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

**36th meeting
London, 7-8 October 2008**

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

Document prepared by the Secretariat of the CAHDI

1. CAHDI

1.a CM/Del/Dec(2008)1032 15 July 2008

**Parliamentary Assembly -
3rd part of the 2008 Session (Strasbourg, 23-27 June 2008) -
Texts adopted**

Decisions

The Deputies

[...]

6. concerning Recommendation 1842 (2008) – “Activities of the International Committee of the Red Cross (ICRC)”¹

- a. decided to bring it to the attention of their governments;
- b. agreed to communicate it to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), to the European Committee on Migration (CDMG), to the Steering Committee on Human Rights (CDDH), to the European Committee on Legal Co-operation (CDCJ), to the Committee of Legal Advisers on Public International Law (CAHDI) and to the Steering Committee for Education (CDED) for information and possible comments by 31 October 2008;
- c. in the light of possible comments, invited their Rapporteur Group on Social and Health Questions (GR-SOC) to prepare a draft reply for adoption at one of their forthcoming meetings;

1.b CM/Del/Dec(2008)1031/10.1E / 04 July 2008

Committee of Legal Advisers on Public International Law (CAHDI)

- a. Exchange of views with the Chair of CAHDI²
- b. Abridged report of the 35th meeting (Strasbourg, 6-7 March 2008)
- c. Draft Recommendation CM/Rec(2008)8 of the Committee of Ministers to member states on the acceptance of the jurisdiction of the International Court of Justice and its Explanatory Memorandum
- d. Draft Recommendation CM/Rec(2008)9 of the Committee of Ministers to member states on the nomination of international arbitrators and conciliators and its Explanatory Memorandum

Decisions

The Deputies

1. adopted Recommendation CM/Rec(2008)8 of the Committee of Ministers to member states on the acceptance of the jurisdiction of the International Court of Justice, as it appears at Appendix 26 to the present volume of Decisions and took note of the Explanatory Memorandum, as it appears in document CM(2008)40 add1³;

¹ Recommendation 1842 (2008) and relevant Resolution 1623 (2008) appear in **Appendix I** to the present document.

² Speech delivered by the Chair of the CAHDI appears in **Appendix II** to the present document

³ Both documents appear in **Appendix III** to the present document.

2. adopted Recommendation CM/Rec(2008)9 of the Committee of Ministers to member states on the nomination of international arbitrators and conciliators, as it appears at Appendix 27 to the present volume of Decisions and took note of the Explanatory Memorandum, as it appears in document CM(2008)40 add2⁴;

3. in the light of the above, took note of the abridged report of the 35th meeting of the Committee of Legal Advisers on Public International Law (CAHDI), as it appears in document CM(2008)40, as a whole.

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

2.a CM/Del/Dec(2008)1034E / 15 September 2008

Written Question No. 542 by Mrs Däubler-Gmelin: “The United States of America and international law”

Decision

The Deputies adopted the reply to Written Question No. 542 by Mrs Däubler-Gmelin: “The United States of America and international law”, as it appears at Appendix 6 to the present volume of Decisions. **[See below]**

Reply to Written Question No. 542 by Mrs Däubler-Gmelin: “The United States of America and international law”

**(Adopted by the Committee of Ministers on 11 September 2008
at the 1034th meeting of the Ministers' Deputies)**

Question:

Considering that the Committee of Ministers’ reply of 12 July 2007 to PACE Recommendation 1788 (2006) on *The United States of America and international law* (Doc 11456) does not give a comprehensive answer to some of the Assembly’s recommendations,

Mrs Däubler-Gmelin asks the Committee of Ministers,

Firstly, whether the Committee of Ministers has requested “the Government of the United States to provide information on its response to Assembly Resolutions 1340 (2003), 1433 (2005) and 1507 (2006), as well as Assembly Recommendation 1760 (2006) – relating to, in particular, the lawfulness of persons held in Guantánamo Bay and elsewhere, secret detentions and unlawful state transfers of detainees, and the abolition of the death penalty – as well as on measures taken to comply with them”, and

secondly, what efforts and progress have been made further to Recommendation 1788 (2006) (more than six months after receipt).

Reply:

1. In reply to the Honourable Member’s question, the Committee of Ministers would like to inform her that on 19 November 2007, its Chairman transmitted to the Permanent Observer of the United States of America to the Council of Europe, Parliamentary Assembly Resolution 1539 (2007) on

⁴ Both documents appear in **Appendix IV** to the present document.

“The United States and international Law” together with its Recommendation 1788 (2007) as well as the Committee of Ministers’ reply.

2. The Committee of Ministers recalls that it has on many occasions confirmed 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 refers to the European Day against the Death Penalty, celebrated each year on 10 October, which it established in 2007 as a joint initiative with the European Union. It would like to inform the Honourable Member that the Ministers, meeting in Strasbourg on 7 May 2008 on the occasion of the 118th Ministerial Session, stated their determination to support once again the adoption of a resolution on a moratorium on the use of the death penalty at the 64th session of the UN General Assembly.

3. Finally, the Committee of Ministers recalls that Council of Europe’s member states are in dialogue with the United States authorities, notably in the framework of the meetings of the Committee of Legal Advisers on Public International Law (CAHDI).

2.b CM/Del/Dec(2008)1032/10.1E / 15 July 2008

“United Nations Security Council and European Union blacklists” – Parliamentary Assembly Recommendation 1824 (2008)

Decision

The Deputies adopted the reply to Parliamentary Assembly Recommendation 1824 (2008) on “United Nations Security Council and European Union blacklists”, as it appears at Appendix 12 to the present volume of Decisions. **[See below]**

“United Nations Security Council and European Union blacklists” Parliamentary Assembly Recommendation 1824 (2008)

(Reply adopted by the Committee of Ministers on 9 July 2008 at the 1032nd meeting of the Ministers’ Deputies)

1. The Committee of Ministers brought the recommendation to the attention of the governments of the member states, so that they can take it into account when they act within the framework of the United Nations, or of the European Union if appropriate.

2. At the same time, the Committee of Ministers sought comments from the Committee of Legal Advisers on Public International Law (CAHDI), the Committee of Experts on Terrorism (CODEXTER) and the Steering Committee for Human Rights (CDDH). Their opinions, which the Committee of Ministers fully endorses, are appended hereto. The Assembly may wish to consult them; it will find there information on the various initiatives taken. The Council of Europe keeps the questions raised by the recommendation under constant review, particularly within the CAHDI and the CODEXTER. To this end, in 2004, the CAHDI set up a restricted database on the implementation at national level of the United Nations sanctions in the field of the fight against terrorism and respect of human rights, which contains national contributions from member and observer states to the CAHDI, as well as a contribution from the European Union. The CODEXTER considers this matter in the context of its activity aimed at securing effective follow-up to the “road map” for the Council of Europe’s contribution to the implementation of the United Nations Counter-Terrorism Strategy.

3. Generally speaking, the Committee of Ministers underlines the importance in the fight against terrorism of the targeted sanctions contained in the resolutions of the Security Council of the United Nations adopted under Chapter VII of the United Nations Charter, and their implementation. Having said that, the Committee of Ministers reiterates that it is essential that these sanctions be accompanied by the necessary procedural guarantees, as specified in its "Guidelines on human rights and the fight against terrorism" of 11 July 2002. The Committee of Ministers encourages all member states of the Council of Europe to support ongoing efforts to further improve the international system of targeted sanctions, in particular with regard to fair and clear procedures for placing individuals and entities on the lists, for removing them and for granting humanitarian exemptions.

4. The Council of Europe's views are drawn to the attention of the United Nations and the European Union through regular exchanges between these bodies and CAHDI. The Council of Europe will hold further exchanges of views with these organisations on the relationship between targeted sanctions and compliance with human rights obligations, in particular after the European Court of Justice has delivered its judgments in the various cases concerning targeted sanctions currently pending before that Court.

3. FOLLOW-UP TO PRIORITIES RESULTING FROM THE WARSAW SUMMIT

CM/Del/Dec(2008)1027 23 May 2008

118th Session of the Committee of Ministers (Strasbourg, 7 May 2008) – Follow-up

Decisions

The Deputies, on the basis of the 118th Session Communiqué and the discussions held,

On the consolidation of the Council of Europe system of human rights protection,

1. called on all those in a position to contribute to the entry into force of Protocol No. 14 to the European Convention on Human Rights to seize any opportunity to do so in earnest;

2. instructed the Steering Committee for Human Rights (CDDH), in the execution of its ad hoc terms of reference, under which, *inter alia*, it is to submit, by 10 April 2009, a final report "Enhancing the control system of the ECHR" (follow-up to the Wise Persons' report), to ensure that this final report be as comprehensive as possible,

- covering also possible practical proposals for the supervision of execution of the Court's judgments in situations of slow or negligent execution, as well as on the developing practice on the so-called pilot judgments;

- taking into account any proposals for further measures, in the light notably of the results of the Seminar on "The role of government agents in ensuring effective human rights protection" (Bratislava, 3-4 April 2008) and of the Colloquy "Towards stronger implementation of the ECHR at national level" (Stockholm, 9-10 June 2008);

- taking into account of the relevant conclusions of the activity report "Sustained action to ensure the effectiveness of the implementation of the ECHR at national and European levels" transmitted to the 118th Session (document CM(2008)52);

[...]

