristi LAND, Counsellor of the Under-Secretary of Legal and Consular Affairs, Ministry of Foreign Affairs

FINLAND/FINLANDE:
Mr Marcus LAURENT, Director General, Legal Department, Ministry for Foreign Affairs

Mrs Marja LEHTO, Director, Legal Department, Ministry for Foreign Affairs

FRANCE:
Mme Edwige BELLIARD, Directrice des affaires juridiques, Ministère des Affaires Etrangères

M. Antoine OLLIVIER, Rédacteur, Sous-direction du droit international public général, Direction des Affaires Juridiques, Ministère des Affaires Etrangères

GEORGIA/GEORGIE:
Mr Konstantin SURGULADZE, Director of Consular Department, Ministry of Foreign Affairs

Mr Mamuka JGENTI, Deputy Permanent Representative, Permanent Representation of Georgia to the Council of Europe

GERMANY/ALLEMAGNE:
Mr Georg WITSCHEL, Director General, Head of Legal Department and Legal Adviser, Federal Foreign Office

Mr Christophe EICK, Head of Division 500, Federal Foreign Office

GREECE/GRECE:
Mr Michael STELLAKATOS-LOVERDOS, Member of the Legal Service, Ministry of Foreign Affairs

HUNGARY/HONGRIE:
Mr István HORVÁTH, Legal Adviser, International Law Department, Ministry for Foreign Affairs

ICELAND/ISLANDE:
Mr Tomas HEIDAR, Legal Adviser, Ministry for Foreign Affairs

IRELAND/IRLANDE:
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ITALY/ITALIE:
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Ms Herta DÄUBLER-GMELIN, Chair of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, Parliamentary Assembly's Rapporteur on the ICC

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CAHDI SECRETARIAT / SECRETARIAT DU CAHDI

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Mme GRIFFITH
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APPENDIX II

AGENDA

A. INTRODUCTION

1. Opening of the meeting by the Chair, Sir Michael Wood

2. Adoption of the agenda

3. Approval of the report of the 34th meeting

4. Statement by the Director of Legal Advice and Public International Law, Mr Manuel Lezertua

B. ONGOING ACTIVITIES OF THE CAHDI

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

   - "Disconnection clause": draft report of the CAHDI
   - Draft opinion of the CAHDI on Parliamentary Assembly Recommendation 1824 (2008)

6. Programme of activities of the CAHDI for 2008-2009

7. State immunities:
   a. State practice
   b. UN Convention on Jurisdictional Immunities

8. Organisation and functions of the Office of the Legal Adviser of the Ministry for Foreign Affairs
   a. Situation in member and observer States
   b. The role of the OLA in national implementation of international law

9. National implementation measures of UN sanctions and respect for Human Rights

10. Cases before the ECHR involving issues of public international law

11. Peaceful settlement of disputes:
    a. Compulsory jurisdiction of the International Court of Justice (ICJ) (Article 36 (2)): Preliminary draft Recommendation of the Committee of Ministers to member States on the acceptance of the Jurisdiction of the ICJ
    b. Overlapping jurisdiction of international tribunals
    c. Lists of arbitrators and conciliators nominated by States: Preliminary draft Recommendation of the Committee of Ministers to member States on the nomination of international arbitrators and conciliators

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

    b. Consideration of reservations and declarations to international Treaties applicable to the fight against terrorism

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

13. Exchange of views with Mr Nicolas Michel, UN Under-Secretary-General for Legal Affairs and UN Legal Counsel

14. Consideration of current issues of international humanitarian law

15. Developments concerning the International Criminal Court (ICC): statement by Mrs Herta Däubler-Gmelin, Chair of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe and Rapporteur on the ICC

16. Implementation and functioning of the Tribunals established by United Nations Security Council Resolutions 827 (1993) and 955 (1994) and the Special Tribunal for Lebanon

17. Follow-up to the outcome document of the 2005 UN World Summit – Advancing the international rule of law

18. Fight against terrorism - Information about work undertaken in the Council of Europe and other international bodies

D. OTHER

19. Preparation of the 36th meeting of the CAHDI (London, 7-8 October 2008) and information concerning the International Conference of International Courts and Tribunals (London, 6-7 October 2008)

20. Other business:
    - Status of ratification of Protocol 14 to the ECHR
    - Agreed arrangements between Spain and the United Kingdom relating to Gibraltar authorities in the context of mixed agreements and certain international treaties (2007)

APPENDIX III

DECLARATION OF MR MANUEL LEZERTUA
DIRECTOR OF LEGAL ADVICE AND PUBLIC INTERNATIONAL LAW

Mr President,
Ladies and Gentlemen,

It is a pleasure and an honour for me to meet you again today in Strasbourg and to inform you, as Director of Legal Advice and Public International Law of the Council of Europe, of the recent developments that have occurred within our organisation since your last meeting in September.

These past months have been an opportunity for the Council of Europe to reap what it has sowed. On the one hand, several important conventions have recently entered, or will soon enter, into force, however I will come back to that. On the other hand, **relations which have been developed with the European Union** are taking on quite an interesting dimension and are making our interactions more and more concrete. Priorities of the current presidencies; Slovak for the Committee of Ministers of the Council of Europe, and Slovenian for the Council of the Union, agree on this point: it is crucial that the synergy of these two different organisations be guaranteed. In this regard, the first four-party meeting of the Council of Europe/European Union since the signature of the memorandum of understanding which henceforth links our two entities, took place on 23 October last year. Moreover, the next four-party meeting will take place in a few days' time, on 10 March.

Meanwhile, the issue of the European Union's accession to the European Convention on Human Rights has taken shape with the signing of the Lisbon Treaty, currently in the process of being ratified. In addition, the European Union's Ministers of Justice approved, on 7 December 2007, the initiative of the Council of Europe aiming at establishing the "European Day against the death penalty," which will be commemorated annually on 10 October. Furthermore, the Council of Europe's Parliamentary Assembly and the European Parliament signed a co-operation agreement on 28 November last year. This agreement includes in particular the holding of meetings and common hearings, and regular contacts between rapporteurs. Let me take this occasion to announce the election to the presidency of the Parliamentary Assembly, of Mr Lluis Maria de Puig (Spain), on 21 January of this year.

