

Strasbourg, 23/03/10

CAHDI (2010) 13

**COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW
(CAHDI)**

39th meeting, Strasbourg, 18-19 March 2010

**List of items discussed and decisions taken
Abridged report**

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 39th meeting in Strasbourg, on 18 and 19 of March 2010, with Mr. Rolf Einar Fife (Norway) in the Chair. The list of participants is set out in Appendix I of the meeting report¹.

2. The CAHDI adopted its agenda as set out in **Appendix I** of the present report. It also adopted the report of its 38th meeting (Strasbourg, 10-11 September 2009), and authorised the Secretariat to publish it on the CAHDI's website.

3. The CAHDI was further informed about the developments concerning the Council of Europe since the last meeting of the Committee, in particular those concerning the Council of Europe Treaty Series. The intervention on this matter of Mr. Manuel Lezertua, Director of Legal Advice and Public International Law, Jurisconsult, is set out in Appendix III of 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 particular, the CAHDI adopted its comments on PACE Recommendation 1888 (2009) – "Towards a new ocean governance", as set out in **Appendix II** to the present report. Moreover, recalling its report on the consequences of the so-called "disconnection clause", the CAHDI stressed the importance of maintaining a coherent approach in the use of such clauses in line with the Ministers' Deputies decision of 10 December 2008².

5. The CAHDI considered State practice and case-law regarding State immunities on the basis of contributions by the delegations, including those relevant to the CAHDI database. It invited delegations to submit or update their contributions at their earliest convenience. The Committee also took stock of the process of accession of its member and observer States to the United Nations Convention on Jurisdictional Immunities of States and Their Property.

In addition, following a decision at its last meeting, the CAHDI exchanged views - on the basis of contributions provided by the delegations to the relevant questionnaire - on possibilities for the Ministry of Foreign Affairs to raise public international law issues in procedures pending before national tribunals and related to States' or international organisations' immunities. The CAHDI agreed to keep this item on the agenda of its next meeting and invited delegations which have not yet done so to submit their contributions to the aforementioned questionnaire.

¹ Document CAHDI (2010) 14 prov

² Document CM(2008)164 [CM/Del/Dec\(2008\)1044/10.6cE / 15 December 2008](#)

6. The CAHDI further considered the issue of organisation and functions of the Office of the Legal Adviser of the Ministry for Foreign Affairs and welcomed in particular the presentation by the Office of Legal Affairs of Interpol. The delegations were further invited to submit or update their contributions to the relevant database at their earliest convenience.

7. The CAHDI further discussed the issue of national implementation of UN sanctions and respect for human rights on the basis of contributions by delegations, including those relevant to the CAHDI database. It invited the delegations to submit or update their contributions to the database at their earliest convenience. The Committee also took note of information on cases that have been eventually submitted to national tribunals by persons or entities removed from the lists established by the UN Security Council Sanctions Committees.

8. 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.

9. In the context of its consideration of issues relating to the peaceful settlement of disputes, the CAHDI took note of the International Court of Justice's jurisdiction under selected international treaties and agreements and, in particular, the situation concerning the Council of Europe's member and observer States. The Committee invited delegations to submit to the Secretariat any relevant information on this matter.

10. 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 the delegations. The table summarising the delegations' positions is set out in **Appendix III** to the present report.

11. The CAHDI welcomed the Interlaken Declaration adopted at the High Level Conference on the Future of the European Court of Human Rights on 19 February 2010. The Committee also held an exchange of views with Mr. Jean-Paul Costa, President of the European Court of Human Rights, *inter alia*, on the issue of an accession of the European Union to the European Convention of Human Rights.

12. The CAHDI held an exchange of views with Mr. Sean Hagan, Director of the Legal Department of the International Monetary Fund.

13. On the basis of contributions from the delegations, the CAHDI took note of current issues of international humanitarian law, recent developments concerning the International Criminal Court (ICC) and developments concerning the implementation and functioning of the international criminal tribunals.

14. The CAHDI considered the item regarding follow-up to the Outcome Document of the 2005 UN World Summit. For the next meeting of the Committee, the delegations were invited to consider the need for and possibilities to rephrase this item in order to ensure more focused discussions, as appropriate.

15. The CAHDI took note of the work undertaken by the Council of Europe in relation to the fight against terrorism, in particular the on-going activity for the establishment of a follow-up mechanism for the effective use and implementation of the CoE Convention on the Prevention of Terrorism (CETS No. 196).

16. The CAHDI considered some topical issues of international law on the basis of contributions from delegations. In particular, the CAHDI took note of the request from the International Law Commission (ILC) to the Jurisconsult of the Council of Europe to provide

comments and observations on the ILC Draft Articles on “Responsibility of International Organisations” by 1st January 2011.