On the follow-up to other priorities resulting from the Warsaw Summit,

[...]

8. invited their Rapporteur Group on Legal Co-operation (GR-J) to examine how full use can be made of the Council of Europe's potential in enhancing the rule of law and to report back in due time before the handover of the chairmanship of the Committee of Ministers from Sweden to Spain in November 2008;

[...]

4. EXTERNAL RELATIONS (WITH INTERNATIONAL ORGANISATIONS AND THIRD COUNTRIES)

4.a CM/Del/Dec(2008)1034E / 15 September 2008

Co-operation between the United Nations and the Council of Europe – Draft Resolution for submission to the United Nations General Assembly

Decisions

The Deputies

1. approved the draft Resolution of the General Assembly of the United Nations on co-operation between the United Nations and the Council of Europe, as it appears at Appendix 5 to the present volume of Decisions⁵;
2. invited the Chairmanship of the Committee of Ministers to take necessary measures for its transmission, through its mission in New York, to the Secretary General of the United Nations;
3. recalling that a very wide margin of manoeuvre is left to the Chairmanship of the Committee of Ministers, requested it to keep them informed in due course of the discussions which will take place on the draft Resolution at the General Assembly of the United Nations;
4. invited the delegations of member states to co-sponsor the draft Resolution at the United Nations;
5. expressed the wish that the draft Resolution would also be co-sponsored by observer states;
6. decided to communicate this draft Resolution to the Parliamentary Assembly for information.

4.b CM/Del/Dec(2008)1029/1.6E / 13 June 2008

Co-operation between the Council of Europe and the European Union Agency for Fundamental Rights – Agreement between the Council of Europe and the European Community

Decisions

The Deputies

1. took note of the approval by the Council of Ministers of the European Union of the Agreement between the Council of Europe and the European Community concerning the co-

⁵ The draft appears in **Appendix V** to the present document

operation between the Council of Europe and the European Union Agency for Fundamental Rights, as set out in document CM(2008)74 rev⁶, and approved this final text themselves;

2. authorised the Secretary General to sign this Agreement;
3. instructed their Rapporteur Group on External Relations (GR-EXT) to follow the implementation of the Agreement and to report back to them in due course.

4.c CM/Del/Dec(2008)1026/10.1cE / 16 May 2008

European Commission for Democracy through Law (Venice Commission)

[...]

c. Request from the Government of the Tunisian Republic for membership of the Enlarged Agreement establishing the European Commission for Democracy through Law

Decision

The Deputies agreed to the request by the Tunisian Republic to join the Enlarged Agreement establishing the European Commission for Democracy through Law (Venice Commission) and invited the Tunisian Republic to appoint a member to sit on the Commission.

d. Request from the Government of the Palestinian National Authority for co-operation with the European Commission for Democracy through Law

Decision

The Deputies agreed to authorise co-operation between the European Commission for Democracy through Law (Venice Commission) and the Palestinian National Authority.

5. OTHERS

CM/Del/Dec(2008)1024/1.6E / 25 April 2008

Study on the efficiency and effectiveness of committees and study on staff/activities ratio and working methods

Decisions

The Deputies

1. took note of the report of the Chair of the GT-REF.INST as it appears in document GT-REF.INST(2008)CB3 and, in this context:

Concerning the study on the efficiency and effectiveness of committees

2. took note of the study on the efficiency and effectiveness of committees (document DD(2007)548) and of the proposals for follow-up action (document GT-REF.INST(2008)3)⁷ and

- invited the steering committees to regularly review the priorities and the work in their field of competence, as well as their working methods, in contributing to the core objective of the

⁶ The agreement appears in **Appendix VI** to the present document.

⁷ These documents appear in CAHDI (2008) Inf 10

Organisation as decided at the Warsaw Summit and, in this respect, recalled the importance they attach to the document CM(2006)101 final on establishing criteria for projects;

- in this light, invited the GT-REF-INST to regularly examine the follow-up to be given to the document CM(2006)168 on the rationalisation of intergovernmental committees, and to put forward suggestions for their further rationalisation, as necessary;

3. invited the Secretary General, in the light of the observations made during the meetings of the GT-REF.INST (26 February and 27 March 2008), to give follow-up to the study taking into account the need to:

- constantly assess whether the structure and terms of reference of the committees are in line with the priorities set by the Committee of Ministers and make proposals as appropriate;

- propose ways and means for increasing efficiency, effectiveness and flexibility in the functioning of committees whilst ensuring the representation of the diversity of views of all member states in their work;

- consider how communication between the Secretariat, permanent representations and experts of the steering committees on issues concerning the effective functioning of committees could be improved, in particular with regard to transparency and communication flows;

4. agreed to transmit the study on the efficiency and effectiveness of committees and document GT-REF.INST(2008)3, together with these decisions, to steering committees and other committees involved in implementing the intergovernmental programmes of activities for information, as well as the Budget Committee, for information and for possible comments;

[...]

APPENDIX I

Parliamentary **Assembly**
Assemblée parlementaire



Recommendation 1842 (2008)*

Activities of the International Committee of the Red Cross (ICRC)

1. The Parliamentary Assembly refers to its Resolution 1623 (2008) on the same subject and invites the Committee of Ministers to take into account the ideas and proposals contained therein.
2. The Assembly recommends that the Committee of Ministers:
 - 2.1. support the ICRC in its work on monitoring conditions of detention;
 - 2.2. co-operate with the ICRC on promoting humanitarian assistance for persons affected by armed conflict and other situations of violence (including refugees and internally displaced persons);
 - 2.3. contribute to solving the issue of persons missing as a result of armed conflict and other situations of violence in Europe;
 - 2.4. promote both the dissemination and implementation of international humanitarian law at national level.
3. The Assembly furthermore asks the Committee of Ministers to instruct the Steering Committee for Education (CDED) of the Council of Europe to examine ways to support the ICRC in their efforts to include knowledge about international humanitarian law in school curricula under the Exploring Humanitarian Law (EHL) programme of the ICRC.

* *Assembly debate* on 26 June 2008 (26th Sitting) (see Doc. 11608, report of the Committee on Migration, Refugees and Population, rapporteur: Mr Hancock). *Text adopted by the Assembly* on 26 June 2008 (26th Sitting).

Resolution 1623 (2008)*

Activities of the International Committee of the Red Cross (ICRC)

1. The International Committee of the Red Cross (ICRC) was established in 1863; it is at the origin of the International Red Cross and Red Crescent Movement (the Movement).
2. It is an impartial, neutral and independent organisation with an exclusively humanitarian mandate to protect the lives and dignity of victims of war, armed conflict and internal violence and to provide them with assistance. It directs and co-ordinates international relief activities conducted by the Movement in situations of conflict. It also seeks to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles.
3. The ICRC has an international legal mandate under the 1949 Geneva Conventions and the 1977 additional protocols to visit prisoners, organise relief operations, reunite separated families and to undertake other humanitarian activities during armed conflicts. It also has a mandate under its statutes to undertake similar work in situations of internal violence where the Geneva Conventions do not apply.
4. The ICRC has a dedicated staff of over 12 000 worldwide, maintaining a presence in 80 countries and helping millions of persons affected by armed conflict or other situations of violence. It is generously supported by European states, in particular by Belgium, Denmark, France, Germany, Italy, the Netherlands, Norway, Spain, Sweden, Switzerland, and the United Kingdom.
5. International humanitarian law (IHL) remains just as relevant today in international and other armed conflicts, and it remains imperative to protect all victims of armed conflict, whatever side they are on.
6. The Parliamentary Assembly welcomes the universal ratification of the 1949 Geneva Conventions and the entry into force of Protocol III additional to these conventions on 14 January 2007. It also expresses the hope that all IHL treaties will achieve universal acceptance.
7. Furthermore, the Assembly welcomes the progress made in the implementation of IHL and acknowledges the importance of taking measures at all levels to achieve its effective implementation, dissemination and enforcement. Therefore, the Assembly recommends to the Council of Europe member states to:
 - 7.1. actively support the work of the ICRC and its Advisory Service on IHL aimed at assisting states to accede to and implement IHL treaties;

7.2. encourage partnerships and synergies in the implementation, dissemination and development of IHL with other countries, international and regional organisations, the ICRC, Red Cross and Red Crescent National Societies and their international federation, academic institutions and non-governmental organisations;

7.3. strengthen the efforts to enforce IHL at the domestic and international levels, bearing in mind that impunity for crimes under international law is not acceptable and that victims' rights must be addressed in accordance with international law;

7.4. translate IHL in relation to the conduct of military operations and integrate them into military regulations and mechanisms;

7.5. provide ongoing in-depth training for armed and security forces personnel at all levels on the rules of IHL and their concrete application, including in the context of multinational peacekeeping operations.