This "reinforced co-operation" between the parliamentarians of both organisation should allow a protection and a more efficient promotion of human rights, democracy and the rule of law.

In the Warsaw declaration, the Heads of States and Governments also pledged to strengthen the **co-operation between the Council of Europe and the United Nations**. I find it important to stress once again the contribution that CAHDI can bring to this objective. The participation in this current meeting of Mr. Nicolas Michel, the Unided Nations' Under-Secretary General for Legal Affairs who will join us in the early afternoon, is the perfect illustration of what I have just said.

In the same way, and this relates to the "European Day against the death penalty" that I spoke of a moment ago, I would like to emphasise the new impetus given by **the campaign aiming at obtaining a worldwide moratorium against the death penalty** and tending towards its abolition. Indeed, on 15 November last year, the third commission of the United Nations' General Assembly approved a draft resolution which was adopted on 18 December by the General Assembly itself. On that occasion, the Council of Europe recalled that it is resolutely committed to standing side by side with the United Nations and abolitionist countries in other regions of the world so as to speed up this process.

With regard to **developments that have occurred in the series of European Treaties**, as I stated earlier, many of our Conventions have presently taken on a new phase of their existence.

First of all, the **Council of Europe Convention on Action against the trafficking in Human Beings** came into force on 1 February this year, and is accompanied by an independent monotoring mechanism called GRETA (Group of Experts on Action Against Trafficking in Human Beings/Groupe d'experts sur la lutte contre la traite des êtres humains). To date, 38 States have signed this Convention and, among them, 15 have ratified it.

It should be noted that during the 28th Conference of European Ministers of Justice held in Lanzarote on 25-26 October last year, the **Council of Europe Convention on the Protection of Children against Sexual exploitation and Sexual abuse** was opened for signature. Twenty three member states signed this Convention on the day it was adopted, and four others have since been added to the list. For the first time, an international treaty provides a criminal punishment for sexual abuse; an offence usually committed by people known to, and who often have an influence on, the victims – in some cases members of their own family. This is one of the most harmful infringements to children and an outrageous breach of their rights and dignity.

In addition, an agreement regarding the adoption of the **revised European Convention on the Adoption of children** I told you about during our last meeting is taking shape. The opening for signature of this new Convention is henceforth planned before the end of the first half of 2008, as the Parliamentary Assembly had made a favourable opinion to the draft on November 23, 2007.

Finally, the **Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism** will enter into force on 1 May 2008 after having collected the 6 ratifications required for its entry into force. Twenty two States have also signed this Convention, which takes into account the latest developments in the field, particularly the recommendations of the FATF (Financial Action Task Force) on the fight against terrorist financing. Mr Benitez will come back to this subject later and will talk specifically about recent developments related to the fight against terrorism.

I now turn to activities undertaken by your **Committee**, the quality of its work being unanimously recognised. The agenda of today's meeting shows once again how excellent CAHDI is, especially in terms of its ability to co-operate with other international organisations and to address issues of crucial relevance. We can mention, for instance, the request from the Committee of Ministers to examine the consequences in international law of the so-called "disconnection clauses" or the implementation of UN sanctions and respect for human rights, notably in the light of the recent Recommendation of the Parliamentary Assembly.

You will also have the opportunity, right after this presentation, to exchange views with Ms Herta Däubler-Gmelin, Chairperson of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe and Rapporteur on the ICC, particularly as concerns developments related to the International Criminal Court.

These interventions are illustrations of co-operation and the sharing of experience and practices which justify, on the one hand, that you are frequently sought by the executive body of the organisation for advice; and on the other hand, that we consider your Committee to be one of the most efficient means of fulfilling one of the main current objectives of the Council of Europe; namely co-operation, research for synergies with other international organisations.

It is also the occasion to indicate, whilst underlining the major character of your activities, the importance of the **Conference** which will take place next autumn and which aims at bringing together **international Courts and Tribunals**. This event which will, just before your next meeting, gather together the Presidents and Clerks of international jurisdictions, is the first of its kind. It is a wonderful opportunity to discuss common obstacles encountered through the respective work of those jurisdictions. Let us benefit from this meeting so as to develop a strong and respected international justice.

This will thus undoubtedly be the opportunity for those international jurisdictions to take part once again in the “dialogue of judges” and for you, States representatives, to move closer to the international justice in a context other than that of disputes. It is a precious occasion for dialogue and exchange. It involves taking a break from your daily activity in order to reflect together on this phenomenon within international justice which is rapidly developing before our eyes.

On a practical note, more information will be given to you by the Secretariat during this meeting in relation to the status of preparations for this Conference.

To finish, inevitably, this Conference will address the issue of the means to be put in place in order to improve the efficiency of international justice. At the Council of Europe, we know what that efficiency requires. The European Court of Human Rights, our jewel, urgently needs, in order to work serenely, the entry into force of **Protocol 14**, and we hope that this will happen in the near future.

As your agenda is particularly busy, I conclude my intervention by assuring you that you will receive the most loyal support of the Secretariat in your efforts.

I thank you for your attention.

APPENDIX IV

OPINION OF THE COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI) ON RECOMMENDATION 1824 (2008) OF THE PARLIAMENTARY ASSEMBLY

1. On 6 February 2008, the Ministers' Deputies communicated Assembly Recommendation 1824 (2008) to the Committee of Legal Advisers on Public International Law (CAHDI) for information and possible comments by 15 April 2008. The Ministers' Deputies have also communicated this Recommendation to the Steering Committee for Human Rights (CDDH) and the Committee of Experts on Terrorism (CODEXTER).

2. The CAHDI examined the above-mentioned Recommendation at its 35th meeting (Strasbourg, 6-7 March 2008) and adopted the following comments which concern aspects of the recommendation which are of particular relevance to the mandate of the CAHDI (public international law).

