

Strasbourg, 14/02/08

CAHDI (2008) 4 rev

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

**35th meeting
Strasbourg, 6-7 March 2008**

**DECISIONS OF THE COMMITTEE OF MINISTERS CONCERNING THE CAHDI AND
REQUESTS FOR THE CAHDI'S OPINION**

Document prepared by the Secretariat of the CAHDI

1. CAHDI

1.a CM/Del/Dec(2007)1006/10.3E / 12 October 2007

**Committee of Legal Advisers on Public International Law (CAHDI)
Draft ad hoc terms of reference with a view to examining the consequences of the so-called “disconnection clause” in international law**

Decision

The Deputies adopted Decision No. CM/874/10102007 giving ad hoc terms of reference to the Committee of Legal Advisers on Public International Law (CAHDI) with a view to examining the consequences of the so-called “disconnection clause” in international law, as they appear at Appendix 15 to the present volume of Decisions **[see below]**.

Ad hoc terms of reference for the Committee of Legal Advisers on Public International Law (CAHDI) with a view to examining the consequences of the so-called “disconnection clause” in international law

*(Adopted by the Committee of Ministers on 10 October 2007
at the 1006th meeting of the Ministers’ Deputies)*

1. Name of Committee:

Committee of Legal Advisers on Public International Law (CAHDI)

2. Source:

Committee of Ministers

3. Completion date:

These terms of reference shall expire on 31 December 2008

4. Terms of reference:

To examine the consequences of the so-called “disconnection clause” as laid out in Article 43, paragraph 3 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and equivalent provisions of the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196) (Article 26, paragraph 3), the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) (Article 40, paragraph 3) and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198) (Article 52, paragraph 4) in international law in general and for Council of Europe conventions, containing such a clause, in particular, and report back to the Committee of Ministers, including on consultations under paragraph 5.

5. Working methods and structures:

In carrying out its work, the Committee shall consult the European Union/European Community and its member states as well as the Council of Europe’s relevant services.

1.b CM/Del/Dec(2007)1011/10.1E / 23 November 2007

**Committee of Legal Advisers on Public International Law (CAHDI)
Abridged report of the 34th meeting (Strasbourg, 10-11 September 2007)**

Decisions

The Deputies

1. took note of the abridged report of the 34th meeting of the Committee of Legal Advisers on Public International Law (CAHDI), as it appears in document CM(2007)149;

2. noted that CAHDI has launched the procedure with a view to holding its 36th meeting in London at the end of 2008 at the invitation of the authorities of the United Kingdom, and that this meeting will be followed immediately by an international conference on international courts and tribunals, organised by the Council of Europe under the Swedish Chairmanship of the Committee of Ministers.

2. ACTIONS TAKEN BY THE COMMITTEE OF MINISTERS ON PARLIAMENTARY ASSEMBLY RECOMMENDATIONS

2.a CM/Del/Dec(2008)1017/3.1E / 08 February 2008

Parliamentary Assembly

**1st part of the 2008 Session (Strasbourg, 21-25 January 2008) Texts adopted
(2008 Session (Provisional Compendium of texts adopted))**

Decisions

The Deputies

(...)

4. concerning Recommendation 1824 (2008) – “United Nations Security Council and European Union blacklists”¹

a. decided to bring it to the attention of their governments;

b. agreed to communicate it to the Committee of Legal Advisers on Public International Law (CAHDI), to the Steering Committee for Human Rights (CDDH) and the Committee of Experts on Terrorism (CODEXTER) for information and possible comments by 15 April 2008;

c. invited their Rapporteur Group on Human Rights (GR-H) together with their Rapporteur Group on Legal Co-operation (GR-J) to prepare a draft reply for adoption at one of their forthcoming meetings;

¹ See Appendix 1 to the present document.

2.b CM/Del/Dec(2007)1011/10.4E / 23 November 2007

**“The United States of America and international law”
Parliamentary Assembly Recommendation 1788 (2007)**

Decision

The Deputies adopted the reply to Parliamentary Assembly Recommendation 1788 (2007) on “The United States of America and international law”, as it appears at Appendix 5 to the present volume of Decisions **[see below]**.

**“The United States of America and international law” – Parliamentary Assembly
Recommendation 1788 (2007)**

*(Reply adopted by the Committee of Ministers on 21 November 2007
at the 1011th meeting of the Ministers’ Deputies)*

1. The Committee of Ministers informs the Parliamentary Assembly that the following reply was adopted by a majority as provided by Article 20 (d) of the Statute.
2. The Committee of Ministers has duly considered Parliamentary Assembly Recommendation 1788 (2007) concerning “The United States of America and international law”. It has brought the recommendation to the attention of the governments of the member states and forwarded it to the Committee of Legal Advisers on Public International Law (CAHDI), for information and possible comments. The comments are appended to the present reply².
3. The Committee of Ministers notes that Resolution 1539 (2007) is addressed both to the United States authorities and to United States parliamentarians at the Federal and State level. While the resolution commends the United States for its traditional role as an upholder of the rule of law, at the same time it includes powerful criticism of certain recent developments based on a report by the Assembly’s Committee on Legal Affairs and Human Rights.
4. The Committee of Ministers refers to its replies to Parliamentary Assembly Recommendations 1699 (2005) and 1760 (2006). It confirms its own commitment to the fundamental principles regarding detention, fair trial and the treatment of detainees, including the prohibition of torture and inhuman or degrading treatment or punishment, as contained in Articles 3, 5 and 6 of the European Convention on Human Rights and corresponding provisions of the International Covenant on Civil and Political Rights. Moreover, the Committee of Ministers underlines its total opposition to the death penalty. The Committee of Ministers considers that the death penalty constitutes an inhuman punishment and supports its universal abolition which will contribute to the enhancement and progressive development of human rights. In this respect, it recalls that it recently declared a “European Day against the Death Penalty”, which will be held annually on 10 October.
5. In response to paragraph 2.1 of the recommendation, the Committee of Ministers has requested its Chairman to transmit Parliamentary Assembly Resolution 1539 (2007) on “The United States of America and international law” to the Government of the United States, together with its Recommendation 1788 (2007) and this reply.

² See Appendix 2 to the present document.

6. Finally, the Committee of Ministers draws the Parliamentary Assembly's attention to the fact that Council of Europe's member states are in dialogue with the United States authorities, *inter alia* in the framework of CAHDI's meetings. Moreover, it recalls that the United States is a Permanent Observer to the Council of Europe and is entitled to attend the meetings of the Committee of Ministers in this capacity.

2.c CM/Del/Dec(2008)1015/10.2E / 18 January 2008

“Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report” Parliamentary Assembly Recommendation 1801 (2007)

Decision

The Deputies adopted the reply to Parliamentary Assembly Recommendation 1801 (2007) on “Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report”, as it appears at Appendix 13 to the present volume of Decisions [see below].

“Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report Parliamentary Assembly Recommendation 1801 (2007)”

*(Reply adopted by the Committee of Ministers on 16 January 2008
at the 1015th meeting of the Ministers' Deputies)*

1. The Committee of Ministers has studied Parliamentary Assembly Recommendation 1801 (2007) on “Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report”, with great attention. It has transmitted the recommendation to the governments of member states as well as to the European Commission for Democracy through Law (Venice Commission), the European Committee on Crime Problems (CDPC) and to the Steering Committee for Human Rights (CDDH), for information and possible comments. The opinions received are appended to this reply³.

2. The Committee of Ministers has always underlined the need to promote democratic values and the respect of human rights in the fight against terrorism.⁴ Less than a year after the events in New York on 11 September 2001, the Committee adopted Guidelines for member states on human rights and the fight against terrorism. In these Guidelines, it reaffirmed states' obligation to respect, in their fight against terrorism, the international instruments for the protection of human rights and, for the member states in particular, the Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the European Court of Human Rights. The Guidelines have been widely disseminated and have served as an inspiration for discussions at the international level. In 2005, the Committee of Ministers adopted and opened to signature the Council of Europe Convention on the prevention of terrorism: a landmark treaty in this area.

