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CAHDI (2009) 1

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

**37th meeting
Strasbourg, 19-20 March 2009**

**COMMITTEE OF MINISTERS' DECISIONS OF RELEVANCE TO THE CAHDI'S ACTIVITIES
INCLUDING REQUESTS OF THE CAHDI'S OPINION**

Document prepared by the Secretariat of the CAHDI

1. CAHDI

1.a CM/Del/Dec(2008)1044/10.6abE / 15 December 2008

Committee of Legal Advisers on Public International Law (CAHDI)

a. Abridged report of the 36th meeting (London, 7-8 October 2008)

b. Opinion of the CAHDI on Parliamentary Assembly Recommendation 1842 (2008) on “Activities of the International Committee of the Red Cross (ICRC)”

Decisions

The Deputies

1. took note of the opinion of the Ad hoc Committee of Legal Advisers on Public International Law (CAHDI) on Recommendation 1842 (2008) of the Parliamentary Assembly on “Activities of the International Committee of the Red Cross (ICRC)” as it appears in document CM(2008)163 (Appendix 2);

2. took note of the abridged report of the 36th meeting of the Committee of Legal Advisers on Public International Law (CAHDI) as it appears in document CM(2008)163, as a whole.

1.b CM/Del/Dec(2008)1044/10.6cE / 15 December 2008

Report on the consequences of the so-called “disconnection clause” in international law in general and for Council of Europe conventions, containing such a clause, in particular

Decisions

The Deputies

1. welcomed the report on the consequences of the so-called “disconnection clause” in international law in general and for Council of Europe conventions, containing such a clause, in particular;

2. agreed to forward the document to all committees set up with their authorisation, inviting them to bear it in mind when drafting new Council of Europe treaties.

1.c CM/Del/Dec(2008)1042bis/1.2bE / 02 December 2008

The Council of Europe and the rule of law

Decisions

The Deputies

1. welcomed document CM(2008)170 “The Council of Europe and the rule of law – An overview”¹ prepared by the Secretariat and decided to declassify it;

2. invited their Chair to forward the document to the Parliamentary Assembly, the Congress for Local and Regional Authorities of the Council of Europe and the Human Rights Commissioner, for information and possible comments;

¹ This document appears under item 16 of the agenda of the CAHDI “Follow-up to the outcome document of the 2005 UN World Summit - Advancing the international rule of law”.

3. invited the Secretariat to forward the document to the European Committee on Legal Co-operation (CDCJ), Steering Committee for Human Rights (CDDH), European Committee on Crime Problems (CDPC), Steering Committee on the Media and New Communication Services (CDMC), Steering Committee for Equality between Women and Men (CDEG), European Commission for the Efficiency of Justice (CEPEJ), Consultative Council of European Judges (CCJE), Consultative Council of European Prosecutors (CCPE), the Lisbon Network, Group of States against Corruption (GRECO), Group of Experts on Action against Trafficking in Human Beings (GRETA), Committee of Experts on Terrorism (CODEXTER), Committee of Legal Advisers on Public International Law (CAHDI) and the Venice Commission for information and possible comments by 31 March 2009;
4. invited their Group of Rapporteurs on Legal Co-operation (GR-J) to resume consideration of this item in the light of any comments received and to report back.

1.d CM/Del/Dec(2008)1041/4.7E / 21 November 2008

**Liaison Committee with the European Court of Human Rights (CL-CEDH) –
Follow-up**

Decisions

The Deputies

1. recalled the oral report by the Chairman of the CL-CEDH on the Liaison Committee meeting of 14 October 2008 (1040th meeting, 5 November 2008, item 4.4);
2. noted with grave concern the continuing increase in the volume of individual applications brought before the Court and its impact on the processing of applications by the Court which creates an exceptional situation and threatens to undermine the effective operation of the Convention system;
3. agreed that it is urgent to adopt measures aimed at enabling the Court to increase its case-processing capacity;
4. requested the Steering Committee for Human Rights (CDDH) to give, before 1 December 2008, a preliminary opinion on the advisability and modalities of inviting the Court to put into practice certain procedures which are already envisaged to increase the Court's case-processing capacity, in particular the new single-judge and committee procedures, and a final opinion on the same matter by 31 March 2009;
5. requested the Committee of Legal Advisers on Public International Law (CAHDI) to give, by 21 March 2009, an opinion on the public international law aspects of this matter and to inform the CDDH of this opinion through the Secretariat.