3. In Recommendation 1824 (2008), the Assembly recommended to the Committee of Ministers to invite:

a the United Nations Security Council and the Council of the European Union to examine their targeted sanctions regimes and to implement procedural and substantive improvements aimed at safeguarding individual human rights and the rule of law, as a matter of the credibility of the international fight against terrorism, in particular an effective and comprehensive appeal mechanism against sanctions imposed by United Nations and European Union bodies;

b those member States of the Council of Europe which are permanent or non-permanent members of the United Nations Security Council, or of the European Union, to use their influence as a matter of urgency in these international bodies in order to improve the respective targeted sanctions regime so as to ensure respect for human rights and the rule of law;

c those member States of the Council of Europe which are permanent or non-permanent members of the United Nations Security Council or of the European Union to respect judicial decisions in relation to registration on blacklists, and to present the measures they have taken to put an end to the ongoing irregularities mentioned in the Assembly report.

4. From the outset, the CAHDI would like to underline the usefulness of the targeted sanctions system which needs to be preserved and consolidated, including through the consideration of further possible improvements. The Committee would also note that the Security Council and the European Union keep these matters under constant review and that significant improvements have been made. The Committee would also draw attention to the relevant provisions of the Charter of the United Nations, which form the international legal framework for the adoption and legal effect of UN sanctions, and to the fact that the issues raised are the subject of ongoing litigation, including in the cases of *Yassin Abdullah Kadi v. Council of the European Union and Commission of the European Communities* and *Yusuf and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities* pending before the Court of Justice of the European Communities,[5] in which Advocate General Maduro delivered his Opinion respectively on 16 and 23 January 2008.

5. As to the recommendation in paragraph 3(a) above, the CAHDI would like to recall its contribution to the improvement of the protection of human rights within the framework of the UN

[5] Judgments of the Court of First Instance of the European Communities of 21 September 2005, T-315/01 (Kadi v. Council and Commission) and T-306/01 (Yusuf and Al Barakaat International Foundation v. Council and Commission). All judgments can be downloaded from the website of the European Court of Justice (http://www.curia.europa.eu).

sanctions regime with reference to the fight against terrorism. Since March 2004 the Committee has been analysing the question of the relationship between the obligations of States to implement the United Nations Security Council resolutions on the basis of which the sanctions were adopted on the one hand and on the other hand the obligations of the same States resulting from international human rights treaties, in particular the European Convention on Human Rights.

6. It should also be underlined that the delegations of the member and observer states to the CAHDI hold regular exchanges with the United Nations and the European Union, in particular through the regular participation of representatives of these two institutions in the Committee's meetings.

7. As to the recommendation in paragraph 3(b) above, the CAHDI welcomes the adoption of United Nations Security Council resolutions 1730 (2006) and 1735 (2006), which aim at improving the protection of fundamental rights of individuals and the rule of law through the sanctions mechanism of the United Nations in the field of the fight against terrorism, notwithstanding the need for consideration of further improvements. The Committee also notes that improvements have been made in EU procedures aimed at enhancing the protection of fundamental rights of individuals and the rule of law.

8. As to the recommendation in paragraph 3(c) above, the CAHDI would like to recall the "Guidelines on human rights and the fight against terrorism", adopted by the Committee of Ministers on 11 July 2002, at the 804th meeting of the Ministers' Deputies, and in particular Section XIV, which reads:

> "The use of the property of persons or organisations suspected of terrorist activities may be suspended or limited, notably by such measures as freezing orders or seizures, by the relevant authorities. The owners of the property have the possibility to challenge the lawfulness of such a decision before a court."

9. Moreover the Committee underlines that in 2004 it initiated the setting up of a restricted database containing national contributions from member and observer states to the CAHDI, as well as a contribution from the European Union, on the implementation at national level of the United Nations sanctions in the field of the fight against terrorism and respect of human rights. This database contains, *inter alia*, information on national case-law and State practice concerning the relation between the sanctions targeting persons and the fundamental rights of these persons.

10. This database also allows for an exchange of best practices between states, with a view to making the fight against terrorism more efficient and increasing the protection of human rights. In March 2007, the CAHDI granted access to the database to the Committee of the Security Council established pursuant to resolution 1267 (1999) *concerning Al-Qaida and the Taliban and Associated Individuals and Entities*, at its request.

11. Finally, the CAHDI pursues its examination of and activities in this field.

APPENDIX V

DRAFT RECOMMENDATION REC(2008)... OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE ACCEPTANCE OF THE JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE

1. The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe;

2. *Considering* that the aim of the Council of Europe is to achieve a greater unity between its members;

3. *Having regard* to the work of the Committee of Legal Advisers on Public International Law (CAHDI);

4. *Bearing in mind* the European Convention for the Peaceful Settlement of Disputes (ETS 23);

5. *Having regard to* the Charter of the United Nations and in particular to Articles 2, 7, 36 and 92 to 96, and to the Statute of the International Court of Justice;

6. *Recalling* that the International Court of Justice is the principal judicial organ of the United Nations;

7. *Bearing in mind* United Nations General Assembly resolution 3232 (XXIX) of 12 November 1974 and resolution 44/23 of 17 November 1989;

8. *Recalling* the United Nations Decade of International Law, which had as one of its main purposes the promotion of means and methods for the peaceful settlement of disputes between states, including resort to and full respect for the International Court of Justice ;

9. *Bearing in mind* the 2005 World Summit Outcome, adopted by General Assembly resolution 60/1 of 16 September 2005, in which the General Assembly called upon States which had not yet done so to consider accepting the jurisdiction of the International Court of Justice in accordance with its Statute, as well as resolutions 61/39 of 4 December 2006 and 62/70 of 6 December 2007, in which the General Assembly repeated its call;

10. *Noting* that there is no requirement to make any reservations when accepting the jurisdiction of the International Court of Justice, and that some member States of the Council of Europe have indeed made declarations accepting the Court's jurisdiction without reservation;

11. *Stressing* that the list of Model Clauses appended to this Recommendation is in no way exclusive, and does not call into question other clauses that States may decide to include in their declarations accepting the jurisdiction of the International Court of Justice;

* * *

12. Recommends that the Governments of member States that have not yet done so consider accepting the jurisdiction of the International Court of Justice in accordance with Article 36, paragraph 2, of its Statute and that, when doing so, they give consideration as appropriate to the Model Clauses appended to this Recommendation;

13. Requests the Secretary General to forward this Recommendation to the Secretary-General of the United Nations.

Appendix to Recommendation ….