8. The Assembly fully supports the ICRC's institutional objective for the period 2007-10 aimed at adapting the ICRC's operational framework and activities in order to respond to the needs of the victims of armed conflicts and other forms of armed violence in the most timely and effective way possible. The Assembly encourages the ICRC to:

8.1. further increase its focus on protection activities, which can best be done by improving its financing;

8.2. continue its efforts to prevent enforced disappearances;

8.3. provide more support to governments to resolve the issue of persons unaccounted for as a result of armed conflict or internal violence, especially in the countries of the former Yugoslavia and of the Caucasus;

8.4. further contribute to building and maintaining the capacity of National Red Cross Societies to promote IHL, the principles and humanitarian values of the Movement and to consolidate the National Red Cross Societies' capacity to restore family links;

8.5. continue to participate in institutional and operational humanitarian co-ordination with other humanitarian organisations and adapt to new forms of co-ordination developed within the current United Nations' humanitarian reform, while upholding the neutral and independent approach of the ICRC;

8.6. further promote IHL through education and, in particular, through the implementation of the Exploring Humanitarian Law (EHL) programme aimed at integrating IHL into the formal curricula of secondary schools around the world, as part of the basic education given to students;

8.7. pursue work aimed at minimising the suffering of civilians due to landmines, cluster munitions and other explosive remnants of war;

8.8. continue its work on protection of migrants, refugees and internally displaced persons.

9. The Assembly recommends to member states of the Council of Europe and to the states whose parliaments enjoy observer status with the Parliamentary Assembly to:

9.1. ratify, if they have not done so, and fully implement, *inter alia*, the 1977 and 2005 Additional Protocols to the 1949 Geneva Conventions, the 2003 Protocol on Explosive Remnants of War, the 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children

in armed conflict, the International Convention for the Protection of All Persons from Enforced Disappearance, and the Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction;

9.2. create a domestic legal framework for the investigation and prosecution of crimes under international law, in particular war crimes, and for those states that have not yet done so, ratify the Statute of the International Criminal Court;

9.3. sign the Convention on Cluster Munitions when it is opened for signature on 2 December 2008 in Oslo, Norway, and take the necessary steps to ratify it as soon as possible;

9.4. enact the necessary legislation implementing international humanitarian norms and allocate the necessary financial resources for their implementation;

9.5. accord ICRC personnel unconditional access to persons deprived of their freedom in order to monitor the well-being of detainees;

9.6. solve the problem of missing persons by using the good offices and experience of the ICRC;

9.7. protect cultural property from the effects of armed conflicts;

9.8. provide the ICRC with financial support for its ongoing activities and its future monetary appeals;

9.9. integrate education on IHL in the formal curricula of secondary schools as part of the basic education of students;

9.10. promote knowledge of the ICRC and its activities;

9.11. promote the independence and auxiliary role of the National Red Cross and the Red Crescent Societies;

9.12. adopt measures on the use and protection of the distinctive emblems and signs of the Movement recognised under the Geneva Conventions and their protocols.

* *Assembly debate* on 26 June 2008 (26th Sitting) (see Doc. 11608, report of the Committee on Migration, Refugees and Population, rapporteur: Mr Hancock). *Text adopted by the Assembly* on 26 June 2008 (26th Sitting).

APPENDIX II

Sir Michael Wood, KCMG, Chair of the Committee of Legal Advisers on Public International Law (CAHDI)

1031st meeting of the Committee of Ministers at Deputies' Level 2 July 2008

Mr Chairman,
Madam Deputy Secretary General,
Members of the Committee of Ministers,

1. It is a pleasure to be here to give an account of the work of the Committee of Legal Advisers on Public International Law (CAHDI). I last appeared before you nearly two years ago, when I was Vice-Chair, supporting Mrs Phani Dascalopoulou-Livada of Greece. It is a particular pleasure to meet once again those of you who were fellow participants in the CAHDI.
2. It is, I believe, a good tradition to invite the Chair of the CAHDI to attend a meeting of the Committee of Ministers at least once during his or her term of office. It might also be a good idea for a representative of the Committee of Ministers, for example the Chair of the GR-J, to come to CAHDI from time to time, for an exchange of views, so that we can better understand each other's priorities.
3. I want to look at the past, the present and then look forward to what the CAHDI's programme of work might look like in the years to come.

CAHDI and its predecessors

4. I first attended a Council of Europe meeting on public international law in the early 1970s. The membership was about one third of what it is now. The range of issues was far narrower - though even then we were dealing with terrorism. My first meeting was on the draft Internationally Protected Persons Convention.
5. The CAHDI itself was established in 1991. It has met twice a year since then, 35 meetings in all. It succeeded a Committee of Experts on Public International Law (CJ-DI), which was established in 1982 as a subordinate committee of the CDCJ - to do the work previously done in the field of public international law by the CDCJ itself. You can trace the Council of Europe's work on public international law right back to the origins of the Organisation.
6. As with any really useful institution, outputs are difficult to measure. But I would say there are three kinds of output from the CAHDI and its predecessors:
 - *First*, there are documents: Council of Europe conventions and recommendations in the field of public international law, legal opinions and reports, publications and electronic databases.
 - *Second*, and this is sometimes overlooked, the impetus that work in the CAHDI gives to work in capitals. A good example is objections to reservations to treaties. Without the work in the CAHDI, many states would simply not get round to taking this matter as seriously as it deserves.
 - *Third*, there is the contribution that the CAHDI makes to the common understanding of common problems, to international law as a 'common language' as it is sometimes put. The CAHDI contributes to the building of relations among the 'invisible college' of international lawyers.
7. The CAHDI now brings together the legal advisers of the Ministries for Foreign Affairs of the 47 member states and a number of observer states and organisations. The observers include Australia, Canada, the Holy See, Israel, Japan, Mexico, New Zealand and the United States of

America. Other states have recently shown an interest in becoming observers. We also regularly have observers from the United Nations, the EU (both the Commission and Council Legal Services), the ICRC and NATO.

8. The level of attendance is high. This is numerically the case - virtually all member states and observers attend every meeting. And it is the case in terms of the level of representation - the great majority (including the observers) are represented by their most senior Foreign Ministry legal advisers. This was not always so. I think it shows the increasing importance attached to co-operation in this field.

9. This record of attendance makes our twice-yearly meetings excellent occasions to get to know each other better, to exchange views and experiences on what are often, regrettably, pressing and difficult issues.

10. By way of example, I would highlight the regular attendance at the CAHDI over the last three years of the US State Department's Legal Adviser, John B Bellinger III. At a time when some see a great gulf between European and American views on international law, we are able to speak openly and frankly on matters such as the International Criminal Court, detainee issues, and 'extraordinary rendition'. When the Parliamentary Assembly requested the Committee of Ministers to draw the attention of the US authorities to certain views on these matters, you were able to say that a forum for doing so was already there and operational, the CAHDI.

11. International law is, of course, universal. But it is nevertheless useful to exchange views and coordinate positions at the regional level. The CAHDI, with its broad membership, is an especially valuable grouping in this regard. There are bodies corresponding to the CAHDI in other regions, the Asian-African Legal Consultative Organization and the Inter-American Juridical Committee, for example. Perhaps some thought should be given to developing co-operation with these other regional bodies, for example in the margins of the United Nations General Assembly's Sixth Committee.

12. Given its composition, the CAHDI is, in my personal view, an even more useful forum for the consideration of questions of international law than its EU equivalent, the COJUR. The COJUR has, of course, a special role given the importance of the EC/EU as an international actor, which needs to understand and to play its part in international law. But discussions in the CAHDI are likely to be more influential with other regions and at the United Nations, precisely because of the breadth of Council of Europe membership. Having said that, co-operation between Brussels and Strasbourg in the field of public international law works well. The interplay between the COJUR and the CAHDI is very positive. This is to everyone's benefit.

Current activities

13. Turning to our current work, the CAHDI has submitted to the Committee of Ministers for adoption the two draft recommendations which are before you today. As the Chairman has already explained, they both relate to the peaceful settlement of international disputes. One is on the nomination of international arbitrators and conciliators under various international conventions. And the other concerns acceptance of jurisdiction under the 'Optional Clause' of the Statute of the International Court of Justice.

14. These two texts aim to promote the rule of law in international affairs, including through mechanisms for the peaceful settlement of disputes. They may be seen as a Council of Europe contribution to the implementation of the UN General Assembly's 2005 World Summit Outcome. This will be particularly true if, as I hope will be the case, the two Recommendations are brought to the attention of the United Nations' Legal Committee, and there is some follow-up in New York.

15. An important ongoing function of the CAHDI is to act as the curiously named European Observatory of Reservations to International Treaties (EORIT). The CAHDI regularly examines

outstanding reservations and declarations to treaties, paying particular attention to those concerning terrorism. The Committee helps to coordinate member states' approaches to these reservations. This is an important and practical activity, in what is otherwise a somewhat neglected field. As with so many things we do, the success of our work should be measured not just by outputs at the level of the Council of Europe, but also by the impact of our work in capitals. Were it not for the CAHDI, Foreign Ministries would not examine reservations as carefully as they should.