3. The Committee of Ministers has taken due note of the reports by the Parliamentary Assembly which contain allegations of serious human rights violations. Moreover, these reports and those by the Secretary General mention certain lacunae in the internal law of member states, which does not seem to offer sufficient protection against such violations. In

³ See Appendix 3 to the present document.

⁴ See the reply to Parliamentary Assembly Recommendation 1687 (2004) on combating terrorism through culture (document CM/AS(2004)Rec1687 final).

this context, it recalls the existing obligations under the European Convention on Human Rights (ECHR), according to which prompt and effective investigations capable of leading to the identification and punishment of those responsible for any illegal acts is the most appropriate reaction to serious allegations of grave human rights violations. It also recalls that, according to the relevant case law of the European Court of Human Rights, the responsibility of a State Party for the material breach of the provisions of the Convention may not only result from direct action by its authorities, but also from failing to comply with their positive obligations to prevent human rights violations on their territory or to conduct an independent and impartial investigation into substantial allegations of such human rights violations.

4. As the Committee of Ministers stated in its reply to Parliamentary Assembly Recommendation 1713 (2005) on the “Democratic oversight of the security sector in member states”,⁵ the legislation on national security services should be adapted to the task of combating the current level of terrorist threats while protecting human rights, the rule of law and democracy. It considered that a study of the legislation on, and the practice in respect of, democratic oversight of national security in the Council of Europe member states, would be a useful tool for defining how the accountability of these services can best be achieved in a democratic society, due regard being paid to the need for them to be efficient. The Committee therefore invited the Venice Commission to carry out such a study giving special emphasis to the role of parliaments and their specialised committees as well as to that of national courts in carrying out this task.

5. Subsequently, in its reply to the Assembly’s Recommendation 1754 (2006) on “Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states”, the Committee of Ministers stressed that the proposals made by the Secretary General for follow-up activities to his reports under Article 52 of the European Convention on Human Rights on the question of secret detention and transport of detainees suspected of terrorist acts, notably by or at the instigation of foreign agencies,⁶ reached deeply into sensitive areas of national security, law and practice.⁷ It would therefore give them careful consideration and return to this issue at one of its forthcoming meetings.

6. The Venice Commission adopted its report on the democratic oversight of security services in June 2007.⁸ From this report, the Committee of Ministers noted *inter alia* that the Commission considered that in order to anticipate, prevent or protect itself against threats to its national security, a state needs effective intelligence and security services. However, the Commission also pointed out that in the post 9/11 era, the changed powers and functions of the domestic security services and the international co-operation in the fight against terrorism, require an improved control over the manner in which these powers are used and their acceptability in a democratic society. In its report, the Venice Commission highlighted the difficulties of holding the security services accountable, mostly on account of the “subjectivity and flexibility of the term “national security”. It also pinpointed, in relation to the possibility of redressing undue human rights infringements by the services, that a court’s ability to consider all the evidence or to go to the heart of the issue may be limited by invoking the “state secret”. It noted that, for this reason, certain states have alternative,

⁵ “Democratic oversight of the security sector in member states” – Parliamentary Assembly Recommendation 1713 (2005), (Reply adopted by the Committee of Ministers on 21 June 2006 at the 969th meeting of the Ministers’ Deputies, see document CM/AS(2006)Rec1713 final).

⁶ See document SG/Inf(2006)01.

⁷ His proposals had been elaborated in the light, not only of his reports under Article 52, but also of Resolution 1507 (2006) and of Recommendation 1754 (2006) of the Parliamentary Assembly, as well as of the Venice Commission’s Opinion No. 363/2005.

⁸ Venice Commission, Report on the Democratic oversight of the Security Services, CDL-AD(2007)016.

specialist tribunals, or ombudsman-like systems, or allocate complaint functions to parliamentary committees.⁹

7. The Committee of Ministers is convinced of the utmost importance of promoting and protecting human rights for all and the rule of law while combating terrorism. Taking into account the complex nature of the issues raised, the Committee of Ministers, if necessary, will consider undertaking further work in this respect, keeping in mind the opinions already given by the CDDH, the CDPC and the Venice Commission report on the democratic oversight of secret services. It will in this respect ensure that any possible work will be operational and bring real added value. The Committee of Ministers emphasises that while dealing with such sensitive issues as allegations about secret detentions and illegal interstate transfers of detainees, only information from reliable sources shall be taken into consideration and used in official documents.

8. Finally, the Committee of Ministers recalls the International Convention for the Protection of All Persons from Enforced Disappearance, opened for signature on 6 February 2007, the entry into force of which would significantly contribute to combating the practice of enforced disappearances.

2.d CM/Del/Dec(2008)1015/10.4E / 18 January 2008

“Prosecution of offences falling within the jurisdiction of the International Criminal Tribunal for the former Yugoslavia (ICTY)” Parliamentary Assembly Recommendation 1803 (2007)

Decision

The Deputies adopted the reply to Parliamentary Assembly Recommendation 1803 (2007) – “Prosecution of offences falling within the jurisdiction of the International Criminal Tribunal for the former Yugoslavia (ICTY)”, as it appears at Appendix 14 to the present volume of Decisions [see below].

Prosecution of offences falling within the jurisdiction of the International Criminal Tribunal for the former Yugoslavia (ICTY) Parliamentary Assembly Recommendation 1803 (2007)

*(Reply adopted by the Committee of Ministers on 16 January 2008
at the 1015th meeting of the Ministers’ Deputies)*

1. The Committee of Ministers has attentively examined Parliamentary Assembly Recommendation 1803 (2007) entitled “Prosecution of offences falling within the jurisdiction of the International Criminal Tribunal for the former Yugoslavia (ICTY)”, which it has transmitted to the member states’ governments, to the Committee of Legal Advisers on Public International Law (CAHDI), to the European Committee on Crime Problems (CDPC) and to the Steering Committee for Human Rights (CDDH), for information and possible comments. The comments received from these committees are appended to this reply¹⁰.

2. The Committee of Ministers notes that the Assembly recommends that the Committee of Ministers:

⁹ CDL-AD(2007)016, (paras. 195-217; 241-250).

¹⁰ See Appendix 4 to the present document.

a. invites certain Council of Europe member states to sign and/or ratify a number of Council of Europe treaties on international justice in criminal matters (particularly ETS Nos. 24, 70, 73, 82, 99, 116, 167 and 182) aimed at promoting international co-operation, prevention of impunity and victim protection; and

b. encourages member states which have not yet done so to consider signing agreements with the United Nations concerning the enforcement of sentences handed down by the International Criminal Tribunal for the former Yugoslavia (ICTY).

3. With regard in particular to paragraph 1 of the recommendation, the Committee of Ministers refers to the Action Plan adopted at the Third Summit of the Council of Europe (Warsaw, May 2005), which calls for full use to be made of the Council of Europe's standard-setting potential and for promotion of the implementation and development of the Organisation's legal instruments and judicial co-operation mechanisms, and to Resolution No. 5 on the functioning of the Council of Europe conventions on judicial co-operation in criminal matters, adopted by the 26th Conference of European Ministers of Justice (Helsinki, April 2005). In addition, it draws attention to the work of the Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters (PC-OC), which monitors the functioning of conventions dealing with international co-operation in criminal matters so as to facilitate their application in practice.

4. The Committee of Ministers takes notes of the entry into force on 27 June 2003 of the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes (ETS No. 82) and of the fact that it has to date been ratified by only three states and signed by two others. The Committee of Ministers informs the Assembly that Serbia has ratified the European Convention on the International Validity of Criminal Judgments (ETS No. 70) and the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS No. 182). The Committee of Ministers invites all states which have not yet done so to ratify these instruments and the other treaties cited by the Assembly.