MODEL CLAUSES FOR POSSIBLE INCLUSION IN DECLARATIONS OF ACCEPTANCE OF THE COMPULSORY JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE UNDER ARTICLE 36, PARAGRAPH 2, OF THE STATUTE

1. Basic language accepting the Court's jurisdiction

"I hereby declare that [NAME OF STATE] recognizes [OR accepts] as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice, in conformity with paragraph 2 of Article 36 of the Statute of the Court"

2. Additional clauses which may be included in a Declaration accepting the Court's jurisdiction

A. Termination clause

"until [TIME-LIMIT] notice may be given to the Secretary-General of the United Nations withdrawing the declaration" OR "until such time as a notification may be given to the Secretary-General of the United Nations withdrawing the declaration [with effect from the moment of such notification/with effect from [DATE]]"

B. Clause excluding prior disputes

"over all disputes arising after [DATE], with regard to situations or facts subsequent to the same date"

or

"over all disputes, other than disputes arising prior to [DATE] or relating to facts or situations which occurred prior to that date"

C. Settlement by other method

"other than any dispute in respect of which the parties have agreed or shall agree to have recourse to some other method of peaceful settlement"

D. Clause to avoid 'surprise' applications

"other than where the acceptance of the Court's compulsory jurisdiction on behalf of any other party to the dispute was deposited less than [TIME-PERIOD] prior to the filing of the application bringing the dispute before the Court"

E. Variation clause

"The Government of [NAME OF STATE] also reserves the right [upon giving [TIME-PERIOD] notice/at any time], by means of a notification addressed to the Secretary-General of the United Nations, [and with effect from the moment of such notification,] either to add to, amend or withdraw any of the foregoing reservations or any other reservations that may hereafter be added."

APPENDIX VI

DRAFT RECOMMENDATION REC(2008)... OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE NOMINATION OF INTERNATIONAL ARBITRATORS AND CONCILIATORS

1. The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe;

2. *Considering* that the aim of the Council of Europe is to achieve a greater unity between its members;

3. *Having regard* to the work of the Committee of Legal Advisers on Public International Law (CAHDI);

4. *Bearing in mind* the Conventions for the Pacific Settlement of International Disputes of 29 July 1899 and 18 October 1907;

5. *Bearing in mind* the European Convention for the Peaceful Settlement of Disputes of 29 April 1957 (ETS 23);

6. *Having regard to* the Charter of the United Nations and in particular to Article 33, paragraph 1;

7. *Bearing in mind* United Nations General Assembly resolution 2625 (XXV) of 24 October 1970 adopting the *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations*;

8. *Recalling* the United Nations Decade of International Law, which had as one of its main purposes the promotion of means and methods for the peaceful settlement of disputes between states;

9. *Bearing in mind* the 2005 World Summit Outcome, adopted by General Assembly resolution 60/1 of 16 September 2005, emphasizing the obligation of States to settle their disputes by peaceful means;

* * *

10. Recommends that the Governments of member States maintain, and keep under review, a list of treaties and other instruments which provide for the nomination of arbitrators or conciliators for inclusion in lists maintained for the purpose of implementing provisions concerning the peaceful settlement of disputes;

11. Recommends further that the Governments of member States consider nominating arbitrators and conciliators in accordance with the instruments in question, and that they keep such nominations under review.

12. Requests the Secretary General to forward this Recommendation to the Secretary-General of the United Nations.

APPENDIX VII

INTERNATIONAL TREATIES
OBJECTIONS AUX RÉSERVES ET DÉCLARATIONS AUX TRAITÉS INTERNATIONAUX SUSCEPTIBLES D'OBJECTION

(07/03/08)

Legend / *Légende*:

- ● State has objected / *L'Etat a fait objection*
- ⭘ State intends to object / *L'Etat envisage de faire objection*
- ◘ State does not intend to object / *L'Etat n'envisage pas de faire objection*

TREATIES / *TRAITÉS*

A. Convention on the Rights of Persons with Disabilities and Optional Protocol thereto / *Convention relative aux droits des personnes handicapées et son protocole facultatif,* New York, 13 December / *décembre* 2006
B. International Covenant on Economic, Social and Cultural Rights / *Pacte international relative aux droits économiques, sociaux et culturels*, New York, 16 December / *décembre* 1966
C. United Nations Convention against Corruption / *Convention des Nations Unies contre la Corruption*, New York, 31 October / *octobre* 2003
D. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Adoption of an Additional Distinctive Emblem (Protocol III) / *Protocole additionnel aux Conventions de Genève du 12 août 1949 relatif à l'adoption d'un signe distinctif additionnel (Protocole III)*, Geneva/ *Genève* 8 December / *décembre* 2005
E. International Convention for the Suppression of Acts of Nuclear Terrorism / *Convention internationale pour la répression des actes de terrorisme nucléaire*, New York, 13 April/*avril 2005*

	Conventions	**A**		**B**	**C**		**D**	**E**			
States / *Etats*		**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**
	Reservation/ *Réserve*	El Salvador	Mauritius *Maurice*	Bahrain *Bahreïn*	Bahamas	United States of America *Etats-Unis d'Amérique*	Israel *Israël*	Egypt *Egypte*	Turkey *Turquie*	United Arab Emirates *Emirats Arabes Unis*	Saudi Arabia *Arabie Saoudite*
	Deadline *Délai*	30/03/07	25/09/07	3/10/08	30/01/09	5/12/07	21/11/08	03/11/05	31/10/05	28/01/09	6/02/09
Albania / *Albanie*											
Andorra / *Andorre*											
Armenia / *Arménie*											
Austria / *Autriche*	⭘			◘							
Azerbaijan / *Azerbaïdjan*											
Belgium / *Belgique*											
Bosnia and Herzegovina / *Bosnie-Herzégovine*											
Bulgaria / *Bulgarie*											
Croatia / *Croatie*											
Cyprus / *Chypre*											
Czech Republic / *République tchèque*											
Denmark / *Danemark*											
Estonia / *Estonie*											
Finland / *Finlande*	⭘										
France											
Georgia / *Géorgie*											
Germany / *Allemagne*	⭘**										
Greece / *Grèce*											
Hungary / *Hongrie*											
Iceland / *Islande*											
Ireland / *Irlande*					◘					◘	
Italy / *Italie*								●			
Latvia / *Lettonie*								●	●		
Liechtenstein											
Lithuania / *Lituanie*											
Luxembourg	◘	◘	◘	◘	◘	◘	◘	◘	◘	◘	