16. In September 2001, the Committee of Ministers instructed CAHDI to consider reservations to regional and universal conventions relating to terrorism and to exchange views on conventions currently being drafted in the United Nations, with a view to co-ordinating the positions taken by member states. An updated document on this matter is in preparation.

17. Another function of the Committee is to prepare, for the Committee of Ministers, legal opinions in the field of public international law. Examples from the last couple of years include our opinions on the Parliamentary Assembly recommendations on the "United States and International Law" and on the so-called UN and EU sanctions "blacklisting" mechanisms.

18. While on the subject of the Parliamentary Assembly, the CAHDI was pleased to welcome as our guest at our March meeting Mrs Däumler-Gmelin, Chair of the Assembly's Committee on Legal Affairs and Human Rights. We had a lively discussion about the International Criminal Court. This was the first time that I can recall where there was direct interaction between the CAHDI and the PACE Committee. I said on that occasion that

"the work of the CAHDI and the work of the Parliamentary Assembly, and in particular the work of your [that is, Frau Däumler-Gmelin's] committee, are closely related. We are both striving to promote the international rule of law: you at a political level, we at the level of governmental international law experts. Our work is complementary, and should be mutually reinforcing.... Yet we do not have as much regular direct and personal contact as perhaps we should. I would hope that your visit to us today will be followed by further contacts of this kind on matters of mutual concern."

19. At the request of the Committee of Ministers, the CAHDI is currently working on a report on the legal consequences of the so-called 'disconnection clause' in international law in general and for the Council of Europe conventions in particular. This has been a contentious issue over the years, legally as well as politically. But I am hopeful that the CAHDI will be able to adopt a substantive and useful report at our next meeting in October. I should like to express my appreciation for the co-operation I have received from all participants in the CAHDI on this matter.

20. The CAHDI provides a forum for dialogue on public international law issues between governments, international institutions (including courts) and academia. We regularly invite 'Special Guests' to our meetings: over the last few years these have included the President and chief Prosecutor of the International Criminal Court, the Secretary General of the Permanent Court of Arbitration, and our former colleague, Nicolas Michel, the Legal Counsel to the United Nations.

21. One activity that I am particularly pleased about is the electronic database that we have established on the Office of the Foreign Ministry Legal Adviser. This currently describes the position in most member and observer states. It is a valuable resource, and has, I believe, assisted some capitals in building up their Legal Offices. And it allows the Council of Europe countries to inform those in other regions how we organise ourselves. I quite frequently get requests for information, and refer people to the website.

22. Other areas of note are our databases on State Immunity and on National implementation measures of UN sanctions and respect for human rights. The CAHDI's work on this latter subject could be seen as contributing to the adoption by the UN Security Council in 2006 of improvements in the UN sanctions system from the human rights perspective.

23. The CAHDI follows the development of international justice closely, and holds frequent exchanges of views with high-level experts in this area. The Committee has organised four conferences to promote the ICC and further conferences on international justice in general. As you know, there is to be a Conference entitled "International Courts and Tribunals - the Challenges Ahead" in London on 6 and 7 October 2008. The conference is an initiative of the Council of Europe in the framework of the Swedish Chairmanship of the Committee of Ministers in conjunction with the CAHDI. It aims to bring together the participants in the CAHDI with the Presidents, Prosecutors and Registrars of some 15 international courts and tribunals to discuss recent developments in international justice. We look forward to welcoming, among others, the Secretary General and the Presidents of the International Court of Justice and the European Court of Human Rights. As I understand it, a principal aim is to discuss practical matters, to focus on the interface between national governments (and especially the Legal Advisers) and international courts.

Future work

24. I will now offer some brief, and necessarily entirely personal, remarks on the future work of the CAHDI.

25. *First*, the CAHDI should continue its **regular work**. This includes:

- (i) Responding to requests for legal opinions from the Committee of Ministers;
- (ii) Examining reservations to treaties, including terrorism conventions;
- (iii) Keeping an overview of questions of public international law arising before the European Court of Human Rights;
- (iv) Exchanging views and, where appropriate, coordinating positions on the work of the International Law Commission and the General Assembly (including 'rule of law' activities).

26. *Second*, in terms of **outputs**, the CAHDI should aim to produce on average at least one draft recommendation for adoption by the Committee of Ministers every year or two. And it should continue to work on its useful databases and other publications.

27. *Third*, I would offer four personal suggestions for **specific future activities**:

- (i) The CAHDI should continue to focus on aspects of the peaceful settlement of international disputes. Council of Europe members should set an example here. I could see scope for further recommendations, for example on the acceptance of optional clauses for dispute settlement in particular conventions;
- (ii) Action could be taken to encourage states to publish their state practice relevant to public international law. The Council of Europe has already, as long ago as the 1960s, taken a lead by developing a schema for such publications, which was updated in the 1990s. But still only a minority of member states systematically publish their practice.
- (iii) The CAHDI should continue to work on the difficult field of state immunity. Recent cases in a number of member states, some very recent indeed, show just how important and topical this subject is. In particular, the CAHDI should monitor and encourage progress towards accession to the 2004 United Nations Convention on the Jurisdictional Immunities of States and Their Property. There will be a tour de table at the CAHDI in October, and I hope that capitals will be ready to report progress then.

- (iv) Perhaps, and this you may even think a rather bold suggestion, the CAHDI should be ready to discuss aspects of the international law on the use of force. This should not be a taboo subject. If there were greater common understanding on the rules, say on anticipatory self-defence, or on the use of force against non-state actors, that could only strengthen the rules and the rule of law in this most important field.

Mr Chairman,

28. I cannot let this occasion pass without thanking the Director of Legal Advice and Public International Law, Mr Manuel Lezertua, and all the members of the Secretariat of the Committee for their hard work. They are a constant source of wise advice to the Chair. They prepare the documentation with great care and always on time. I would mention their work on the Public International Law website of the Council of Europe, which is a valuable resource for anyone interested in our work. I can assure you that I and all the participants in CAHDI have the highest opinion of our Secretariat.

29. I must express particular thanks to the former Secretary of the Committee, Mr Rafael Benítez. Mr Benítez had been the Secretary of the Committee for over 10 years, since 1997 in fact. We owe him a great debt. His good humour, hard work, and extraordinary knowledge of the subject have been central to our activities. We wish him well in his new position as Head of Protocol of the Council of Europe.

30. I thank you for your attention.

APPENDIX III

**Recommendation CM/Rec(2008)8
of the Committee of Ministers to member states
on the acceptance of the jurisdiction of the International Court of Justice**

*(Adopted by the Committee of Ministers on 2 July 2008
at the 1031st meeting of the Ministers' Deputies)*

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

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

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

Bearing in mind the European Convention for the Peaceful Settlement of Disputes (ETS No. 23);

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

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

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

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

Bearing in mind the 2005 World Summit Outcome, adopted by General Assembly Resolution 60/1 of

16 September 2005, in which the General Assembly called upon states which had not yet done so to consider accepting the jurisdiction of the International Court of Justice in accordance with its Statute, as well as Resolutions 61/39 of 4 December 2006 and 62/70 of 6 December 2007, in which the General Assembly repeated its call;

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

Stressing that the list of model clauses appended to this recommendation is in no way exclusive, and does not call into question other clauses that states may decide to include in their declarations accepting the jurisdiction of the International Court of Justice,

1. Recommends that the governments of member states that have not yet done so consider accepting the jurisdiction of the International Court of Justice in accordance with Article 36, paragraph 2, of its Statute and that, when doing so, they give consideration as appropriate to the model clauses appended to this recommendation;

2. Requests the Secretary General to forward this recommendation to the Secretary General of the United Nations.

Model clauses for possible inclusion in declarations of acceptance of the compulsory jurisdiction of the International Court of Justice under Article 36, paragraph 2, of the Statute of the Court

1. Basic language accepting the Court's jurisdiction

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

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

A. Termination clause

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

B. Clause excluding prior disputes

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

or

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

C. Settlement by other method

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

D. Clause to avoid "surprise" applications

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

E. Variation clause

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

EXPLANATORY MEMORANDUM

Introduction

1. The peaceful settlement of disputes by states has been a constant aspiration of the international community and led to the adoption of international treaties such as the Conventions for the Pacific Settlement of International Disputes of 29 July 1899 and 18 October 1907 and, within the Council of Europe, the European Convention for the Peaceful Settlement of Disputes of 29 April 1957 (ETS 23).

2. This concern enshrined in the Principles of the Charter of the United Nations, which provides that all Members *shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered*.¹ Chapter VI of the Charter concerns the pacific settlement of disputes. Its first article provides that *“The parties to a dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.”*

3. The principle of the pacific settlement of disputes has often been reiterated by the United Nations, for example in texts such as the 1970 *Declaration on Principles of International Law concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations*² and the 1988 *Manila Declaration on the Peaceful Settlement of Disputes*. The 2005 World Summit Outcome likewise emphasizes the obligation of states to settle their disputes by peaceful means, as do the subsequent resolutions of the General Assembly on the rule of law at the national and international level.