5. The Committee of Ministers further draws the Assembly's attention to the work of the CAHDI, which also contributes to the effectiveness and operation of the conventions by regularly examining reservations to international treaties, as part of its work as the European Observatory of Reservations to International Treaties.

6. With regard to paragraph 2 of the recommendation, the Committee of Ministers wishes to inform the Assembly that the CAHDI periodically examines developments concerning the international criminal courts, not least the ICTY and the ICTR, with a view to promoting their work. Since 2000, at the initiative of the CAHDI and the CDPC, the Council of Europe has also held four consultation meetings, open to member and observer states, so as to foster exchanges of views on the implications for Council of Europe member states of ratifying the Statute of the International Criminal Court (ICC). Although the meetings concerned the ICC, aspects of co-operation with the ICTY were also discussed. The conclusions adopted at these meetings were brought to the attention of the Committee of Ministers, which transmitted them to the Parliamentary Assembly.

7. Lastly, the Committee of Ministers notes that ten states, all members of the Council of Europe, have concluded agreements on the enforcement of sentences handed down by the ICTY.¹¹ It also points out that concluding such agreements is voluntary and would

¹¹ Italy, 6 February 1997, Finland, 7 May 1997, Norway, 24 April 1998, Sweden, 23 February 1999, Austria, 23 July 1999, France, 25 February 2000, Spain, 28 March 2000, Germany, 17 October 2000, Denmark, 19 June 2002, and United Kingdom, 11 March 2004. These agreements can be consulted on <http://www.un.org/icty/legaldoc-e/index.htm>.

contribute to pursuit of the objectives underlying the establishment of the ICTY. It encourages states which have not yet done so to envisage signing such agreements.

3. FOLLOW UP OF THE THIRD SUMMIT (WARSAW, MAY 2005)

3.a GR-EXT (2007)CB9 (extract) / 29 November 2007

Synopsis / Meeting of 20 November 2007

“(...) b. Follow-up to the Juncker report

(...)

24. As regards Recommendation No. 1, the Director General of Human Rights and Legal Affairs underlined that EU accession to the European Convention on Human Rights was a sensitive issue in the present situation and that it was for the time being impossible for the Commission to start formal negotiations with the Council of Europe about accession. The legal basis for this would not exist until the new “Reform Treaty” is ratified. In the present situation, only very informal discussions could be held.

25. As for Recommendation No. 3, the Director of the Office of the Commissioner for Human Rights informed the Group that the Commissioner had undertaken a series of consultations with the various European Union institutions with a view to better assessing the prospect for and the impact of a reinforced cooperation between the EU and his Office. Some contacts would take place later this week, notably with COSCE members. The Commissioner would then elaborate a memorandum, which would also take into account other aspects of an expanding mission, resulting for instance from the Wise Persons’ Report, from suggestions included in the review by the Committee of Ministers of its thematic monitoring procedure and from Parliamentary Assembly Recommendations on his Office or on the State of Human Rights and Democracy in Europe. He hoped to be able to transmit the document to the Deputies early next year, which would also cover the issue of the resources of the Commissioner’s Office. The Chairman indicated that his intention was that the Group consider the Commissioner’s memorandum at its meeting on 7 February.

(...)”

3.b CM/Del/Dec(2007)1009/1.9E / 26 October 2007

Working Party on Institutional Reforms (GT-REF.INST)

“Building on our Strengths: Eight initiatives to shape the Council of Europe for the future – Towards a medium-term strategy”

Conclusions of the GT-REF.INST¹²

Decisions

The Deputies took note of the report of the Chair of the GT-REF.INST and approved the following conclusions:

“The Committee of Ministers has considered document SG/Inf(2007)4 “Building on our Strengths: Eight initiatives to shape the Council of Europe for the future – Towards a medium-term strategy” and delegations’ comments thereon¹³.

¹² Document reproduced in Appendix 5 to the present document.

The Committee of Ministers sees the document as a Secretariat contribution setting out means to implement the strategy defined and decisions taken by the Heads of State and Government of the member states of the Council of Europe at the Third Summit in Warsaw on 16 and 17 May 2005, and which takes forward the work already undertaken in the framework of Chapter V of the Action Plan. It welcomes the participation of staff in this process.

With a view to the implementation plan referred to on page 13 of the said document to be submitted to the Deputies in due course, the Committee of Ministers asks that the Secretary General take account of the observations made during the meetings of the Deputies (5 September 2007) and of the GT-REF.INST (11 October 2007) and of the following remarks:

- a. the objectives should be strictly in accordance with the decisions taken at the Third Summit in Warsaw;
- b. in each case, a distinction should be made between the objectives to be attained and the means to achieve them;
- c. it should be stressed that all parties, both within the Secretariat as well as member states, should assume their respective responsibilities in the implementation of the Warsaw decisions;
- d. this exercise should not lead to further budgetary constraints;
- e. the Organisation's intergovernmental nature should be duly taken account of."

4. RELATIONS WITH INTERNATIONAL ORGANIZATIONS

CM/Del/Dec/(2007)1009/2.3E / 26 October 2007

25th Quadripartite meeting between the Council of Europe and the European Union (Strasbourg, 23 October 2007) – Follow-up

Decisions

The Deputies

- 1. took note of the conclusions of the 25th Quadripartite meeting between the Council of Europe and the European Union (Strasbourg, 23 October 2007);
- 2. instructed their Rapporteur Group on External Relations (GR-EXT) and their Rapporteur Group on Democracy (GR-DEM) to examine, within the scope of their respective competencies, the follow-up to be given to this meeting.

5. DEATH PENALTY

5.a CM/Del/Dec(2007)1005/4.9E / 01 October 2007

European Day against the Death Penalty

¹³ The information documents prepared by the Secretary General, the Deputy Secretary General and the Executive Board are reproduced in Appendix 6 to the present document.

Decisions

The Deputies

1. approved the establishment of a “European Day against the Death Penalty” to be held on 10 October of each year;
2. expressed the hope that this could be pursued, as soon as possible, in the form of a joint initiative with the European Union, as originally foreseen.

5.b CM/Del/Dec(2007)1009/4.3E / 26 October 2007

Abolition of the death penalty in all member states of the Council of Europe

Decisions

The Deputies

1. reiterated their strong and urgent call on the Russian Federation, as the only member state which has not yet abolished the death penalty, to take without delay all the necessary steps to transform the existing moratorium on executions into *de jure* abolition of the death penalty and to ratify Protocol No. 6;
2. took note of the information provided by the Russian Federation on measures taken to this effect;
3. welcomed the ratification of Protocol No. 13 by France which took place on 10 October 2007, the first European Day against the Death Penalty, and encouraged those states which have not yet signed or ratified the Protocol to do so rapidly;
4. agreed to resume consideration of this issue at one of their forthcoming meetings, but no later than April 2008, in the light of additional information to be provided by the Russian Federation by mid-March 2008.

5.c CM/Del/Dec(2007)1011/2.4E / 23 November 2007

Co-operation between the Council of Europe and the United Nations Draft United Nations Resolution for a moratorium on the use of the death penalty

Decisions

The Deputies

1. invited the Slovak Chairmanship of the Committee of Ministers to intervene on behalf of the Council of Europe before the UN General Assembly in support of the draft UN Resolution for a moratorium on the use of the death penalty;
2. invited member states to support the adoption by the General Assembly of the aforementioned draft Resolution¹⁴.

¹⁴ N.B.: This Resolution was adopted on 18 December 2007 as A/RES/62/149, <http://www.un.org/ga>

Appendix 1

Parliamentary **Assembly**
Assemblée parlementaire



Provisional edition

United Nations Security Council and European Union blacklists

Recommendation 1824 (2008)¹

1. The Parliamentary Assembly, referring to its Resolution 1597 (2008) on United Nations Security Council and European Union blacklists, invites the Committee of Ministers to take up the issue of targeted sanctions and to invite:

1.1. 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;

1.2. 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;

1.3. 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.