2. RELATIONS WITH OBSERVER STATES AND REQUESTS TO ACCEDE TO COUNCIL OF EUROPE CONVENTIONS

2.a CM/Del/Dec(2009)1045/2.5E / 16 January 2009

“The Council of Europe and its observer states – the current situation and a way forward” – Parliamentary Assembly Recommendation 1827 (2008)

Decision

The Deputies adopted the reply to Parliamentary Assembly Recommendation 1827 (2008) – “The Council of Europe and its observer states – the current situation and a way forward”, as it appears at Appendix 5 to the present volume of Decisions² [see below].

The Council of Europe and its observer states – the current situation and a way forward Parliamentary Assembly Recommendation 1827 (2008)

(Reply adopted by the Committee of Ministers on 14 January 2009
at the 1045th meeting of the Ministers' Deputies)

1. The Committee of Ministers has carefully considered Recommendation 1827 (2008) and is grateful to the Assembly for its contribution to the reflection on how to enhance the relations between the Council of Europe and observer states. The contribution, including financial, made by observer states³ to the work of the Council of Europe is most useful and the Committee of Ministers wishes this engagement to be maintained and strengthened further as co-operation with these states constitutes a precious outreach opportunity for the Council of Europe and allows also the Organisation to benefit from their input and support. The Committee of Ministers welcomes the ratification of Council of Europe treaties by observer states and their membership of partial agreements.

2. The Committee would like to recall the decision adopted at the 676th meeting of the Ministers' Deputies held on 1-2 and 7 July 1999 on the criteria for the granting of observer status with the Council of Europe. Whilst distinguishing the commitments to Council of Europe standards by member states and observer states, these criteria address the issues raised in Recommendation 1827 (2008), including the proposal to amend Statutory Resolution (93) 26 and promote the universal abolition of the death penalty.

3. Striving to ensure the total abolition of the death penalty within all Council of Europe member states, the Committee recalls that it has appealed in favour of its abolition on several occasions. Such appeals have also been addressed to observer states which still apply this sentence. The efforts to convince through dialogue to this end will be reinforced.

4. In accordance with the decision of the Ministers' Deputies, the Secretary General presents each year an Annual Report on External Relations of the Council of Europe. This report also contains information on the involvement of observer states in all aspects of the Council of Europe's work, including a detailed account of contacts with Japan and the United States on non use and abolition of the death penalty. The report covering calendar year 2007 is at the Assembly's disposal. The next report will be submitted in anticipation of the Ministerial Session of the Committee of Ministers to be held on 12 May 2009. This report will also be available to the Assembly.

² Parliamentary Assembly Recommendation 1827 (2008) appears in **Appendix I** to the present document.

³ Holy See since 1970, the United States since 1995, Canada since 1996, Japan since 1996 and Mexico since 1999.

5. The Committee of Ministers confirms that the observer states are invited to participate in the Forum for the Future of Democracy. Their national experience and expertise can be most useful for advancing the work of the Forum and their active participation in the sessions of the Forum is therefore welcome.

6. Finally, the Committee recalls its reply to Parliamentary Assembly Recommendation 1753 (2006) on External Relations of the Council of Europe adopted on 18 January 2007 at the 984th meeting of the Ministers' Deputies, in which the Committee stated that in order to strengthen the existing partnership with observer states and encourage these states to make full use of the opportunities offered by their status, it had decided that observer states (Canada, Holy See, Japan, Mexico and United States of America) would also be invited to attend the regular meetings of the Ministers' Deputies as from September 2006 (971st meeting, 12 July 2006).