17. The CAHDI took note of the departure of Mr. Alexandre Guessel, the Secretary of the CAHDI. The Committee expressed its gratitude for his work and wished him all the best in his future professional activities.

18. Following a kind invitation from the Norwegian authorities, the CAHDI decided to hold its next 40th meeting in Tromsø, Norway, on 16-17 September 2010. The Committee instructed the Secretariat to prepare - in due course and in consultation with the Chair of the Committee - the preliminary draft agenda for this meeting.

APPENDIX I

AGENDA

A. INTRODUCTION

1. Opening of the meeting by the Chair, Mr. Rolf Einar Fife
2. Adoption of the agenda
3. Approval of the report of the 38th meeting
4. Statement by the Director of Legal Advice and Public International Law, Mr Manuel Lezertua

B. ONGOING ACTIVITIES OF THE CAHDI

5. Committee of Ministers' decisions of relevance to the CAHDI's activities including requests of the CAHDI's opinion :
 - Request for possible comments of the CAHDI on Recommendation 1865 (2009)
 - “The protection of Human Rights in emergency situations”
 - Request for possible comments of the CAHDI on Recommendation 1888 (2009)
 - “Towards a new ocean governance”
6. Immunities of States and international organisations:
 - a. State practice and case-law
 - recent national developments and updates of the website entries
 - exchange of national practices on possibilities for the Ministry of Foreign Affairs to raise public international law issues in procedures pending before national tribunals and related to States' or international organisations' immunities
 - b. UN Convention on Jurisdictional Immunities of States and Their Property
7. Organisation and functions of the Office of the Legal Adviser of the Ministry for Foreign Affairs:
 - a. Questions dealt with by offices of the Legal Adviser which are of wider interest and related to the drafting of implementing legislation, foreign litigation, peaceful settlements of disputes, and other questions of relevance to the Legal Adviser.
 - Presentation by the Office of Legal Affairs of Interpol
 - b. Updates of the website entries
8. National implementation measures of UN sanctions and respect for human rights
9. Cases before the ECHR involving issues of public international law
10. Peaceful settlement of disputes
11. Law and practice relating to reservations and interpretative declarations concerning international treaties: European Observatory of Reservations to International Treaties:

- List of outstanding reservations and declarations to international Treaties

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

12. Accession of the European Union to the European Convention of Human Rights: exchange of views with Mr Jean-Paul Costa, President of the European Court of Human Rights (ECHR)
13. Exchange of views with Mr Sean Hagan, General Counsel, Director of the Legal Department of the International Monetary Fund (IMF)
14. Consideration of current issues of international humanitarian law
15. Developments concerning the International Criminal Court (ICC)
16. Implementation and functioning of other international criminal tribunals (ICTY, ICTR, Sierra Leone, Lebanon, Cambodia)
17. Follow-up of 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. Topical issues of international law

D. OTHER

20. Date, place and agenda of the 40th meeting of the CAHDI
21. Other business

APPENDIX II

COMMENTS OF THE COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI) ON PARLIAMENTARY ASSEMBLY RECOMMENDATION 1888 (2009) “TOWARDS A NEW OCEAN GOVERNANCE”

1. On 21 October 2009, the Ministers' Deputies communicated Parliamentary Assembly Recommendation 1888 (2009) to the Committee of Legal Advisers on Public International Law (CAHDI) for information and possible comments by 31 March 2010.
2. In its Recommendation, the Parliamentary Assembly called on the Committee of Ministers to:
 - instruct a committee of experts to define a legal and institutional framework for new ocean governance;
 - invite the Parliamentary Assembly to take part in the work of the committee of experts.

The Assembly also recommended that the Committee of Ministers call on governments of member States to:

- take part in the EurOcean intergovernmental project;
 - promote the establishment and proper management of marine protected areas.
3. The CAHDI examined the above-mentioned Recommendation at its 39th meeting (Strasbourg, 18-19 March 2010) and adopted the following comments concerning aspects of the recommendation which are of particular relevance to the mandate of the CAHDI (public international law).
 4. From the outset, the CAHDI would like to underline the importance of the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS), which provides the regulatory framework for use of the world's seas and oceans and is the key legal reference in this field. 160 States or entities are parties to UNCLOS³, of which 42 are Council of Europe members. Also large parts of UNCLOS reflect customary law. The CAHDI considers that UNCLOS is the comprehensive legal and institutional framework for oceans governance, and does not see the need to establish a new framework. The CAHDI recommends to the Deputies to call on Council of Europe member States which have not yet done so to ratify or to accede this instrument at their earliest convenience.
 5. The CAHDI considers that – as before – the United Nations remains the most appropriate institution for discussing oceans governance, given the global reach of the law of the sea.
 6. In this respect, the CAHDI also recalls the importance of the peaceful settlement of disputes in the field of the law of the sea, including as provided for in UNCLOS. In this respect States may use the opportunity provided under UNCLOS to nominate suitably qualified people to lists of arbitrators and to update such lists on a regular basis. In this regard, the CAHDI would like to recall its contribution to the Committee of Ministers' adoption of Recommendation CM/Rec(2008)9 to member states on the nomination of international arbitrators and conciliators.