4. The International Court of Justice (ICJ) is a central institution for the peaceful settlement of legal disputes being, in accordance with the UN Charter³, the principal judicial organ of the United Nations.⁴

5. The jurisdiction of the ICJ depends upon the consent of States. One way in which consent can be given is through a declaration accepting the so-called ‘Optional Clause’ under the Statute of the Court. Other ways are by treaty or *compromis* (special agreement) including the procedure known as *forum prorogatum*.

6. The system for accepting the ICJ's jurisdiction under the Optional Clause is established in Article 36, paragraph 2, of the Statute of the International Court of Justice, which reads as follows:

“The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

a. the interpretation of a treaty;

b. any question of international law;

c. the existence of any fact which, if established, would constitute a breach of an international obligation;

¹ See Article 2, paragraph 3, of the Charter of the United Nations signed in San Francisco on 26 June 1945.

² Adopted by UN General Assembly Resolution 2625 (XXV) of 24 October 1970.

³ See Articles 2, 7, 36 and 92 to 96 of the Charter of the United Nations, and the relevant provisions the Statute of the International Court of Justice.

⁴ See for instance United Nations General Assembly resolution 3232 (XXIX) of 12 November 1974 and resolution 44/23 of 17 November 1989. More recently, the United Nations Decade of International Law had as one of its main purposes the promotion of means and methods for the peaceful settlement of disputes between states, including resort to and full respect for the International Court of Justice.

d. the nature or extent of the reparation to be made for the breach of an international obligation.”

7. Paragraph 3 further provides that such declarations “*may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time*” and paragraph 4 provides that such declarations shall be deposited with the Secretary-General of the United Nations.

8. There is extensive practice and case-law under the Optional Clause, which has been consolidated over the years.

9. In the 2005 World Summit Outcome, the Heads of State and Government called upon States that had not yet done so to consider accepting the jurisdiction of the International Court of Justice in accordance with its Statute⁵.

10. This call was repeated in General Assembly resolution 61/39 entitled “The rule of law at the national and international level”, adopted on 4 December 2006; and also in General Assembly resolution 62/70 of 6 December 2007 adopted under the same agenda item.

11. At present, just over one third of the members of the United Nations have declarations in force under the Optional Clause, many of which have extensive reservations. Broadly speaking, Africa and Europe have the largest number of declarations in force⁶, while Asia has the lowest⁷.

12. The drafting of declarations accepting the jurisdiction of the ICJ has evolved on an essentially *ad hoc* basis. Thus, in some cases states have copied declarations by other states verbatim, in whole or in part, despite the fact that the language in specific declarations may reflect a particular problem faced by the declaring state and does not necessarily therefore apply to another state.

13. The Council of Europe Committee of Legal Advisers on Public International Law (CAHDI) has regularly considered developments concerning the ICJ and, with the aim of assisting states in the drafting of declarations accepting the compulsory jurisdiction of the ICJ under the Optional Clause, undertook the preparation of Recommendation Rec (2008) ... of the Committee of Ministers to member States on the acceptance of the ICJ jurisdiction which contains in the Appendix a series of Model Clauses for Declarations of Acceptance. The CAHDI considered the draft at its 33rd and 34th meetings in 2007 and decided at its 35th meeting in March 2008 to submit it to the Committee of Ministers, which adopted it at its ... meeting on

14. The Recommendation and Model Clauses are intended to assist states, which may be considering accepting the compulsory jurisdiction of ICJ or changing an existing declaration, to decide upon the terms of their declarations of acceptance, as well as to promote the peaceful settlement of international disputes. They are primarily aimed at the member and observer states of the Council of Europe but could also be of interest to other states.

15. In this connection, it must be stressed that the list of Model Clauses is in no way exclusive or exhaustive, and does not call into question other clauses that states may decide to include in their declarations accepting the ICJ’s jurisdiction, for example reservations excluding certain types of disputes or disputes arising in relation to particular countries.

16. On the contrary, as the Preamble to the Recommendation clearly states, there is no requirement to make any reservations when accepting the compulsory jurisdiction of the ICJ. Some member states of the Council of Europe have already made declarations accepting its jurisdiction without reservation.

⁵ See UN General Assembly resolution 60/1 of 16 September 2005, paragraph 134(f).

⁶ Respectively 20 and 22 (out of the 47 member states of the Council of Europe) at the time of preparing this document.

⁷ Six at the time of preparing this document.

The Recommendation

17. The Preamble to the Recommendation first recalls the importance of peacefully settling international disputes and lists some of the key international provisions which enshrine this principle.

18. The Preamble then recalls the role of the ICJ as the principal judicial organ of the United Nations and, against this background, the importance of accepting the ICJ's jurisdiction, as stated in the 2005 World Summit Outcome Document and subsequent resolutions of the UN General Assembly.

19. In the operative part, the Committee of Ministers calls upon the Governments of member States that have not already done so to consider accepting the Optional Clause and recommends that, when doing so, they give consideration as appropriate to the Model Clauses appended to the Recommendation.

The Model Clauses

20. The CAHDI identified a small number of clauses that are commonly included in declarations accepting the Optional Clause, which may be of use for states when they consider accepting the ICJ's jurisdiction thereunder.

21. The declaration normally takes the form of a communication (for example a letter) addressed to the Secretary-General of the United Nations and signed by an authorised person, such as the Foreign Minister or the Permanent Representative to the United Nations.⁸

22. As stated above, the list of Model Clauses contained in the Appendix to the Recommendation is not exhaustive or exclusive. The CAHDI opted to include only a small number of the most common clauses.

23. The Model Clauses, which contain variants, are in no sense intended to be prescriptive. States that decide to accept the compulsory jurisdiction of the ICJ need to draft the terms of their acceptance in the light of their particular circumstances.

24. The Appendix consists of two parts: (1) basic language to accept the ICJ's jurisdiction and (2) a number of possible reservations.

25. Part One suggests basic language for accepting the ICJ's jurisdiction:

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

26. Part Two contains five *Additional clauses* (clauses A-E), which may be included in a Declaration accepting the ICJ's jurisdiction. They refer to different situations that the declaring state may wish to take into account.

27. The first additional clause (A) (**Termination clause**) concerns the temporal validity of the declaration of acceptance of the ICJ jurisdiction and provides two wording options:

⁸ For further information or assistance in this respect contact the UN Treaty Section at the Office of Legal Affairs treaty@un.org. For information about the UN Treaty Section, consult the website at http://untreaty.un.org/ola/div_treaty.aspx?section=treaty and in particular the Treaty Section - Technical Assistance tools at http://untreaty.un.org/ola/div_treaty_techassist.aspx?section=treaty. A *Treaty Handbook* is available at <http://untreaty.un.org/English/TreatyHandbook/hbframeset.htm>.

“until [TIME-LIMIT] notice may be given to the Secretary-General of the United Nations withdrawing the declaration”

or

“until such time as notice may be given to the Secretary-General of the United Nations withdrawing the declaration”

28. There are many options for language on termination, and some important case-law on the subject. Several scenarios can be envisaged: the declaring state sets a time frame within which it may withdraw its declaration; the declaring state does not set such a time and states that it may withdraw its declaration at any time with immediate effect or with effect from a specified date; or the declaring state remains silent i.e. does not include a termination clause. The non-inclusion of a termination clause does not deprive the declaring State of the possibility of withdrawing its acceptance.

29. The second additional clause (B) provides for the **exclusion of disputes arising before a certain date** by stating that the *[STATE] recognizes [OR accepts] (...) the jurisdiction of the International Court of Justice, in conformity with paragraph 2 of Article 36 of the Statute of the Court:*

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

or

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

30. This clause limits the acceptance of jurisdiction to disputes arising after a certain date, with regard to situations or facts subsequent to the same date; or by excluding disputes arising prior to a certain date or relating to facts or situations which occur prior to that date (even if such facts or situations continue to have effects thereafter). The purpose may be to exclude ‘stale’ or historical disputes, or to exclude disputes arising before major political events, such as those experienced by countries in transition.

31. Whether such a cut-off date is needed, and if so what a reasonable date would be, will vary according to the circumstances of particular states.

32. The third additional clause (C) relates to cases where the parties have agreed **settlement by another method** (e.g. conciliation, arbitration, etc) and is intended to maintain the priority of specific arrangements.

33. Under this clause, the acceptance applies to all disputes *“other than any dispute in respect of which the parties have agreed or shall agree to have recourse to some other method of peaceful settlement”*.

34. The fourth additional clause (D) is intended to ensure that a state accepting the ICJ’s jurisdiction to **avoid “surprise” applications** by providing for the exclusion of disputes where a party has accepted the ICJ’s jurisdiction less than a certain period prior to commencing the proceedings.

35. Such a clause has become common following cases where one of the Parties accepted the ICJ’s jurisdiction only a few days before proceedings were brought against that state.⁹

⁹ See, for instance, *Case concerning Right of Passage over Indian Territory (Portugal v. India)*, ICJ Reports 1960

36. In such cases, the declaring [STATE] recognizes [OR accepts], (...) the jurisdiction of the International Court of Justice (...), for disputes

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

37. The final additional clause (E) (**Variation clause**) provides expressly the possibility for the declaring state to explicitly reserve the right to add to, amend or withdraw any of the reservations it has made or any other reservations it may add subsequently.