¹ *Assembly debate* on 23 January 2008 (5th Sitting) (see Doc. 11454, report of the Committee on Legal Affairs and Human Rights, rapporteur : Mr Marty). *Text adopted by the Assembly* on 23 January 2008 (5th Sitting).

Appendix 2

Opinion of the Committee of Legal Advisers on Public International Law (CAHDI) on Parliamentary Assembly Recommendation 1788 (2007) “The United States of America and international law”

1. On 12 April 2007, the Ministers’ Deputies communicated Parliamentary Assembly Recommendation 1788 (2007) to the Committee of Legal Advisers on Public International Law (CAHDI), for information and possible comments by 15 June 2007.¹⁵
2. The following comments have been adopted by the CAHDI through correspondence. (The CAHDI did not have a scheduled meeting between the date of the Committee of Ministers’ request and 15 June 2007.)
3. In Recommendation 1788 (2007), the Assembly recommended that the Committee of Ministers transmit Assembly Resolution 1539 (2007) “The United States of America and international law” to the government of the United States of America, reminding it of its obligations as a Council of Europe observer state, and requesting the United States authorities to respond to this and earlier Assembly resolutions.
4. Resolution 1539 (2007) is addressed both to the United States authorities and to United States parliamentarians at the Federal and State level. While the resolution commends the United States for its traditional role as an upholder of the rule of law, at the same time it includes powerful criticisms of certain recent developments. The resolution is based on a report by the Assembly’s Committee on Legal Affairs and Human Rights (Doc. 11181), which includes an Explanatory Memorandum based on a working paper by Philippe Sands. The Memorandum is an historical and policy analysis of US attitudes to international law raising difficult legal and policy issues,
5. Council of Europe member states are already in dialogue with the United States authorities on matters of concern in these and other fields; John B Bellinger III, Department of State Legal Adviser, and his colleagues from the Office of the Legal Adviser in the Department of State, participate regularly and actively in the meetings of the CAHDI, as the United States observer delegation.
6. The United States, which has the status of Permanent Observer to the Council of Europe, is entitled to attend meetings of the Committee of Ministers and the Ministers’ Deputies.

¹⁵ CM/Del/Dec(2007)993/3.2b, 16 April 2007.

Appendix 3

Opinions of Council of Europe Committees on Parliamentary Assembly Recommendation 1801 (2007) on “Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report”

Opinion of the European Commission for Democracy through Law (Venice Commission)

A. Introduction

On 5 July 2007, the Committee of Ministers of the Council of Europe decided to ask the Venice Commission to provide comments on PACE Recommendation 1801 (2007) on “Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report”, before 30 October 2007.

These comments were prepared by Mr Jan Helgesen (CDL(2007)082). The Commission took note of them at its 72nd Plenary Session (Venice, 19-20 October 2007).

B. Background

In its Recommendation 1801 (2007) on “Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report”, adopted on 27 June 2007, the Parliamentary Assembly of the Council of Europe invited the Committee of Ministers to prepare a recommendation concerning the concepts of state secrecy or national security in order to: ensure that information and evidence concerning the civil, criminal or political liability of the state’s representatives for grave human rights violations committed are excluded from protection as state secrets; introduce appropriate procedures ensuring that the culprits are accountable for their actions while preserving lawful state secrecy and national security, when secrets unworthy of protection are inextricably linked with lawful state secrets.

PACE also invited the Committee of Ministers to look into the need for member states to provide democratic oversight of the activities of national intelligence services in respect of, in particular, military intelligence services as well as those foreign intelligence services operating in their territory.

On 5 July 2007, the Committee of Ministers decided to bring this recommendation to the knowledge of the Venice Commission and to seek its possible comments thereon before 31 October 2007.

C. Previous work of the Venice Commission in this area

The Venice Commission has previously carried out two studies on the internal security services, in which it had stressed the need for national constitutions and legislation to state the accountability of the security services for undue human rights infringements.¹⁶

The Venice Commission, in its report on the democratic oversight of the security services, highlighted the difficulties of holding the security services accountable, mostly on account of the “subjectivity and flexibility of the term ‘national security’”. It also pinpointed, in relation to the possibility of redressing undue human rights infringements by the services, that a court’s

¹⁶ Venice Commission, Internal Security Services in Europe, CDL-INF(1998)6 and Report on the democratic oversight of the security services, CDL-AD(2007)016.

ability to consider all the evidence or to go to the heart of the issue may clearly be limited by invoking the “state secret”. It noted that, for this reason, certain states have alternative, specialist tribunals or ombudsman-like systems, or allocate complaint functions to parliamentary committees.¹⁷

The Commission has so far not dealt with the oversight of foreign intelligence services or of military intelligence services, except insofar as these perform internal security functions. In its report on the democratic oversight of the security services, the Commission considered that “the diffuse boundary between these services and the function of internal security, especially as regards the fight against terrorism, merits further study”.¹⁸

D. Future perspectives

It appears relevant and useful to examine more in detail:

- a. the national legislation and practice relating to the concepts of “national security” and “state secret”;
- b. the need for the democratic oversight of the foreign intelligence services and of military intelligence services.

The Venice Commission is ready to assist in the examination of these matters, if so requested.

Opinion of the Steering Committee for Human Rights (CDDH)

The Steering Committee for Human Rights (CDDH) already indicated in its comments on Parliamentary Assembly Recommendation 1791(2007) – “State of human rights and democracy in Europe” – that it will address human rights problems raised by secret detentions and illegal transfers of detainees in comments on Parliamentary Assembly Recommendations 1754 (2006) and 1801 (2007).¹⁹

The CDDH notes that the reports by the Parliamentary Assembly and the Secretary General contain allegations of serious human rights violations and of certain lacunae in the internal law of member states, which does not seem to offer sufficient protection against such violations. In this context, the CDDH wishes to recall the existing obligations under the ECHR, according to which prompt and effective investigations capable of leading to the identification and punishment of those responsible for any illegal acts is the most appropriate reaction to serious allegations of grave human rights violations. The CDDH also recalls that, according to the case law of the European Court of Human Rights, the responsibility of a State Party for the material breach of the provisions of the ECHR may not only result from direct action by its authorities, but also from failing to comply with their positive obligations to prevent human rights violations on their territory or to conduct an independent and impartial investigation into substantial allegations of such human rights violations. The CDDH recalls that it is the responsibility of States Parties to take the necessary steps to comply with these requirements of the Convention.

¹⁷ CDL-AD(2007)016, (paras. 195-217; 241-250).

¹⁸ Venice Commission, Report on the democratic oversight of the security service, CDL-AD(2007)016, footnote 6. The Venice Commission addressed instead in detail the issue of the international co-operation between intelligence agencies: paras. 115-121; 177-189.

¹⁹ CDDH(2007)013 § 9: “As to allegations of secret detentions and unlawful interstate transfers, the CDDH agrees with the Assembly that there is a need to examine any possible problems of human rights in this area. It will address these issues in separate comments, which the Committee of Ministers has requested it on Parliamentary Assembly Recommendations 1754 (2006) and 1801 (2007).”

The CDDH is ready, should the Committee of Ministers so request, to undertake any intergovernmental activities that will assist member states in taking firm action to protect human rights in their jurisdictions and to contribute to any other measures, the purpose of which should be preventive.

The CDDH notes that the Committee of Ministers still has to take a final decision on the Secretary General's proposals prepared in June 2006 and submitted to the Committee in September 2006 (SG(2006)01).²⁰ These proposals, which took account of the results of the Parliamentary Assembly's inquiry and the opinion of the European Commission for Democracy through Law (Venice Commission) of March 2006 (Opinion No. 363/2005), have been endorsed by the European Parliament and the Parliamentary Assembly itself. In the opinion of the CDDH, if the Committee of Ministers deems it necessary, they could be a starting point for future intergovernmental work.