Malta / *Malte*										
Moldova	◘	◘	◘	◘	◘	◘	◘	◘	◘	
Monaco										
Montenegro										
Netherlands / *Pays-Bas*	●				●					
Norway / *Norvège*										
Poland / *Pologne*	o**									
Portugal										
Romania / *Roumanie*										
Russian Federation / *Fédération de Russie*							o*			
San Marino / *Saint-Marin*										
Serbia / *Serbie*										
Slovakia / *Slovaquie*	o**									
Slovenia / *Slovénie*										
Spain / *Espagne*										
Sweden / *Suède*		o								
Switzerland / *Suisse*										
"the former Yugoslav Republic of Macedonia"/ *"l'ex-République yougoslave de Macédoine"*										
Turkey / *Turquie*										
Ukraine										
United Kingdom / *Royaume-Uni*				◘					◘	◘
Canada										
Holy See / *Saint-Siège*										
Israel										
Japan / *Japon*			◘						◘	◘
Mexico / *Mexique*										
United States of America / *Etats-Unis d'Amérique*										

(*) Consideration of political statement / *Considération d'une déclaration de nature politique*
(**) If confirmed upon ratification / *Si confirmé lors de la ratification*
(***) Considers it a late reservation and therefore not in force / *Considère ceci comme une réserve tardive et donc pas en vigueur*

APPENDIX VIII

STATEMENT BY MR. NICOLAS MICHEL, UNDER SECRETARY GENERAL FOR LEGAL AFFAIRS, THE LEGAL COUNSEL

Dear Michael,
Dear Colleagues and Friends,

It is an honour to take part in this dialogue with the members of CAHDI and to have this opportunity to start with introductory remarks. I would like to address three topics: (i) how the United Nations is promoting the rule of law; (ii) the challenge of bringing an end to impunity; and (iii) the challenges facing the United Nations and the international community in operationalising the "responsibility to protect". As Foreign Ministry Legal Advisers, you are uniquely placed to play a key role in each of these areas.

The Rule of Law

Respect for the rule of law is at the very heart of the United Nations and its Charter, and was at the forefront of the minds of the United Nations' founders. Already in the Preamble of the Charter, they expressed the resolve "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained". As the former Secretary-General Kofi Annan said in his report "In Larger Freedom", the protection and promotion of the universal values of the rule of law, human rights and democracy are ends in themselves, and are essential for a world of justice, opportunity and stability.

The United Nations promotes the rule of law on three levels: the international level, the national level, and within the United Nations itself. I will look at each of these in turn.

First, the rule of law at the international level

Promoting respect for international law is absolutely key to the maintenance of international peace and security. To use the words of Judge Higgins, President of the International Court of Justice: "in a world often divided by politics, international law is our common language". The organs of the United Nations are of course at the heart of efforts to promote the rule of international law.

The primary aim of the United Nations must be to prevent conflict in so far as possible. Greater recourse to international dispute settlement is one effective way to help prevent tensions rising to the point where conflict breaks out. We should remind ourselves that it is an obligation under the Charter to resolve disputes peacefully. A positive development would be an increase in the number of States accepting the ICJ's jurisdiction. Increased acceptance of the jurisdiction was called for in the 2005 World Summit outcome Document. Each of you is well-placed within your national systems to press for an adequate response to this call.

An effective cooperative relationship between the Security Council and the ICJ, both principal organs of the United Nations, must be at the heart of the United Nations system for the maintenance of international peace and security. To this end, President Higgins has reinstated the practice of regularly briefing the Security Council on the ICJ's work. She has drawn attention to Articles 33 and 36 of the Charter which invite the Security Council to inform States to settle their disputes by judicial means, including by reference to the ICJ. Greater recourse by the Security Council to these provisions, which have not been used for many years, is one way in which the rule of international law might be positively promoted, and conflicts prevented.

President Higgins continues to present annual reports to the General Assembly and to attend the informal annual meetings of legal advisers in the margins of the Sixth Committee of the General Assembly. These are all important means by which the work of the ICJ is brought to the attention of the United Nations and the international community.

Since its establishment in 1946, the Office of Legal Affairs, then known as the Legal Department, has had as a core goal the promotion of international law. OLA carries out this work through training programmes, fellowships, publications, the drafting of model legislation, and the establishment of and support for international and internationally assisted criminal tribunals. We provide such assistance in: trade law, both through secretariat support to the UN Commission on International Trade Law and direct assistance to States; the Law of the Sea, through support to Law of the Sea treaty bodies and direct assistance to States; and treaty law, with a specific focus on assisting States to become parties to treaties and to live up to their international obligations. An excellent example is an OLA training programme last year in Liberia that included participation by the United Nations Development Programme, the World Bank, the Office of the High Commissioner for Human Rights, the International Committee of the Red Cross, and other organizations.

This well coordinated programme resulted in Liberia successfully developing national strategies for entering into and implementing treaties. It demonstrates that no one department in the United Nations has a monopoly on expertise in rule of law issues, and that cooperation and coherence in our strategies are essential if the assisted States are to benefit fully.

I turn now to the rule of law at the national level

As the Inventory of Rule of Law Activities being prepared by OLA demonstrates, around 40 UN entities promote the rule of law at the national level. Prominent among them are the Department of Peacekeeping Operations, the UN Development Programme, the Office of the High Commissioner for Human Rights and the UN Office on Drugs and Crime. UN agencies support the development of legal institutions and the rule of law in post-conflict societies, and in the longer term through development programmes. It is now universally accepted that the rule of law is fundamental to long-term and sustainable peace building.