2.b CM/Del/Dec(2008)1044/10.4E / 15 December 2008

Council of Europe's Convention on the Transfer of Sentenced Persons (ETS No. 112) – Request by Honduras to be invited to accede

Decisions

The Deputies

1. took note of the request of Honduras to be invited to accede to the Convention on the Transfer of Sentenced Persons (ETS No. 112) and noted that the Committee of Ministers agreed in principle to granting this request;

2. instructed the Secretariat to consult the non-member states which are Contracting States to the Convention, i.e. Australia, the Bahamas, Bolivia, Canada, Chile, Costa Rica, Ecuador, Israel, Japan, Korea, Mauritius, Mexico, Panama, Tonga, Trinidad and Tobago, the United States of America and Venezuela, and set 6 February 2009 as the deadline for a reply;

3. agreed that, if there was no objection from the non-member states consulted, the decision to invite Honduras to accede to the Convention on the Transfer of Sentenced Persons (ETS No. 112) would be regarded as adopted on 11 February 2009 (1048th meeting of the Ministers' Deputies);

4. agreed to resume consideration of this item if the non-member states consulted raised an objection concerning the accession of Honduras to the Convention.

2.c CM/Del/Dec(2008)1044/10.5E / 15 December 2008

European Convention on Extradition (ETS No. 24) – Request by the Republic of Korea to be invited to accede

Decisions

The Deputies

1. took note of the request of the Republic of Korea to be invited to accede to the European Convention on Extradition (ETS No. 24) and its two Additional Protocols (ETS Nos. 86 and 98) and its commitment to make at the time of acceding to the Convention a declaration on the non-application of the death penalty, and noted that, under this condition, the Committee of Ministers agreed in principle to granting this request;

2. instructed the Secretariat to consult the non-member states which are Contracting States to the Convention, i.e. Israel and South Africa, and set 6 February 2009 as the deadline for a reply;
3. agreed that, if there was no objection from the non-member states consulted, the decision to invite the Republic of Korea to accede to the European Convention on Extradition (ETS No. 24) would be regarded as adopted on 11 February 2009 (1048th meeting of the Ministers' Deputies);
4. agreed to resume consideration of this item if the non-member states consulted raised an objection concerning the accession of the Republic of Korea to the Convention.

2.d CM/Del/Dec(2008)1037/10.2E / 10 October 2008

Council of Europe's Convention on Cybercrime (ETS No. 185) – Request by the Dominican Republic to be invited to accede

Decisions

The Deputies

1. took note of the request of the Dominican Republic to be invited to accede to the Convention on Cybercrime (ETS No. 185) and noted that the Committee of Ministers agreed in principle to granting this request;
2. instructed the Secretariat to consult the non-member state which is a Contracting State to the Convention, i.e. the United States of America, and set 14 November 2008 as the deadline for a reply;
3. agreed that, if there was no objection from the United States of America, the decision to invite the Dominican Republic to accede to the Convention on Cybercrime (ETS No. 185) would be regarded as adopted on 19 November 2008 (1041st meeting of the Ministers' Deputies);
4. agreed to resume consideration of this item if the United States of America raised an objection concerning the accession of the Dominican Republic to the Convention.

3. CONFERENCES

3.a CM/Del/Dec(2008)1039/1.7E / 24 October 2008

Conference on “International Courts and Tribunals – The challenges ahead” (London, 6-7 October 2008) – Report

Decision

The Deputies took note of the conclusions of the Conference.⁴

3.b CM/Del/Dec(2008)1039/4.6E / 24 October 2008

Colloquy: “Towards stronger implementation of the European Convention on Human Rights at national level” (Stockholm, 9-10 June 2008) – Follow-up

Decisions

⁴ Conclusions appear in **Appendix II** to the present document

The Deputies

1. invited the Steering Committee for Human Rights (CDDH), in the context of its ongoing activities, to give priority attention to the following matters identified at the Stockholm Colloquy, and report on them to the Committee of Ministers in time for the next Ministerial Session (5 May 2009):