Taking into account the complex and sensitive nature of the issues raised, one option could be, as a first step, for the Committee of Ministers to convene an expert meeting with a view to identifying issues such as state secrecy and national security interests mentioned in paragraph 3 of Recommendation 1801 (2007) that could be addressed through intergovernmental follow-up, drawing on the work already undertaken in the Council of Europe and other fora, in particular the United Nations. The CDDH is ready to participate in such a meeting and to contribute its expertise in human rights, it being understood that the participation of senior specialists of all relevant fields would be required.

Finally, the CDDH recalls the International Convention for the Protection of All Persons from Enforced Disappearance, opened for signature on 6 February 2007, entry into force of which would significantly contribute to combating the practice of enforced disappearances.

Opinion of the European Committee on Crime Problems (CDPC)

Following the adoption by the Parliamentary Assembly of Recommendation 1801 (2007) on the "Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report", the Committee of Ministers decided to communicate it to the European Committee on Crime Problems (CDPC), for information and possible comments. The CDPC examined the above-mentioned recommendation and decided to contribute to the response of the Committee of Ministers by providing the following comments:

The CDPC recalled the International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly of the United Nations²¹ on 20 December 2006 and opened for signature on 6 February 2007, entry into force of which would significantly contribute to combating secret detention practices.

The CDPC underlined the fundamental importance for any society based on democratic values and human rights that any responsibility of government authorities in relation to allegations of grave human rights violations be thoroughly investigated, those responsible brought to justice and the presumed victims compensated.

²⁰ Reproduced in CDDH(2007)014 Addendum.

²¹ The initial signatories were France, Albania, Algeria, Argentina, Austria, Azerbaijan, Brazil, Burkina Faso, Burundi, Congo, Croatia, Ghana, Guatemala, Haiti, Japan, Lithuania, Maldives, Moldova, Morocco, Uganda, Senegal, Serbia, Sierra Leone, Macedonia, Chad, Tunisia, Vanuatu, Belgium, Bolivia, Bosnia and Herzegovina, Cameroon, Cap Verde, Chilli, Comoros, Costa Rica, Cuba, Cyprus, Finland, Grenada, Honduras, India, Kenya, Lebanon, Luxembourg, Madagascar, Mali, Malta, Mexico, Monaco, Mongolia, Montenegro, Niger, Paraguay, Portugal, Samoa, Sweden and Uruguay. Ireland signed the Convention on 29 March 2007. Armenia signed on 10 April 2007, Ecuador on 24 May 2007 and Italy on 3 July 2007. The Convention will enter into force when ratified by 20 parties. So far, no country has ratified the Convention.

The CDPC confirmed its readiness to contribute, within its fields of competence, to any future work that the Committee of Ministers might decide to undertake in this field.

Appendix 4

Opinion of the Committee of Legal Advisers on Public International Law (CAHDI) on Parliamentary Assembly Recommendation 1803 (2007) – “Prosecution of offences falling within the jurisdiction of the International Criminal Tribunal for the former Yugoslavia (ICTY)”

1. On 9 July 2007, the Ministers’ Deputies communicated Assembly Recommendation 1803 (2007) to the Committee of Legal Advisers on Public International Law (CAHDI) for information and possible comments by 31 October 2007.
2. The CAHDI considered the above-mentioned recommendation and adopted the following comments at its 34th meeting (Strasbourg, 10-11 September 2007).
3. From the outset the CAHDI concentrated on those aspects which it thought fell within its scope of competence and did not address the others, particularly those relating to criminal law, which fall within the competence of other committees, in particular the European Committee on Crime Problems (CDPC).
4. In Recommendation 1803 (2007), the Assembly recommended that the Committee of Ministers:
 - a. invite a number of Council of Europe member states to sign and/or ratify a series of Council of Europe treaties relating to international criminal justice (namely ETS Nos. 24, 70, 73, 82, 99, 116, 167 and 182) aimed at promoting international co-operation, the fight against impunity and the protection of victims; and
 - b. encourage member states which had not yet done to consider signing agreements with the United Nations concerning the execution of sentences handed down by the International Criminal Tribunal for the former Yugoslavia (hereafter the ICTY).
5. Regarding the recommendation in paragraph 4(a) above, the CAHDI wishes to recall the Action Plan of the Third Summit of the Council of Europe (Warsaw, May 2005), which calls for full use to be made of the Council of Europe’s standard-setting potential and for the promotion of the implementation and further development of the Organisation’s legal instruments and mechanisms of legal co-operation, and Resolution No. 5 on the functioning of the Council of Europe conventions on judicial co-operation in criminal matters, adopted at the 26th Conference of the European Ministers of Justice (Helsinki, April 2005).
6. The CAHDI further wishes to stress the importance of the above-mentioned conventions and acknowledge the work of the CDPC relating to their efficient functioning and operation. In particular, the CAHDI notes the entry into force on 27 June 2003 of the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes (ETS No. 082) and the fact that to date it has been ratified by only three states and signed by a further two.
7. The CAHDI also contributes to the efficient functioning and operation of conventions by periodically considering outstanding reservations to international treaties, including those mentioned above, in the context of its operation as European Observatory of Reservations to International Treaties.
8. Regarding the recommendation in paragraph 4(b) above, the CAHDI regularly reviews developments regarding the international criminal tribunals, including the ICTY and the ICTR, with a view to promote their work. This should be seen against the background of

the CAHDI's work in support of international criminal justice, bearing in mind the relevant texts of the Parliamentary Assembly²² and the decisions of the Committee of Ministers in relation to them.

9. Since 2000, at the initiative of the CAHDI and the CDPC, the Council of Europe has also organised four consultation meetings open to member and observer states, to foster exchanges of views on the implications for Council of Europe member states of ratification of the Statute of the International Criminal Court (ICC). Although the consultations focused on the ICC, they also covered aspects relating to co-operation with the ICTY. The Conclusions adopted at these consultations were brought to the attention of the Committee of Ministers, which communicated them to the Parliamentary Assembly.

10. In these conclusions, participants have consistently noted the particular importance for the work of the ICC of appropriate state support with regard to enforcement of sentences in accordance with Part 10 of the Rome Statute. The same should be held true in relation to the ICTY.

11. The CAHDI notes that ten states have concluded agreements on the enforcement of sentences of the ICTY all of which are members of the Council of Europe.²³ The CAHDI notes that the conclusion of such agreements is voluntary and would contribute to the pursuance of the objectives underlying the setting-up of the ICTY, and recalls the position of the Secretary General of the United Nations that "given the nature of the crimes in question and the international character of the Tribunal, the enforcement of sentences should take place outside the territory of the former Yugoslavia. States should be encouraged to declare their readiness to carry out the enforcement of prison sentences in accordance with their domestic laws and procedures, under the supervision of the International Tribunal."²⁴

²² Cf. Parliamentary Assembly: Parliamentary Assembly Recommendation 1189 (1992) on the "Establishment of an international court to judge war crimes"; Parliamentary Assembly Recommendation 1408 (1999) on the "International Criminal Court"; Parliamentary Assembly Recommendation 1581 (2002) on "Risks for the integrity of the Statute of the International Criminal Court"; Parliamentary Assembly Resolution 1300 (2002) on "Risks for the integrity of the Statute of the International Criminal Court"; Parliamentary Assembly Resolution 1336 (2003) on "Threats to the International Criminal Court". Committee of Ministers: Declaration of the Committee of Ministers on the International Criminal Court – forthcoming entry into force of the Rome Statute; Committee of Ministers' reply to Parliamentary Assembly Recommendation 1581 (2002) on "Risks for the integrity of the Statute of the International Criminal Court" and Committee of Ministers' reply to Parliamentary Assembly Recommendation 1408 (1999) on the "International Criminal Court".

²³ These are: Italy, 6 February 1997; Finland, 7 May 1997; Norway, 24 April 1998; Sweden, 23 February 1999; Austria, 23 July 1999; France, 25 February 2000; Spain, 28 March 2000; Germany, 17 October 2000; Denmark, 19 June 2002; and United Kingdom, 11 March 2004. The text of the agreements is available at <http://www.un.org/icty/legal/doc-e/index.htm>.