³ Status as at 4th February 2010. See link below for full details:
http://treaties.un.org/Pages/ViewDetailsIII.aspx?&src=IND&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&lang=en

7. The CAHDI considers that the Arctic is not a new region, nor is it currently intensively exploited. Also in this region UNCLOS constitutes the existing legal framework for oceans governance.
8. Finally, in the course of its work, the CAHDI has also taken note of relevant recent cases brought before international courts, including the European Court of Human Rights, concerning directly or indirectly the law of the sea. The CAHDI follows on a regular basis the development of case law in this field.
9. The CAHDI advises the Committee of Ministers that there is no need to establish a committee of experts to attempt to define a legal and institutional framework for oceans governance as requested, as it considers the current legal framework to be sufficient.

APPENDIX III

TABLE OF OBJECTIONS

OBJECTIONS TO OUTSTANDING RESERVATIONS AND DECLARATIONS TO INTERNATIONAL TREATIES OBJECTIONS AUX RÉSERVES ET DÉCLARATIONS AUX TRAITÉS INTERNATIONAUX SUSCEPTIBLES D'OBJECTION

Legend / Légende:

Sign. : Made upon signature / *Formulée lors de la signature*

● 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*

◆ State intends to make a declaration upon ratification / *L'Etat envisage de faire une déclaration au moment de la ratification*

TREATIES / TRAITÉS

- A. Convention on the Rights of Persons with Disabilities / *Convention relative aux droits des personnes handicapées*, New York, 13 December / décembre 2006
- B. Convention on elimination of all forms of discrimination against women / *Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes*, New York, 18 December/décembre 1979
- C. International Covenant on Civil and Political Rights / *Pacte international relatif aux droits civils et politiques*, New York, 16 December/décembre 1966
- D. Convention on the Privileges and Immunities of the Specialized Agencies / *Convention sur les Privilèges et Immunités des institutions spécialisées*, New York, 21 November / novembre 1947
- E. Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty / *Deuxième Protocole facultatif se rapportant au Pacte international relatif aux droits civils et politiques visant à abolir la peine de mort*, New York, 15 December / décembre 1989
- F. United Nations Convention against Corruption / *Convention des Nations Unies contre la corruption*, New York, 31 Octobre / octobre 2003
- G. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime / *Protocole visant à prévenir, réprimer et punir la traite des personnes, en particulier des femmes et des enfants, additionnel à la Convention des Nations Unies contre la criminalité transnationale organisée*, New York 15 November / novembre 2000
- H. Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime / *Protocole contre le trafic illicite de migrants par terre, mer et air, additionnel à la Convention des Nations Unies contre la criminalité transnationale organisée*, New York, 15 November / novembre 2000
- I. International Convention for the Suppression of the Financing of Terrorism / *Convention internationale pour la répression du financement du terrorisme*, New York, 9 December / décembre 1999

States / Etats	Convention	A			B	C	D	E	F	G		H	I	
	Reservation/ Réserve	1	2	3	4	5	6	7	8	9	10	11	12	13
		Mauritius Maurice	Monaco	Iran (Islamic Republic of) Iran (République islamique d')	Qatar	Lao People's Democratic Republic République démocratique populaire lao	Saudi Arabia Arabie Saoudite	Brazil Brésil	Viet Nam	Syrian Arab Republic République arabe syrienne	Qatar	Indonesia Indonésie	Indonesia Indonésie	Pakistan
	Deadline Délai	17/01/11	22/09/10	02/11/10	07/05/10	14/10/10	30/04/10	27/09/10	24/08/10	07/07/10	09/06/10	26/10/10	25/10/10	18/06/10
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				○									
Portugal													
Romania / Roumanie				○									
Russian Federation / Fédération de Russie													
San Marino / Saint-Marin													
Serbia / Serbie													
Slovakia / Slovaquie			○	●									
Slovenia / Slovénie													
Spain / Espagne				●									
Sweden / Suède			○	○									
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 / États-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*