- the possibility of drawing up more specific non-binding instruments on effective domestic remedies regarding in particular excessive length of domestic proceedings, including practical steps to prevent violations;
- ways of raising states' awareness of judgments relevant to all Council of Europe member states, including through third-party interventions, and assisting states where necessary to take account of the relevant principles in their domestic law in order to avoid violations of the Convention;

2. expressed their appreciation of the impact of the European Programme for Human Rights Education for Legal Professionals (HELP Programme) on strengthening the implementation of the ECHR at national level and invited member states to provide voluntary contributions so as to ensure the continuation and possible broadening of the Programme beyond 2008;

3. invited voluntary contributions to fund translation and dissemination to member states' judiciary and other competent authorities of key judgments of the European Court of Human Rights.

4. ELECTION OF THE SECRETARY GENERAL

4.a CM/Del/Dec(2008)1040/1.7E / 07 November 2008

Election of the Secretary General – Procedure

Decision

The Deputies adopted the calendar of the procedure for the election of the Secretary General, after reception of candidatures by 6 March 2009, as follows:

- 1050th meeting (11 March 2009): examination of the candidatures and, if necessary, decision to call the candidates for interview by the Committee;
- 1054th meeting (15 April 2009): possible interview of candidates by the Committee;
- Second Part of the 2009 Ordinary Session of the Parliamentary Assembly (27-30 April 2009) (exact date to be agreed with the Assembly in due time): consultation of the Assembly at a meeting of the Joint Committee;
- 119th Session (5 May 2009): adoption of the resolution which would then be forwarded to the Parliamentary Assembly with a view to the appointment of the Secretary General.

4.b CM/Del/Dec(2008)1047/1.6E / 6 February 2009

Election of the Secretary General – Procedure

Decision

The Deputies adopted the “Outline for the short-listing of candidates” for the post of Secretary General, based on the criteria of the Statute, of the Regulations and of the decisions taken at the 117th Ministerial Session, as it appears in document CM(2009)26 rev.⁵

5. OTHERS

5.a CM/Del/Dec(2008)1040/2.1bisE / 07 November 2008

“Developments as regards the future status of Kosovo” – Parliamentary Assembly Recommendation 1822 (2008)

Decision

The Deputies adopted the reply to Parliamentary Assembly Recommendation 1822 (2008) on “Developments as regards the future status of Kosovo”⁶, as it appears at Appendix 4 to the present volume of Decisions⁷

“Developments as regards the future status of Kosovo” – Parliamentary Assembly Recommendation 1822 (2008)

(Reply adopted by the Committee of Ministers on 5 November 2008
at the 1040th meeting of the Ministers’ Deputies)

1. The Committee of Ministers welcomes the Parliamentary Assembly’s support for increased Council of Europe involvement in promoting its standards of democracy, good governance, rule of law, protection of human rights and of the rights of minorities and communities in Kosovo.
2. The Committee of Ministers considers it a priority that, as Europeans, all the inhabitants of Kosovo should benefit from the same level of guarantees for democracy, human rights and the rule of law as all other 800 million Europeans. The Committee of Ministers also shares the view of the Parliamentary Assembly that all international actors in Kosovo should also be accountable to the same human rights standards.
3. The Committee of Ministers will strive to ensure that significant Council of Europe assistance continues to be provided in the fields of its expertise in relation to democracy, rule of law, human rights and the protection of cultural heritage and also to extend the scope of application of its control mechanisms to Kosovo when appropriate and feasible.

5.b CM/Del/Dec(2008)1039/4.1E / 24 October 2008

⁵ This document appears as **Appendix III**.

⁶ The Secretariat recalls that all reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

⁷ Parliamentary Recommendation 1822 (2008) appears in **Appendix IV** to the present document.