²⁴ See report of the Secretary General pursuant to paragraph 2 of Security Council Resolution 808 (1993), 3 May 1993, document S/25704.

Appendix 5

Ministers' Deputies/ Working Parties
GT-REF.INST
Working Party on Institutional Reforms

GT-REF.INST(2007)CB4 17 October 2007²⁵

Synopsis
Meeting of 11 October 2007

The Working Party on Institutional Reforms (GT-REF.INST), chaired by Ambassador Joseph, Permanent Representative of Switzerland, examined the following items in the light of draft annotated agenda GT-REF.INST(2007)6.

1. Study on the Efficiency and Effectiveness of Committees under the Programme of Activities of the Council of Europe (Vote II); study on staff/activities ratio and working methods

Following an oral progress report from the Director of Strategic Planning on the above two studies, the group requested that the reports be distributed to delegations without undue delay

2. Towards a medium-term strategy for the Council of Europe (SG/Inf(2007)4)

2.1. The Chair recalled that the Secretary General had presented the document entitled "Building on our Strengths: Eight Initiatives to shape the Council of Europe for the future - Towards a Medium-term Strategy" at the Deputies' 1003rd meeting (5 September 2007). On the basis of the exchange of views held on that occasion, he had circulated draft conclusions (cf. DD(2007)501) for consideration at the present meeting. He informed the group that he did not intend to go into the detail of document SG/Inf(2007)4, nor did he wish to embark on a drafting exercise. He considered that the discussions held by the Deputies on 5 September and by the group at the current meeting would orient the preparation of the implementation plan referred to on page 13 of the said document. In view of the fact that staff at all levels had participated in the exercise, he informed the group that he had asked Ms Penelope Denu, Chair of the Staff Committee, to participate in the meeting and invited her to take the floor.

2.2. The Chair of the Staff Committee said that staff perceived the consultation exercise as a very positive initiative which was taken up with a high degree of goodwill by staff and managers. Staff welcomed the readiness to develop a more global and far-sighted approach to the future of the Organisation and to establish better continuity and coherence with the decisions taken by the Heads of State and Government at the Third Summit. She noted that the Staff Committee was given a unique opportunity to meet with the Executive Board and discuss the draft strategy and hoped that this example of dialogue would be repeated in other areas. She went on to say that she had listened carefully to the Deputies' exchange of views with the Secretary General on 5 September, and many of the comments made then on the substance of the text echoed their own discussions as staff representatives. Staff had

²⁵ This document has been classified restricted at the date of issue; it will be declassified in accordance with Resolution Res(2001)6 on access to Council of Europe documents.

had occasion to express their views and concerns in detail, most recently at a meeting with the Secretary General on 6 September.

The Staff Committee would have liked the strategy to spell out more clearly how the decisions of the Warsaw Summit were to be implemented and the inclusion of some current political concerns which could have added more depth and sharpness to the text. Some areas where the Council of Europe excels and where it had a unique role were hardly mentioned and staff feared their absence could be used to justify cuts they do not support.

In the parts of the strategy addressed to internal functioning, the Staff Committee would have appreciated more guidance on issues such as the human resources needs of the Organisation in the medium term, and ways to overcome the problems of increased bureaucracy and an overloaded reporting system. Further encouragement would have been welcomed as for the role of staff as a force for proposals, and some ideas on how knowledge-sharing could be enhanced.

Whilst not totally convinced of the form the strategy had taken, the staff committee realised that the all-important stage of implementation had been reached, noting that some of their concerns could be still addressed appropriately at this stage. Some issues in areas such as ownership of change and its management, which staff were ready to assume, could be carried forward in close collaboration with the Staff Committee in putting these policies into practice, and she could assure the Secretary General and the Committee of Ministers that they would contribute to carrying the strategy forward in a constructive, active and judicious way.

2.3. Delegations thanked the Chair of the Staff Committee for her constructive intervention. Delegations welcomed the approach taken by the Chair of the GT-REF.INST and his proposed draft conclusions. A number of detailed remarks on the strategy document are summarised below:

- stressing that the Council of Europe was an intergovernmental organisation, delegations agreed in general that this exercise should closely reflect the decisions taken at the Third Summit in Warsaw. Two delegations noted, however, that it should not exclude the possibility of moving beyond the Warsaw summit;
- it was recalled that the Warsaw summit invited the Council of Europe to pursue its core objective of preserving and promoting human rights, democracy and the rule of law and any imbalance in this respect in the document needed correcting;
- the term "European legal space" should be used with caution as it was occasionally subject to misinterpretation and was not always seen as corresponding to the definition given to it in the document. One delegation expressed its reserves as to carrying out a general assessment of all conventions, stating that focus should be implementation rather than on re-opening standards;
- one delegation gave special mention to the notion that the Council of Europe monitoring system could function in a more coordinated and interactive way, giving rise to regular and user-friendly reports, and synergies could be exploited throughout the Secretariat. This delegation supported the publication of an annual human rights report and suggested reallocating resources to make sure that it became a solid, high-profile document. One other delegation expressed its reservations at the latter;
- support was expressed for fewer and more focused campaigns;

- as for the future role of the Council of Europe in the European architecture, which to a large extent depends on the quality of its work, it would also be useful to look at possible cooperation/coordination with other international institutions, such as the OSCE. It was suggested that high level meetings between the OSCE and the Council of Europe could be one mechanism. One delegation considered that more emphasis should be given to the follow-up of the Memorandum of Understanding as well as the Juncker report;

- one delegation suggested that repetition be avoided within the document and expressed reservations as to mandatory mobility as well as to the creation of administrative structures for overseeing implementation. This delegation also stressed the need to alleviate reporting procedures;

- as regards ensuring the effectiveness of the European Court of Human Rights, it was suggested that consideration be given to increasing the number of judges. One other delegation asked that Protocol 14, in view of its different nature, not be treated on the same level as the other reports mentioned in the relevant section of the document;

- caution was expressed as to any possible budgetary implications that might arise from this exercise.

2.4 With regard to the draft conclusions, the Chair noted that delegations had, on the whole, supported his proposals. He noted the exception of one delegation which did not agree with his proposals and wished to use this opportunity to have an in-depth discussion on the future role of the Council of Europe. He noted, however, that some amendments to the draft conclusions had been proposed during the discussion. He would take these into account in the revised draft to be submitted to the Deputies at their 1009th meeting (24 October 2007).

(...)

Appendix 6

Information Documents
SG/Inf(2007)4

11 June 2007

Building on our Strengths:
Eight initiatives to shape the Council of Europe for the future

Towards a Medium-term Strategy

*Prepared by the Secretary General, the Deputy Secretary General and the Executive Board
based on consultation with the staff*

The Council of Europe in 2015

*Introduction by Terry Davis,
Secretary General of the Council of Europe*

In November and December 2006 the staff were consulted about their views on the Council of Europe, its strengths, its weaknesses and its perspectives for the future. I should like to thank all who contributed to this unprecedented exercise, which should help us to navigate in the next eight years. You will find an analytical digest of the results of the consultation in this document entitled “Building on our Strengths: Eight Initiatives to shape the Council of Europe for the future”.

Introducing the results of this collective reflection, I should like to add a few personal thoughts on what the Council of Europe should do and how it should do it.

In my view, the Council of Europe should concentrate on the areas in which it already exercises, or has a fair chance to exercise, a significant and measurable influence in Europe. We must strive to be a leader - not a second fiddle.

We need to do what we do today, but we need to do it better and differently. The Council of Europe resembles a ship with many powerful engines, but even if these engines push in the same direction they seldom run at the same time. That is why we need to look at each of the main functions of the Council of Europe and look into ways to improve them and to create transversal links in which they would reinforce each other. This will enable us to take up new challenges as they appear.