38. Changes to additional declarations are made by means of a notification addressed to the Secretary-General of the United Nations, which would indicate the time of its effect.

APPENDIX IV

**Recommendation CM/Rec(2008)9
of the Committee of Ministers to member states
on the nomination of international arbitrators and conciliators**

*(Adopted by the Committee of Ministers on 2 July 2008
at the 1031st meeting of the Ministers' Deputies)*

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

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

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

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

Bearing in mind the European Convention for the Peaceful Settlement of Disputes of 29 April 1957 (ETS No. 23);

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

Bearing in mind United Nations General Assembly Resolution 2625 (XXV) of 24 October 1970 adopting the Declaration on Principles of International Law concerning friendly relations and co-operation among states in accordance with the Charter of the United Nations;

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

Bearing in mind the 2005 World Summit Outcome, adopted by General Assembly Resolution 60/1 of 16 September 2005, emphasising the obligation of states to settle their disputes by peaceful means,

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

Recommends further that the governments of member states consider nominating arbitrators and conciliators in accordance with the instruments in question, and that they keep such nominations under review;

Requests the Secretary General to forward this recommendation to the Secretary General of the United Nations.

EXPLANATORY MEMORANDUM

1. A considerable number of treaties and other instruments provide for the maintenance of lists of arbitrators or conciliators nominated by States. The precise status of the lists varies, but typically they are to be drawn upon by an appointing authority (e.g. the President of the International Court of Justice) when called upon to appoint a member of an arbitral tribunal or conciliation commission where a party to the dispute has not made an appointment. They may also be a useful guide for States when they have to choose an arbitrator or conciliator. The lists, therefore, have an important role in the dispute settlement system of the instrument.

2. The present recommendation deals only with the maintenance of such lists of potential arbitrators and conciliators, not with the separate issue of the appointment of persons to be members of an arbitral tribunal or conciliation commission.

3. It recommends that States maintain a list of instruments that provide for the nomination of arbitrators and conciliators, and that they consider nominating such arbitrators and conciliators and keep such nominations under review. It thus calls upon States to make the best use of the existing mechanisms. Furthermore, it could contribute to the increasing role of the depositaries: they could play a more active role in alerting States when it comes to nominating arbitrators or conciliators and drawing attention to when the mandate for those who have been nominated is running out.

4. The present explanatory memorandum contains 4 Appendices.

5. *Appendix 1* comprises a preliminary 'list of lists'.

6. *Appendices 2 to 4*, by way of example, indicate to what extent Council of Europe member States have in practice nominated (and kept up-to-date) arbitrators/conciliators under three important but very different treaties:

- Convention for the Pacific Settlement of International Disputes 1899/1907 (Permanent Court of Arbitration), see *Appendix 2*.
- United Nations Convention on the Law of the Sea, 1982, annex VII (arbitration), see *Appendix 3*.
- Vienna Convention on the Law of Treaties (conciliation), see *Appendix 4*.

Appendix 1

NOMINATION OF ARBITRATORS AND CONCILIATORS: LIST OF TREATIES AND OTHER PROVISIONS

1. Convention for the Pacific Settlement of International Disputes 1899/1907: Articles 23/44, four Members of the PCA
2. Convention on the Settlement of Investment Disputes between States and nationals of Other States, 1965: article 13, four conciliators
3. Convention on the Settlement of Investment Disputes between States and nationals of Other States, 1965: article 13, four arbitrators
4. Vienna Convention on the Law of Treaties, 1969: annex, paragraph 1, two conciliators
5. Vienna Convention on Succession of States in Respect of Treaties, 1978: annex, paragraph 1, two conciliators
6. United Nations Convention on the Law of the Sea, 1982: annex V, article 2, four conciliators
7. United Nations Convention on the Law of the Sea, 1982: annex VII, article 2, four arbitrators
8. United Nations Convention on the Law of the Sea, 1982: annex VIII, article 2, eight experts
9. Vienna Convention on Succession of States in Respect of State Property, Archives and Debts, 1983: annex, paragraph 1, two conciliators
10. Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 1986: annex, two arbitrators/conciliators
11. Permanent Court of Arbitration, Optional Rules for Arbitration of Disputes relating to Natural Resources and /or the Environment: article 8(3), list of arbitrators maintained by the PCA Secretary-General
12. Convention on Conciliation and Arbitration within the OSCE, 1992: article 3, two conciliators
13. Convention on Conciliation and Arbitration within the OSCE, 1992: article 4, one arbitrator and one alternate
14. Protocol on Environmental Protection to the Antarctic Treaty, 1991: article 2 of the Schedule, at least one arbitrator, up to three.
15. OECD Convention on the Establishment of a Security Control in the Field of Nuclear Energy, 1957: article 12 (a), a list comprising one judge proposed by each Government party to the present Convention.
16. Convention on International Carriage by Rail, 1980: article 14, two arbitrators, specialists in international transport law, nominated to the panel of arbitrators kept up to date by the Central Office.
17. Agreement relating to the International Telecommunications Satellite Organization, 1971: Annex C, article 3 (a), not more than two legal experts for the list of nominees to serve as presidents or members of tribunals, prepared by the executive organ.

Appendix 2

CONVENTION FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES 1907 CONVENTION FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES 1899 (List of members of the Permanent Court of Arbitration)

1. Article 44 of the Convention for the Pacific Settlement of International Disputes of 1907 provides that:

“Each Contracting Power selects four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of Arbitrator.

The persons thus elected are inscribed, as Members of the [Permanent] Court [of Arbitration], in a list which shall be notified to all the Contracting Powers by the Bureau.

(...)

(...) The Members of the Court are appointed for a term of six years. These appointments are renewable.

Should a Member of the Court die or resign, the same procedure is followed for filling the vacancy as was followed for appointing him. In this case the appointment is made for a fresh period of six years.”

Article 23 of the 1899 Convention is to similar effect.

2. Article 45 of the 1907 Convention provides that, when the Contracting Powers wish to have recourse to the Permanent Court of Arbitration (PCA) for the settlement of a difference, ‘the Arbitrators called upon to form the Tribunal with jurisdiction to decide the difference must be chosen from the general list of Members of the Court’. Article 24 of the 1899 Convention is to the same effect.

3. An important function of the ‘national groups’ in the PCA (i.e. the Members of the PCA selected by a particular State) is to nominate candidates for election to the International Court of Justice in accordance with Articles 4 to 6 of the Statute of the International Court of Justice.

4. Of the 47 member States of the Council of Europe, 38 are parties to one or both Conventions. Five member States – Croatia, Greece, Italy, Montenegro, Turkey – are parties to the 1899 Convention, but not to the 1907 Convention.

5. The nine member States of the Council of Europe which are not parties to either Convention are:

Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Moldova, Monaco, San Marino.

6. According to the list of Members of the PCA as of 28 April 2008 (on the PCA website), of the 38 member States of the Council of Europe which are parties to one or both Conventions, 35 have nominated Members of the PCA. The three that have not are:

Iceland, Liechtenstein, Montenegro.

7. However, of those that have made nominations, some have nominated less than four Members of the PCA. And in a number of cases, some or all of the nominations have passed the six-year time-limit.

8. The five observer States are all parties and have nominated members to the PCA.

Summary of the position

9. Nine member States of the Council of Europe are not parties either to the Convention for the Pacific Settlement of International Disputes of 1907 or to the Convention for the Pacific Settlement of International Disputes of 1899. Three of those that are parties to one or both Conventions have not nominated Members of the PCA.

10. In some other cases less than four Members have been nominated. Some of the nominations are over the six-year time-limit.

Appendix 3

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA, 1982 (List of arbitrators under Annex VII)

1. Part XV of the United Nations Convention on the Law of the Sea, 1982, provides *inter alia* for ad hoc arbitration in accordance with annex VII of the Convention.

2. Article 2 of annex VII reads as follows:

“1. A list of arbitrators shall be drawn up and maintained by the Secretary-General of the United Nations. Every State Party shall be entitled to nominate four arbitrators, each of whom shall be a person experienced in maritime affairs and enjoying the highest reputation for fairness, competence and integrity. The names of the persons so nominated shall constitute the list.

2. If at any time the arbitrators nominated by a State Party in the list so constituted shall be fewer than four, that State Party shall be entitled to make further nominations as necessary.

3. The name of an arbitrator shall remain on the list until withdrawn by the State Party which made the nomination, provided that such arbitrator shall continue to serve on any arbitral tribunal to which that arbitrator has been appointed until the completion of the proceedings before that arbitral tribunal.’

3. Under article 3(b), (c) and (d) of annex VII, the parties to the dispute are to appoint arbitrators ‘preferably’ from the list. Under article 3 (e), however, the appointing authority, if called upon to act, must appoint from the list.

4. The list is therefore crucial where an appointing authority is involved. Persons remain on the list until they are withdrawn (or die or resign). But it may nevertheless be thought desirable to review nominations from time to time to ensure the continuing suitability of the persons on the list.