Whether UN rule of law assistance is provided in a post-conflict situation or not, whether through a mandate from the General Assembly or the Security Council, or through a request from the State wishing to receive support, the principles are the same. In all cases, the UN works to provide rule of law programmes that are tailored to the particular needs of the recipient State, and over which the local authorities and society can take “ownership”. We have learned that one-size-fits-all solutions, imposed from the outside, do not take root.

Experience has shown that the UN needs to deepen and rationalise its rule of law work, strengthen its capacities, enhance its institutional memory and coordinate more effectively within the Organisation and with outside actors. To achieve this, former Secretary-General Annan at the end of 2006, responding to a recommendation of the 2005 World Summit, established a Rule of Law Coordination and Resource Group. The Group consists of the eight Principals of the major rule of law assistance providers in the UN system who meet from time to time under the chairmanship of the Deputy Secretary-General to ensure that our programmes are carried out in a coherent manner and are of a high quality in-keeping with the needs of those requesting the support.

The Group is supported by a small secretariat Unit. The Unit presently has no budget and operates through loans of staff from OLA, UNDP, and DPKO. It is our hope that the Unit will move to the regular budget at the earliest opportunity so that it can play its role fully in supporting and implementing the Group’s essential coordination and quality control functions. The Group is currently considering a joint UN Workplan for 2008, prepared by the Unit, which for the first time brings together the planned rule of law activities of the major UN departments, funds and programmes into a single document that should be a key tool for the senior UN management.

The General Assembly is fully engaged in this process of rationalisation and coordination. Last year's Sixth Committee adopted a resolution which strongly supported the establishment of the Group and the Unit, and confirmed the requests for the Inventory of UN rule of law activities being prepared by OLA, and report identifying ways and means for strengthening and coordinating the activities listed in the inventory. This latter report will be prepared by the Unit and submitted to this Autumn's Sixth Committee. The rule of law is thus firmly embedded in the agenda of the General Assembly.

I turn now to the rule of law within the United Nations

It is important that the United Nations not just promote the rule of law for Member States, but that it ensures that the rule of law is applied within the Organization. I will mention two areas that have attracted particular attention – the UN's internal justice system, and the efficiency and credibility of Security Council sanctions regimes.

Because of the privileges and immunities of international organisations, international civil servants in principle have no recourse to national courts regarding employment related matters. Against the background of the United Nations' responsibility for setting international human rights standards and promoting the rule of law at all levels, the Organisation has a special duty to offer its staff timely, effective and fair justice.

The current system of internal justice of the United Nations has been in place for several decades. The General Assembly requested the Secretary General in 2005 to form a panel of external experts to explore ways to redesign the system. The Redesign Panel, submitted its report to the Secretary General in July 2006.

The Panel recommended comprehensive changes, in particular the establishment of a professional, independent and decentralised internal justice system. The General Assembly is currently seized of the matter.

Turning to Security Council sanctions regimes, again it is due process concerns that are in question. The phasing out of general economic sanctions that adversely affected whole populations, in favour of today's targeted sanctions, has had clear humanitarian benefits. But the fact that Council sanctions committees now list named individuals and entities, whose assets are then frozen by member States, raises corresponding due process requirements. This concern was raised by member States in the 2005 World Summit document, in follow up to which former Secretary-General Annan sent a letter to the members of the Security Council through its President in 2006. In a non-paper annexed to that letter, he set out his views concerning the listing and delisting of individuals and entities on sanctions lists. In particular, he stated that the minimum standards required to ensure that the sanctions committees' procedures are fair and transparent include the following four basic elements:

First, the individual (or entity) against whom measures have been taken by the Council has the right to be informed of those measures and to know the case against him or her as soon as possible.

Second, the individual has the right to be heard, via submissions in writing, within a reasonable time by the relevant decision-making body (that is, the sanctions committee). That right should include the ability to access directly the decision-making body, possibly through a focal point in the Secretariat, as well as the right to be assisted or represented by counsel.

Third, the individual has the right to review by an effective review mechanism. The effectiveness of that mechanism will depend on its impartiality, degree of independence and ability to provide an effective remedy, including the lifting of the measure and/or, under specific conditions to be determined, compensation.

Fourth, the Security Council should, possibly through its committees, periodically review sanctions lists on its own initiative, in order to mitigate the risk of violating the right to property and related human rights.

The Security Council reacted to the request by the 2005 World Summit by a series of resolutions in late December of 2006 establishing, inter alia, a focal point in the Secretariat to receive de-listing requests, which has now been established. I welcome these steps towards ensuring fair and clear procedures for placing individuals and entities on Security Council sanctions lists and for removing them. These positive developments are a reflection of a widely shared perception that progress was needed. As compared to what the SG considered to be minimum standard requirements, they cannot yet be considered a comprehensive solution to the problem. Making further progress on due process issues is an imperative not only to protect the rights of the listed individuals, but to maintain the credibility and effectiveness of sanctions - an important Security Council tool.

In this connection, I am sure that all of you are closely following the development of the appeals cases before the European Court of Justice, in particular after the conclusions presented by Advocate General Maduro in the “Kadi” and “Yusuf” cases.

Impunity

One of the key challenges facing the United Nations and the international community is the need to bring an end to impunity. The world has continued to witness genocide, crimes against humanity, war crimes and other appalling crimes. But there is also growing international acceptance that impunity for these crimes cannot be tolerated, and that there can be no lasting peace until the perpetrators are brought to justice.

The establishment over the last decade or so of the many international and national mechanisms to prosecute those most responsible for serious international crimes testifies to the commitment of the international community to end impunity. The International Criminal Tribunals for the Former Yugoslavia and for Rwanda, both established by the Security Council, were the first of their kind. The likelihood for their success was unknown at the time of their establishment. Now, over a decade later, the value of these Tribunals in terms of their substantive and procedural jurisprudence, their experience, and their legacy as a catalyst for national prosecutions is undeniable.