Our approach is functional - not structural. This is why the “Eight Initiatives” do not mention specifically any of the different bodies of the Council of Europe - with the exception of the Court. Within their respective responsibilities, all our different bodies have a contribution to make in achieving our objectives listed below.

By 2015, the Council of Europe should create and manage a European legal space

The European legal space is the term used to describe the list of Council of Europe conventions. However, many of our conventions are outdated and, taken all together, they do not function as a coherent body of law. To make a reality of the European legal space, we need to review our existing conventions, and establish both a plan to update them and a

plan to elaborate new ones. Opening our conventions to non-European countries should be a key feature of this future European legal space, but a large geographical scope is not enough. Our key conventions must become a cutting-edge in international law in terms of subjects, standards and applicability.

By 2015, the Council of Europe should develop and operate a European monitoring system

Existing Council of Europe monitoring mechanisms are excellent, but they are underexploited. The recent restructuring involving the Directorate General of Legal Affairs and the Directorate General of Human Rights was an important step towards a more logical structure which would regroup the main monitoring mechanisms under one roof inside the Council of Europe. The other monitoring and reporting modalities and methods should be reviewed in order to increase interaction and coordination and to create a Council of Europe monitoring system which produces regular, comprehensive and user-friendly reports on progress in our member states in compliance with Council of Europe standards and the judgments of the European Court of Human Rights. We have all the data. The challenge is to organise and present it in a way which will increase its usefulness, credibility and impact on policy making in Europe. The results of such a monitoring system should feed directly into standard setting, expert assistance and cooperation programmes.

By 2015, Council of Europe expertise should be the leading reference on compliance with standards of democracy and human rights in Europe

Expertise in issues related to democracy and human rights are frequently mentioned as one of the strongest comparative assets of the Council of Europe. Quantitatively speaking, this is certainly true. We invest a lot of effort and money in producing expert opinions, but, with some exceptions, the return on the investment is less than it should be. The solution is to do less, but to do it better. We must review ways in which our expert opinions are prepared and disseminated, and systematically evaluate their impact. Once we adopt an opinion, we must stand by it. If we do not take ourselves seriously, no one else will.

By 2015, the Council of Europe should be the public advocate of our European values

Campaigns are becoming an increasingly important part of the Council of Europe's work, but at present we are trying to run too many separate campaigns at the same time. Our resources are spread too thin, and sometimes our campaign activities are competing with each other for public and media attention. Again, the key is to do less, but to do it better - one or two major campaigns at a time. Every campaign should have clearly identified and measurable objectives, and we should regularly assess progress in achieving them. Awareness-raising should no longer be accepted as an objective in itself. The purpose of our campaigning should be a real change, and not only a positive change of mind.

By 2015, the Council of Europe should reinforce its mission in Europe

We very often speak about the place of the Council of Europe in the European landscape. In this respect, we have been reinforced by the conclusions of the Third Summit of Heads of State and Government in May 2005. Political declarations and institutional arrangements are important, but at the end of the day, our role and influence in Europe will be determined by ourselves and the quality of our work. The Heads of State and Government at the Third Summit in Warsaw have defined the broad framework of the Council of Europe's tasks today. This must be translated into practice and a medium-term perspective.

The Council of Europe must be more responsive to the needs of our stakeholders and work to reinforce their collective ownership of objectives. A strategic plan for the next years will

sharpen the focus of our action, improve our institutional governance and our internal and external communication and ensure the involvement of our staff and their professionalism.

A comprehensive process of change management will be introduced to ensure that the Council of Europe can make best use of its added value and make a key contribution to the progress of our societies.

There is a place at the top for the Council of Europe – but it will not be served on a silver platter. It will have to be taken - through excellence, relevance, good management and hard work.

Let us meet the challenge together and shape the Organisation for the future.

Terry Davis

(...)

1. The mission of the Council of Europe and the Third Summit
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For more than half a century, the Council of Europe has been a focal point for European cooperation in building a community of states based on shared values and principles. The opening articles of the Statute still define the Organisation's central objective:

“The aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress.”

The principles embodied in the Statute's broadly expressed objective have stood the test of time and remain valid.

In May 2005, the Heads of State and Government of our member states gathered for the Third Council of Europe Summit where they defined today's central mission:

- promote common fundamental values
- strengthen the security of European citizens
- build a more humane and inclusive Europe

This is translated into 5 major lines of action:

- 1) Protect and promote human rights
- 2) Ensure the rule of law
- 3) Enhance democracy and good governance
- 4) Foster social cohesion
- 5) Promote cultural diversity and intercultural dialogue

The Council of Europe has to continuously adapt and evolve given the changing international environment. This means working better with other key actors across Europe, in particular the European Union (EU), the Organization for Security and Cooperation in Europe (OSCE), and the United Nations (UN) as well as non-governmental organisations and civil society bodies. The Council of Europe needs to demonstrate what it does best and show its added value.

The Council of Europe is often described as a “human rights watchdog” – a term that recognises its role in creating and safeguarding high standards, and the unique mix of

instruments and institutions it has to defend human rights. This role is clearly recognised by the EU in the Memorandum of Understanding between the Council of Europe and the EU. All activities of the Council of Europe are designed to contribute to this supreme function, along the lines defined in the Third Summit documents.

The Council of Europe therefore plays a key role in the new European landscape: to implement, monitor and promote its values across the continent to ensure stability, peace and security, promote dialogue and democratic culture, all of which are also prerequisites for social and economic development.

This requires further action to implement the mandate of the Third Summit. We will build on our standard-setting work, as well as monitoring and targeted cooperation activities. These work areas will be supported by active campaigns. This unique mix of activities should continuously enrich each other, creating a dynamic process which will benefit all people in Europe.

2. Why a medium-term strategy?

Since the geographical scope of the Council of Europe has broadened to cover the whole continent, various initiatives have been launched to adapt the Council of Europe to the needs of its enlarged membership and to a changing international environment. In 1999, acting on the proposals of the Committee of Wise Persons set up by the Second Summit, the Committee of Ministers adopted a substantial reform plan which included important changes in the structures of the secretariat, the budget approach (move to Results Based Budgeting, change of budget structure), internal control and decentralised financial management, human resources policy and management.

A review by the secretariat in 2006 showed that further to the Warsaw Summit, where priorities were set for the years ahead, there is a continuing need to step up collective efforts to develop the Organisation and achieve comprehensive and sustainable change.

The review of previous reform initiatives concluded that:

1. The Council of Europe needs a comprehensive medium-term strategy for organisational renewal, which must not only address the substance but also the process of its development and implementation.
2. Senior management should be collectively responsible for the implementation of the strategy which must be communicated adequately to staff and other stakeholders.
3. Decisions must take into account the effects on budgets, work programmes and human resources in order to reduce risks to implementation.
4. Implementation of the strategy must be planned with realistic targets and closely monitored in order to be able to make adjustments as necessary. A Secretariat steering group will regularly promote, monitor, and report on the implementation process.
5. To ensure successful implementation, the strategy must be “owned” by staff and by the heads of major administrative entities. Appropriate staff participation is therefore required.

Based on these findings, a comprehensive medium-term approach is needed to reinforce the decisions of the Third Summit. This must take collective needs and assets into account and

must identify ways and means to optimise strengths, redress weaknesses, seize opportunities and minimise threats for the Council of Europe over the next few years.

In particular, ongoing work under the Warsaw Summit Action Plan must be reinforced:

“Building on efforts already in hand, the process shall aim at an efficient functioning of the Organisation according to its objectives and keeping fully in mind the need for budgetary restraints. Special attention should be paid to initiatives that will further secure transparency, cost-efficiency as well as internal cooperation and knowledge-sharing.” (Chapter V)

3. Strategy framework and medium-term goals

A. The Framework

The core principle for strategy development is to build on strengths and to enhance the added value of the Organisation: the Council of Europe must therefore sharpen its profile as the guardian of human rights, democracy and rule of law in Europe by using its comparative advantages, in particular:

- the multifaceted institutional setup representing all relevant actors in a democratic society,
- the unparalleled scope of complementary instruments: standard-setting, monitoring and assistance (policy development and advice, awareness-raising, capacity-building),
- the capacity to influence and carry forward the European agenda on key human rights issues,
- the think tank potential as a European laboratory of ideas,
- the opportunity to be a unique European forum for dialogue at all levels, including the parliamentary dimension,
- the variety of approaches to working towards conflict prevention, reduction of tension and increased security for all in Europe through legal instruments and policies for international cooperation, social cohesion, management of cultural diversity and education for democratic citizenship,
- the potential to contribute to social progress and quality of life through the implementation of fundamental values and principles.