5. According to the UN Multilateral Treaties website, as of 28 April 2008, 26 of the 155 States Parties to UNCLOS have nominated arbitrators, in some cases less than the four permitted. Of the 40 Council of Europe member States which are States Parties to UNCLOS, 15 have nominated arbitrators. The following have not done so:

Albania, Armenia, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Denmark, Georgia, Greece, Hungary, Iceland, Ireland, Latvia, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, Romania, Serbia, Slovenia, the former Yugoslav Republic of Macedonia, Ukraine.

Summary of the position

6. Of the 40 Council of Europe member States that are States Parties to UNCLOS, 25 have not nominated annex VII arbitrators.

Appendix 4

VIENNA CONVENTION ON THE LAW OF TREATIES (List of conciliators under the Annex)

1. Article 66 (b) of, and the annex to, the Vienna Convention on the Law of Treaties provides for the compulsory conciliation of certain disputes concerning the interpretation or application of the articles of Part V of the Convention (Invalidity, Termination and Suspension of the Operation of Treaties) other than articles 53 or 64 (jus cogens).

2. The annex provides, at paragraph 1, that –

“A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a party to the present Convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.”

3. Under paragraph 2, each party to a dispute is required to appoint two conciliators, one of whom must be from the list. The conciliators appointed by the parties are required to appoint a conciliator from the list to be chairman. If the chairman has not been appointed within a certain time, the Secretary-General is required to appoint the chairman either from the list or from the membership of the International Law Commission.

4. These provisions contain some unusual features. First, it is open to all Members of the United Nations to appoint persons to the list, not just parties to the Vienna Convention. Second, those appointed automatically cease to be on the list when their five-year term ends.

5. According to the UN Multilateral Treaties website, as of 28 April 2008 ten States (all of which are among the 108 parties to the Convention) currently have persons on the list:

Austria, Croatia, Denmark, Germany, Paraguay, Slovakia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia.

6. The website also lists conciliators whose nominations were not renewed after five years. These include those nominated by:

Cyprus, Finland, Italy, Japan, Mexico, Netherlands, United Kingdom.

Summary of the position

7. Of the 37 members of the Council of Europe that are parties to the Vienna Convention on the Law of Treaties, nine currently have persons on the list of conciliators. (Another five did so in the past, but the nominations have lapsed.)

APPENDIX V

Draft Resolution on co-operation between the United Nations and the Council of Europe for the agenda of the 63rd session of the United Nations General Assembly

Co-operation between the United Nations and the Council of Europe

The General Assembly,

- a. Recalling the Agreement between the Council of Europe and the Secretariat of the United Nations signed on 15 December 1951 and the Arrangement on Co-operation and Liaison between the Secretariats of the United Nations and the Council of Europe of 19 November 1971,
- b. Recalling its previous resolutions on co-operation between the United Nations and the Council of Europe,
- c. Recalling the 60th anniversary of the Universal Declaration on Human Rights in 2008, and the 60th anniversary of the European Convention for the Protection of Human Rights and Fundamental Freedoms in 2010,
- d. Acknowledging the contribution of the Council of Europe to the protection and strengthening of human rights and fundamental freedoms, democracy and the rule of law through its standards, principles and monitoring mechanisms,
- e. Acknowledging also the importance of the Council of Europe contribution to the effective implementation, at European level, of all relevant United Nations international legal instruments,
- f. Taking note of the important contribution of the Council of Europe to the United Nations Human Rights Council's Universal Periodic Review,
- g. Welcoming the Council of Europe Declaration to improve the protection of human rights defenders and promote their activities,
- h. Acknowledging also the contribution of the Council of Europe to the development of international law, and noting that a number of Council of Europe legal instruments are open to the participation of states of other regions,
- i. Recalling its Resolution 62/149 of 18 December 2007 on a moratorium on the use of the death penalty as well as the Council of Europe's long-standing commitment against the death penalty and welcoming the establishment of a European Day against the death penalty on 10 October each year,
- j. Welcoming the increasingly close relations between the United Nations and the Council of Europe,
- k. Welcoming also the report of the Secretary General on co-operation between the United Nations and the Council of Europe,
1. Calls for the reinforcement of co-operation and synergies with the Council of Europe regarding the protection of human rights and fundamental freedoms, the promotion of democracy and the rule of law, the abolition of the death penalty, the prevention of torture, the fight against trafficking in human beings, the fight against racism, discrimination, xenophobia and intolerance, the

promotion of gender equality and the protection of the rights of persons belonging to national minorities;

2. Commends the important role of the European Court of Human Rights in protecting human rights as the guardian of the implementation of the European Convention on Human Rights which applies to the 800 million individuals in the 47 member states of the Council of Europe, and invites the United Nations Human Rights Council and the Office of the United Nations High Commissioner for Human Rights to strengthen their co-operation with the Council of Europe, including its Commissioner for Human Rights, in promoting respect for human rights, while encouraging close co-operation with the United Nations Secretary General's Special Representative on Human Rights Defenders;

3. Encourages further co-operation between the United Nations and the Council of Europe through their mechanisms regarding the prevention of torture and inhuman or degrading treatment or punishment;

4. Welcomes the entry into force on 1 February 2008 of the Council of Europe Convention on Action against Trafficking in Human Beings, commends the enhanced co-operation between the United Nations and the Council of Europe in this regard and expresses its appreciation for the preparation of a joint study on trafficking in organs and tissues, including trafficking in human beings for the purpose of the removal of organs;

5. Encourages further co-operation between the United Nations High Commissioner for Refugees and the Council of Europe in the field of nationality, in particular in the prevention and reduction of statelessness, and in the protection and promotion of the rights of refugees, asylum seekers and internally displaced persons;

6. Encourages further co-operation between the United Nations and the Council of Europe in the area of democracy and good governance, *inter alia* through the Venice Commission and the Forum for the Future of Democracy, and in particular with regard to the International Day of Democracy and through the strengthening of links between the United Nations Decade of Education for Sustainable Development and the Council of Europe Project on Education for Democratic Citizenship and Human Rights;

7. Welcomes the signing of a joint declaration between the United Nations Children's Fund and the Council of Europe to further co-operation on the protection and promotion of the rights of the child;

8. Welcomes also the Council of Europe Campaign to Combat Violence against Women, including Domestic Violence, and calls for increased co-operation in this field in the framework of the United Nations Secretary General's Global Campaign to End Violence against Women;

9. Recognises the fruitful co-operation between the United Nations missions and the Council of Europe offices in the field;

10. Welcomes the contribution of the Council of Europe to the implementation of Security Council Resolutions 1373 (2001) of 28 September 2001 and 1624 (2005) of 14 September 2005 and the entry into force on 1 June 2007 of the Council of Europe Convention on the Prevention of Terrorism and on 1 May 2008 of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, and encourages further the Council of Europe to promote the implementation of the United Nations Global Counter-Terrorism Strategy and to protect human rights effectively;

11. Encourages further co-operation between the two organisations regarding the fight against transnational organised crime, cybercrime, corruption and money-laundering, as well as regarding the protection of the rights of crime victims and the promotion of human rights and the rule of law in

the information society, and welcomes the contribution of the Council of Europe to the United Nations Internet Governance Forum while noting the importance of the Council of Europe Convention on Cybercrime and its Additional Protocol;

12. Notes with appreciation the contribution of the Council of Europe to the work of the Sixth Committee of the United Nations General Assembly and the International Law Commission of the United Nations, and encourages co-operation between the United Nations Rule of Law Co-ordination and Resource Group and the Council of Europe with the purpose of strengthening and increasing compliance with international law and promoting a law-based international order;

13. Recognises the pioneering role of the Council of Europe in the field of bioethics, through the Council of Europe Convention on Human Rights and Biomedicine and its Additional Protocols, and encourages further co-operation between the United Nations and its specialised agencies, the United Nations Educational, Scientific and Cultural Organisation and the World Health Organisation, and the Council of Europe;

14. Reiterates its support for co-operation between the two organisations in the social and cultural fields, in particular concerning the protection and promotion of the rights of persons with disabilities, combating poverty and social exclusion and ensuring equal access to economic, social and cultural rights for all;

15. Encourages joint action between the United Nations Educational, Scientific and Cultural Organisation and the Council of Europe in the context of the follow-up to the White Paper on Intercultural Dialogue and the Faro Platform, takes note of the intention of the Council of Europe to work in close co-operation with the Alliance of Civilisations, forum for intercultural dialogue created under the auspices of the United Nations, on the basis of a memorandum of understanding, and welcomes the role of the North-South Centre;

16. Acknowledges the continued interest of the Parliamentary Assembly of the Council of Europe in the reform process of the United Nations;

17. Requests the Secretaries General of the United Nations and the Council of Europe to combine their efforts in seeking answers to global challenges, within their respective mandates, and calls upon all relevant United Nations bodies to support the enhancement of co-operation with the Council of Europe in the areas mentioned above;

18. Decides to include in the provisional agenda of its 65th session the sub-item entitled "Co-operation between the United Nations and the Council of Europe", and requests the Secretary General to submit to the General Assembly at its 65th session a report on co-operation between the United Nations and the Council of Europe in implementation of the present resolution.