The International Criminal Court is now the centerpiece of a system of international criminal justice. Last year marked the fifth anniversary of the entry into force of the Rome Statute. In a statement on that occasion, the Secretary-General recalled that the creation of the ICC represented one of the major achievements in international law during the past century. He underscored that the activities of the Court and its Prosecutor already have a deterrent effect on potential perpetrators of international crimes, and he called on States not yet parties to the Rome Statute to consider becoming a party to it.

The Prosecutor of the Court is currently investigating four situations: in the Democratic Republic of the Congo, in Darfur, in Northern Uganda, and in the Central African Republic.

To carry out its functions, the ICC needs the active cooperation of the United Nations and of the international community. I would like to urge you to use your influence within your governments to the greatest extent possible to ensure that the Prosecutor and the ICC receive this active cooperation.

My Office has been heavily involved in these efforts to end impunity, working to support the establishment and functioning of the international and internationally assisted criminal tribunals.

We have learned significant lessons over the last decade or so about the conduct of international justice. The "second generation" Tribunals such as the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia, and the Special Tribunal for Lebanon, which is still in the process of being established, have been set up at the request of, and to some degree with the cooperation of, the affected State. The founding instruments, drawn up by agreement, provide for the participation of judges nominated by those countries and to some extent for the application of their law.

To name just one major achievement of these second generation Tribunals, and a further example of international cooperation to overcome political hurdles, the arrest and transfer into custody of Charles Taylor, the first African former Head of State to face criminal charges at the international level, was of great significance.

The challenge that frequently arises in the context of post-conflict and post-atrocity situations is that of how to reconcile the need for peace with the duty of justice. Justice and peace must be regarded as complementary requirements. There can be no lasting peace without justice. The question for the United Nations is not whether justice should be pursued, but rather when. How can we best interlink the two in the light of the specific circumstances, without sacrificing the duty of justice?

In this regard, Member States have a key role to play. All too often, we see post-conflict or post-atrocity amnesties for genocide, crimes against humanity and war crimes. The United Nations has a clear position that it cannot support any such amnesty. We look to you, Legal Advisers, both within your own governments and in your countries' relations with others, to ensure that justice is not sidelined in the short-term interest of an unsustainable peace.

Responsibility to Protect

A very significant development at the 2005 World Summit Outcome was the commitment to the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. How to operationalize this consensual commitment by Heads of State and government is a major priority and challenge, both for the United Nations and for member States. We are currently studying this in some depth within the United Nations, and I invite you as Foreign Ministry Legal Advisers to press for the same close attention to the issue within your own countries.

The conceptual foundation of the responsibility to protect is "sovereignty as responsibility". As articulated in the Summit Outcome, the starting point is the responsibility of each individual State towards its own people. As such, a major focus for international involvement is to assist the State to prevent such crimes through capacity building, early warning and other preventive measures. The responsibility to protect potentially offers a powerful new tool for implementing humanitarian rules and human rights. The challenge is to identify ways of translating the Summit text into the practice of Member States, the United Nations and other intergovernmental bodies – and to maintain the momentum that was generated by the Summit Outcome.

Clearly, you are each well-placed within your governments to keep the political spotlight on the responsibility to protect and to give thought to how it can be made effective. Ensuring that the relevant criminal legislation is in place and that any offenders are prosecuted and punished is essential of course, but so is an effective strategy for prevention. We can learn much in this regard I believe from the humanitarian law tradition of widespread and effective dissemination of the law. Promoting a rule of law culture among the institutions of government and the population at large is key to prevention.

So to conclude, promoting the rule of law at the international level, the national level and within the United Nations is central to the United Nations' mission, and through the Rule of Law

Coordination and Resource Group and its secretariat Unit we are beginning to make strides in the coherence and effectiveness of our work across a very large number of departments. The need to end impunity for serious international crimes, and the need to operationalise the responsibility to protect populations from genocide, crimes against humanity, ethnic cleansing and war crimes, remain serious and ongoing challenges The solutions to these challenges are not “rocket science”. They lie in the fulfillment by States of their international legal obligations, and of the international commitments most recently made at the level of Heads of State and government in the 2005 World Summit.

You as Foreign Ministry Legal Advisers are uniquely placed to advance the cause of compliance with these obligations and commitments. I will be very happy to engage in the proposed dialogue with you on these or other topics of interest.

APPENDIX IX

PRELIMINARY DRAFT AGENDA FOR THE 36th MEETING

A. INTRODUCTION

1. Opening of the meeting by the Chair, Sir Michael Wood

2. Adoption of the agenda

3. Approval of the report of the 35th meetin

4. Statement by the Director of Legal Advice and Public International Law, Mr Manuel Lezertua

B. ONGOING ACTIVITIES OF THE CAHDI

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

   - "Disconnection clause": adoption of the draft report of the CAHDI

6. Programme of activities of the CAHDI for 2008-2009

7. State immunities:
   a. State practice
   b. UN Convention on Jurisdictional Immunities of States and Their Property – *Tour de table* on the situation in each member and observer State

8. Organisation and functions of the Office of the Legal Adviser of the Ministry for Foreign Affairs
   a. Situation in member and observer States
   b. The role of the OLA in national implementation of international law

9. National implementation measures of UN sanctions and respect for Human Rights

10. Cases before the ECHR involving issues of public international law

11. Peaceful settlement of disputes:
    - Overlapping jurisdiction of international tribunals

12. Law and practice relating to reservations and interpretative declarations concerning international treaties: European Observatory of Reservations to International Treaties:
    a. List of outstanding reservations and declarations to international treaties
    b. Consideration of reservations and declarations to international treaties applicable to the fight against terrorism

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

13. The work of the International Law Commission (ILC) and of the Sixth Committee

14. Consideration of current issues of international humanitarian law

15. Developments concerning the International Criminal Court (ICC)

16. Implementation and functioning of the Tribunals established by United Nations Security Council Resolutions 827 (1993) and 955 (1994) and the Special Tribunal for Lebanon