To demonstrate and enhance its added value, the Council of Europe needs to be:

- united in defending shared values and objectives,
- more flexible, innovative and responsive to stakeholder needs,
- more attentive to matching expertise with political requirements,
- more action- and results-oriented,
- more dynamic and forward-planning to work efficiently with other partners.

Against this background, the medium-term strategy describes:

- the Council of Europe's goals for the period 2007-2015,
- the actions required to achieve those objectives.

B. The Goals

Within the framework described above, the Council of Europe will strive to achieve five major strategic goals in the next few years:

By 2015, the Council of Europe should be:

1. An organisation focussing on strategic action, enhancing its added value

2. An organisation meeting the needs of all its stakeholders
3. An organisation developing sustainable partnerships
4. An organisation communicating effectively, with clear impact and visibility
5. An organisation providing quality services on the basis of good governance, solid financial backing, motivated staff and effective management

4. Key initiatives to shape the Council of Europe for the future

The following eight key initiatives will help make the Council of Europe fit for the future and achieve the strategic goals taking into account substance as well as process. The initiatives are designed to contribute to several goals at the same time in order to successfully transform the Organisation by 2015.

I. Enhance strategic focus

We will adjust our unique instrumental mix (standard-setting, monitoring, targeted assistance) in response to changing needs and in order to improve our impact

Envisaged action:

- Change the emphasis from standard-setting to implementation and follow-up (review, monitoring, assistance)
- Examine existing monitoring procedures in order to avoid duplication and unnecessary bureaucracy
- Further develop targeted assistance activities based on Court decisions, the work of the Human Rights Commissioner, recommendations resulting from monitoring procedures and accession commitments
- Strengthen and protect democratic participation and human rights by fostering education for citizenship and by enhancing the role of human rights defenders
- Promote democratic standards so that Europe becomes a “free and fair election” zone
- Promote the rule of law, in particular by awareness-raising and by implementing and monitoring the Council of Europe conventions and the recommendations of the Venice Commission and the European Committee for the Efficiency of Justice
- Actively promote intercultural dialogue, in cooperation with international organisations and other partners as a key element for conflict prevention and the management of diversity in pluralist societies

II. Reinvigorate stakeholder relations

We will further promote the ownership of our activities by our major stakeholders

Envisaged action:

- Facilitate Committee of Ministers decision-making e.g. by producing clear and result-oriented documents and by promoting an integrated approach using all our instruments and institutions
- Develop stronger ties with capitals and improve interaction with Ministries of Foreign Affairs and specialised ministries with the assistance of Permanent Representations
- Take full advantage of our institutional assets, in particular the Parliamentary Assembly and the Congress of Local and Regional Authorities, to promote our objectives in member states and to enhance cooperation with national parliaments and local and regional authorities
- Strengthen cooperation with non-governmental organisations and international non-governmental organisations

- Increase visibility by actively promoting Council of Europe activities in member states.
- Communicate the essence of the Council of Europe mission by regularly publishing a report on “The state of human rights and democracy in Europe”

III. Improve institutional governance and internal organisation

We will create better coherence and complementary work between our institutions and improve cross-organisation coordination. We will streamline structures and working methods and organise a process of change management.

Envisaged action:

- Enhance cooperation and synergies between the Committee of Ministers, the Parliamentary Assembly, the Secretary General, the European Court of Human Rights, the Congress of Local and Regional Authorities and the Commissioner for Human Rights
- Provide for adequate structures, methods and resources to create an innovative organisation
- Review the structures and mandates of the major administrative entities of the Secretariat, in particular in the Programme of Activities sector
- Review decentralisation process and management and simplify reporting, rules and procedures
- Reinforce horizontal working methods and practices and improve mainstreaming and coordination of key activities
- Further rationalise Field Offices (“one-roof structure”), enhance the function of the Representatives of the Secretary General and develop their role and responsibilities in coordination with other international organisations
- Create a Secretariat steering group to promote change management and monitor and report on the implementation of the strategy
- Improve and implement a Council of Europe evaluation policy of projects and programmes, to assess their impact
- Increase participation of staff in collective thinking and decision-making to improve motivation and ownership

IV. Ensure the effectiveness of the European Convention on Human Rights

We will strive to find cost-effective and consolidated solutions to improve the system of protection of Human Rights enshrined in the European Convention on Human Rights

Envisaged action:

- Promote the development of comprehensive and efficient national judiciary systems so that a maximum of individual complaints can be dealt with at the national level
- Promote further efforts to find practical and sustainable solutions to the overload of the Court, building on Protocol 14, the Wise Persons’ Report, Lord Woolf’s Report and the San Marino Conference of March 2007
- Speed up the execution of decisions of the Court

V. Promote communication and knowledge-sharing

We will ensure a clear external image as well as better internal knowledge-sharing, transversal communication and cooperation

Envisaged action:

- Implement the communication strategy and develop a five-year action plan which addresses new priorities and creates methods for better communication to all stakeholders
- Improve interaction with media and public through targeted, clear messages
- Create a 'culture of communication' across the Council of Europe which will enhance transversal cooperation, knowledge-sharing and organisational alignment
- Develop campaigns into an effective tool of communication by reducing their number and by sharpening their focus
- Improve other communication tools (portals, documents and publications) and improve the financial basis and management of communication

VI. Promote partnerships

We will clarify and intensify working relations with partners (EU, OSCE, UN), avoiding unnecessary duplication

Envisaged action:

- Ensure complementarity and good working relationships with other international organisations and avoid unnecessary duplication
- Determine potential areas of added value and sharpen the Council of Europe profile
- Streamline coordination procedures with the EU and the OSCE and enhance political significance of cooperation, building on existing political agreements
- Work towards a privileged and effective partnership with the UN and its agencies in areas of common concern
- Develop our relationships with observer and other non-member states with a view to promoting Council of Europe standards and values

VII. Consolidate the financial situation

We will endeavour to establish financial stability and predictability, including raising additional income

Envisaged action:

- Develop and implement a resource mobilisation strategy designed to raise sufficient funds for identified needs, taking priorities into account
- Further improve financial management
- Review the potential role of Partial Agreements to address budgetary constraints
- Explore further options of cooperation with the Council of Europe Development Bank

VIII. Enhance human resources capital

We will take advantage of the skills and expertise of our staff and attempt to further improve job satisfaction, motivation and team work

Envisaged action:

- Improve competency management notably by increased training
- Improve appointment and recruitment procedures and increase transparency
- Improve career/performance management by developing the appraisal system and fostering mobility
- Strengthen the service function of the Human Resources Directorate
- Foster team work e.g. through cross-sectoral, horizontal working methods

5. Make change happen and manage it well
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The measures proposed above are based on a critical review of previous reform initiatives and reflect a number of converging analyses of strengths and weaknesses of the Organisation. They take into account staff experience and proposals on the basis of a staff consultation which took place in the second half of 2006.

The initiatives need to be supported by effective operational measures to meet goals. These measures will be detailed in an implementation plan for the strategy. The plan will ensure coordination, consistency and timing of the envisaged actions over the coming years in order to avoid “innovation overload” and to achieve maximum impact and focus. Special attention will be devoted to communication.

Building on our strengths and using these tools for change, the Council of Europe will be a key contributor to the progress of societies by protecting and promoting human rights, the rule of law and democracy.