APPENDIX VI

Ministers' Deputies
CM Documents

CM(2013)74rev

23 May 2013¹⁷**1029 Meeting, 11 June 2013**

1 General questions

1.6 Co-operation between the Council of Europe and the Agency for Fundamental Rights of the European Union –
 Agreement between the Council of Europe and the European Community

**Agreement between the European Community and the Council of Europe
 on co-operation between the European Union Agency for Fundamental Rights
 and the Council of Europe**

THE EUROPEAN COMMUNITY, hereinafter referred to as "the Community",

of the one part,

and

THE COUNCIL OF EUROPE,

of the other part,

hereinafter together referred to as "the Parties",

WHEREAS, on 15 February 2007, the Council of the European Union adopted Regulation (EC) No 168/2007 establishing a European Union Agency for Fundamental Rights (hereinafter referred to as "the Agency"),

WHEREAS the objective of the Agency is to provide the relevant institutions, bodies, offices and agencies of the Community and its Member States when implementing Community law with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights,

WHEREAS the Agency is to refer in carrying out its tasks to fundamental rights within the meaning of Article 6(2) of the Treaty on European Union, including the rights and freedoms guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950,

WHEREAS the Council of Europe has acquired extensive experience and expertise in intergovernmental cooperation and assistance activities in the field of human rights, having also established several human rights monitoring and control mechanisms, as well as the Council of Europe Commissioner for Human Rights,

¹⁷ This document has been classified restricted at the date of issue. It was declassified at the 1029th meeting of the Ministers' Deputies (11 June 2008) (see CM/Del/Dec(2008)1029/1.6).

WHEREAS, in pursuing its activities, the Agency is to take account, where appropriate, of activities already carried out by the Council of Europe,

WHEREAS, in order to avoid duplication and to ensure complementarity and added value, the Agency is to coordinate its activities with those of the Council of Europe, particularly with regard to its Annual Work Programme and to cooperation with civil society;

WHEREAS close links should now be established between the Agency and the Council of Europe in accordance with Article 9 of Regulation (EC) no 168/2007;

WHEREAS the Representatives of the Member States of the European Union, meeting within the European Council on 16 and 17 December 2004, agreed that the Agency will play a major role in enhancing the coherence and consistency of the EU Human Rights Policy,

WHEREAS the Guidelines on the relations between the Council of Europe and the European Union, adopted at the Third Council of Europe Summit of Heads of State and Government (Warsaw, 16-17 May 2005), refer to the Agency as an opportunity to further increase cooperation with the Council of Europe and to contribute to greater coherence and enhanced complementarity,

WHEREAS the Memorandum of Understanding between the Council of Europe and the European Union concluded in 23 May 2007 contains a general framework for cooperation in the area of human rights and fundamental freedoms and highlights the role of the Council of Europe as the benchmark for human rights, the rule of law and democracy in Europe;

WHEREAS, in accordance with the Memorandum of Understanding, the Agency respects the unity, validity and effectiveness of the instruments used by the Council of Europe to monitor the protection of human rights in its member states;

WHEREAS it is for the Council of Europe to appoint an independent person to sit on the Agency's Management Board and on its Executive Board,

HAVE AGREED AS FOLLOWS:

I. Use of terms

1. For the purposes of this Agreement:

- (a) the term "Council of Europe intergovernmental committees" shall mean any committee or body set up by the Committee of Ministers, or with its authorisation, by virtue of Articles 15(a), 16 or 17 of the Council of Europe Statute;
- (b) the term "Council of Europe's human rights monitoring committees" shall mean the European Committee of Social Rights, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the European Commission against Racism and Intolerance, the Committee of Experts of the European Charter for Regional or Minority Languages, the Advisory Committee of the Framework Convention for the Protection of National Minorities and any other such independent bodies that the Council of Europe might set up in the future;
- (c) the term "Agency" shall comprise the bodies referred to in Article 11 of Regulation (EC) No 168/2007 within their respective areas of competence.

II. General cooperation framework

2. This Agreement establishes a cooperation framework between the Agency and the Council of Europe in order to avoid duplication and ensure complementarity and added value.
3. Regular contacts shall be established at the appropriate level between the Agency and the Council of Europe. The Director of the Agency and the Council of Europe Secretariat shall each appoint a contact person to deal specifically with matters relating to their cooperation.
4. As a general rule, Council of Europe Secretariat representatives shall be invited by the Agency's Executive Board to attend meetings of the Agency's Management Board as observers. This shall not extend to particular agenda items for which, on account of their internal nature, such attendance would not be justified. Such representatives may also be invited to other meetings organized by the Agency's Management Board, including those referred to in Article 6(1) of Regulation (EC) No 168/2007.
5. Representatives of the Agency shall be invited to attend as observers in meetings of those Council of Europe intergovernmental committees in which the Agency has expressed an interest. Upon invitation by the relevant committee, representatives of the Agency may attend meetings or exchanges of views organised by Council of Europe human rights monitoring committees or committees set up under partial agreements as observers. Representatives of the Agency may also be invited to participate in exchanges of views organized by the Committee of Ministers of the Council of Europe.
6. Cooperation shall cover the whole range of the Agency's activities, both present and future.

III. Exchange of information and data

7. Without prejudice to the rules on data protection in force for the Agency and Council of Europe respectively, the Agency and the Council of Europe shall provide each other with information and data collected in the course of their activities, including access to online information. Information and data thus provided may be used by the Agency and the Council of Europe in the course of their respective activities. These provisions do not extend to confidential data and activities produced or undertaken.
8. The Agency shall take due account of the judgments and decisions of the European Court of Human Rights concerning the areas of activity of the Agency and, where relevant, of findings, reports and activities in the human rights field of the Council of Europe's human rights monitoring and intergovernmental committees, as well as those of the Council of Europe's Commissioner for Human Rights.
9. Whenever the Agency uses information taken from Council of Europe sources, it shall indicate the origin and reference thereof. The Council of Europe shall proceed in the same way when using information taken from Agency sources.
10. The Agency and the Council of Europe shall ensure, by means of their networks, the widest possible dissemination of the results of their respective activities on a reciprocal basis.
11. The Agency and the Council of Europe shall ensure regular exchanges of information about activities proposed, under way or completed.

IV. Methods of cooperation

12. Regular consultations shall be held between the Agency and the Council of Europe Secretariat, with the aim of coordinating the Agency's activities, in particular in carrying out research and scientific surveys as well as drafting conclusions, opinions and reports, with those of

the Council of Europe in order to ensure complementarity and the best possible use of available resources.

13. Such consultations shall notably concern:

- a) the preparation of the Agency's Annual Work Programme;
- b) the preparation of the Agency's Annual Report on fundamental rights issues covered by the areas of the Agency's activity;
- c) cooperation with civil society, in particular association of the Council of Europe with the establishment and functioning of the Agency's Fundamental Rights Platform.

14. On the basis of such consultations, it may be agreed that the Agency and the Council of Europe shall conduct joint and/or complementary activities on subjects of common interest, such as the organisation of conferences or workshops, data collection and analysis or the setting up of shared information sources or products.

15. Cooperation between the Agency and the Council of Europe may be further promoted through grants awarded by the Agency to the Council of Europe. The 2004 Framework Administrative Agreement between the European Commission and the Council of Europe on the application of the financial checks clause to operations administered by the Council of Europe and financed or co financed by the European Community shall apply.

16. Temporary exchanges of staff between the Agency and the Council of Europe may be effected by agreement between the Secretary General of the Council of Europe and the Director of the Agency insofar as the relevant applicable staff regulations allow.

V. Appointment by the Council of Europe of an independent person to sit on the Agency's Management and Executive Boards

17. The Committee of Ministers of the Council of Europe shall appoint an independent person to sit on the Management and Executive Boards of the Agency, together with an alternate member. The Council of Europe appointees shall have appropriate experience in the management of public or private sector organizations and knowledge in the field of fundamental rights.

18. The Council of Europe shall notify the Agency and the European Commission of the appointments made.

19. The person appointed by the Council of Europe to the Management Board shall be invited to participate in the meetings of the Executive Board. His or her views shall be duly taken into account, especially to ensure complementarity and added value between the activities of the Agency and those of the Council of Europe. He or she shall have a right to vote in the Executive Board as regards the preparation of decisions of the Management Board on which he or she may vote in accordance with Article 12(8) of Regulation (EC) No 168/2007.

VI. General and final provisions

20. Nothing in this Agreement may be interpreted as preventing the Parties from pursuing their respective activities.

21. This Agreement abrogates and replaces the Agreement of 10 February 1999 between the European Community and the Council of Europe for the purpose of establishing, in accordance with Article 7(3) of Council Regulation (EC) No 1035/97 of 2 June 1997 establishing a European Monitoring Centre on Racism and Xenophobia, close cooperation between the Centre and the Council of Europe.

22. This Agreement shall enter into force upon signature by the duly authorized representatives of the Parties.

23. This Agreement may be modified by mutual agreement between the Parties. The Parties shall evaluate the implementation of this Agreement not later than 31 December 2013 with a view to revising it if necessary.

Done at

For the European Community

For the Council of Europe