17. Follow-up to the outcome document of the 2005 UN World Summit – Advancing the international rule of law

18. Fight against terrorism - Information about work undertaken in the Council of Europe and other international bodies

19. Outcome of the International Conference "International Courts and Tribunals - The Challenges Ahead" (London, 6-7 October 2008)

20. Topical issues of international law

D. OTHER

21. Election of the Chair and Vice-Chair of the CAHDI

22. Date, place and agenda of the 37th meeting of the CAHDI

23. Other business:
- Status of ratification of Protocol 14 to the ECHR

APPENDIX X

LIST OF ITEMS DISCUSSED AND DECISIONS TAKEN

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 35th meeting in Strasbourg on 6 and 7 March 2008 with Sir Michael Wood in the Chair. The list of participants is set out in Appendix I to the meeting report.[6]

2. The CAHDI adopted the agenda as set out in **Appendix I** to the present report. It also adopted the report of its 34th meeting (Strasbourg, 10-11 September 2007) and authorised the Secretariat to publish it on the CAHDI's website.

3. The Director of Legal Advice and Public International Law (Jurisconsult), Mr Manuel Lezertua, informed the CAHDI about developments concerning the Council of Europe since its last meeting, in particular those concerning the Council of Europe Treaty Series. His intervention is set out in Appendix III to the meeting report.

4. The CAHDI considered the decisions of the Committee of Ministers relevant to its work and requests for the CAHDI's opinion.

In accordance with the *Ad hoc* terms of reference given to it by the Committee of Ministers on 10 October 2007, the CAHDI held a preliminary exchange of views on a draft report submitted by the Chair and the Vice-Chair on the consequences of the so-called "disconnection clause" in international law in general and for the Council of Europe's conventions containing such a clause in particular.[7] The CAHDI intends to finalise the report at its next meeting.

Furthermore, following the Committee of Ministers' decision of 6 February 2008, the CAHDI adopted an opinion on Recommendation 1824 (2008) of the Parliamentary Assembly as set out in Appendix II to the present report.

5. The CAHDI discussed its programme of activities for 2008-2009 in the light of the *Criteria for launching, discontinuing and evaluating Council of Europe projects*, approved by the Committee of Ministers on 22 January 2007, and decided to include on its agenda for future meetings an additional item "Topical issues of international law". The CAHDI also decided to conduct a *tour de table* on acceptance of the UN Convention on Jurisdictional Immunities of States and Their Property at its next meeting.

6. The CAHDI considered developments concerning its databases on State Practice regarding State Immunities; the Organisation and Function of the Office of the Legal Adviser of the Ministry for Foreign Affairs in member states and observer countries; and the Implications of UN Sanctions and Respect for Human Rights. It took note of the new contributions to these databases and invited delegations to submit or update their contributions at their earliest convenience.

7. The CAHDI took note of cases brought before the European Court of Human Rights (ECHR) involving issues of public international law on the basis of information provided by delegations. It further invited delegations to keep the Committee informed about relevant pending cases.

8. In the context of its consideration of issues relating to the peaceful settlement of disputes, the CAHDI approved a draft Recommendation of the Committee of Ministers to member States on the acceptance of the jurisdiction of the International Court of Justice and a draft Recommendation of the Committee of Ministers to member States on the nomination of international arbitrators and

[6] Document CAHDI (2008) 15 prov.
[7] See document CAHDI (2008)1 prov.

conciliators, set out respectively in Appendices III and IV to the present report, and decided to transmit them to the Committee of Ministers for adoption. The CAHDI also agreed that the draft explanatory memoranda to these recommendations would be circulated by written procedure and submitted to the Committee of Ministers subsequently.

Under this item, the CAHDI pursued consideration of the overlapping jurisdiction of international tribunals and the ICJ's jurisdiction under selected international treaties and agreements, and in particular the situation concerning the Council of Europe's member and observer states. It agreed to keep these issues on its agenda.

9. In the framework of its activity as the European Observatory of Reservations to International Treaties, the CAHDI considered a list of outstanding reservations and declarations to international treaties and the follow-up given to them by delegations. A table summarising the position of delegations in this respect is set out in Appendix V to the present report.

The CAHDI also resumed consideration of possibly problematic reservations to international treaties applicable to the fight against terrorism in the light of the list it had drawn up in pursuance of the Committee of Ministers' decision of 21 September 2001 (CM/Del/Dec (2001)765bis/2.1) and comments provided by delegations. The CAHDI agreed to pursue consideration of this matter at its next meeting with a view to submitting an updated version of the aforesaid list to the Committee of Ministers.

10. The CAHDI had an exchange of views with Mr Nicolas Michel, United Nations Under-Secretary-General for Legal Affairs and Legal Counsel. The text of his statement is set out in Appendix VIII to the meeting report.

11. The CAHDI considered current issues of international humanitarian law, as well as developments concerning the implementation and functioning of the Tribunals established by UN Security Council resolutions 827 (1993) and 955 (1994) and the Special Tribunal for Lebanon.

12. The CAHDI also considered recent developments concerning the International Criminal Court (ICC) and had an exchange of views with Mrs Herta Däubler-Gmelin, Chairperson of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly. The CAHDI welcomed the possibility of holding such exchanges with the Parliamentary Assembly in the future.

13. The CAHDI considered the Outcome Document of the 2005 UN World Summit and agreed to pursue consideration of this matter at its next meeting.

14. The CAHDI took note of the information about work undertaken in the Council of Europe and other international bodies on the fight against terrorism.

15. Under other business, the CAHDI took note of :

a. the state of ratifications of Protocol 14 to the ECHR and strongly encouraged all efforts aimed at ensuring its early entry into force;
b. 2007 arrangements between Spain and the United Kingdom relating to Gibraltar in the context of mixed agreements and certain international treaties; and
c. the request of the Organisation for Democracy and Economic Development - GUAM for observer status in the CAHDI.

The CAHDI welcomed the preparations for the Conference "International Courts and Tribunals – The Challenges Ahead" (London, 6-7 October 2008) and the 36th meeting of the Committee (London, 7-8 October 2008) and the adopted the draft agenda of its next meeting as set out in Appendix VI to the present report.