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

Decisions

The Deputies

1. reiterated their strong and urgent call on the Russian Federation, as the only member state which has not yet abolished the death penalty, to take without delay all the necessary steps to transform the existing moratorium on executions into de jure abolition of the death penalty and to ratify Protocol No. 6;
2. took note of the information provided by the Russian Federation on measures taken to this effect;
3. welcomed recent initiatives on the occasion of the second European Day against the Death Penalty, in particular the signing of a joint declaration by the Council of Europe and the European Union on 10 October 2008;
4. encouraged those states which have not yet signed or ratified Protocol No. 13 to do so rapidly;
5. agreed to resume consideration of this issue at one of their forthcoming meetings, but no later than April 2009, in the light of additional information to be provided by the Russian Federation by mid-March 2009.

APPENDIX I

Parliamentary Assembly
Assemblée parlementaire



Recommendation 1827 (2008)*

The Council of Europe and its observer states: the current situation and a way forward

1. The Assembly refers to Resolution 1600 (2008) on the Council of Europe and its observer states – the current situation and a way forward.
2. The Assembly invites the Committee of Ministers to:
 - 2.1. reiterate the position of principle that states enjoying observer status shall respect fundamental human rights and shall not apply the death penalty;
 - 2.2. intensify its political dialogue with Japan and the United States, to urge both countries to finally place an immediate moratorium on executions, to abolish the death penalty as soon as possible, and to present to the Assembly by the end of 2008 a detailed account of its contacts with these countries;
 - 2.3. present an annual report to the Assembly on the involvement of observer states in all aspects of the Council of Europe's work;
 - 2.4. consider amending Statutory Resolution (93) 26 on observer status for any future applications for this status in such a way that specific standards, formal commitments and a monitoring process, to be elaborated by the Parliamentary Assembly and the Committee of Ministers of the Council of Europe, would be foreseen;
 - 2.5. explore, with existing observer states, their readiness to subscribe voluntarily to any changes made to the statutory resolution;
 - 2.6. consider introducing new designations, without altering in any way the status of the existing observer states, in order to distinguish between:
 - 2.6.1. observer states which either obtained this status prior to any formal arrangements or were granted observer status under Statutory Resolution (93) 26; and
 - 2.6.2. states which could be granted a status following a possible revision of Statutory Resolution (93) 26, as recommended in paragraph 2.4. above;
 - 2.7. delay granting observer status to any more states until all the issues raised in this recommendation have been addressed.
3. The Assembly recommends that the Committee of Ministers invite observer states to take part in the Forum for the Future of Democracy.

* *Assembly debate* on 23 January 2008 (6th Sitting) (see Doc. 11471, report of the Political Affairs Committee, rapporteur: Mr Wilshire; and Doc. 11500, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Omtzigt). *Text adopted by the Assembly* on 23 January 2008 (6th Sitting).

APPENDIX II



London, 07/10/08

IntCourtTribConf (2008) Conclusions
Original: French

Conclusions of the Conference "International Courts and Tribunals - the Challenges Ahead" (London, 6-7 October 2008), on behalf of the Secretariat General

1. An international conference organised by the Council of Europe entitled "International Courts and Tribunals - the Challenges Ahead" was held in London on 6 and 7 October 2008, at the invitation of the British authorities and under the Swedish Chairmanship of the Council of Europe Committee of Ministers.

2. Those taking part, who included the presidents, registrars and – where relevant – prosecutors of the main international courts and tribunals, the legal advisers of the foreign ministries of Council of Europe member and observer states, academics and international law practitioners, warmly welcomed this initiative and thanked the British and Swedish authorities for their contribution to the success of the conference.

3. The discussions ended with the reading out, on behalf of the Council of Europe Secretariat General, of the following conclusions.

Building on accumulated experience and existing mechanisms

4. The conference noted that the number of international judicial bodies has increased considerably over the last twenty years. It welcomed these developments, which reflected greater respect for international law, but considered that it was important to avoid overlapping jurisdictions, trivialisation of international justice and undermining domestic courts sense of responsibility for enforcing international law. Caution therefore needs to be exercised before new international courts are set up. Generally speaking, it is better to use the existing mechanisms and build on what is already in place.

Differentiating courts according to their function

5. The difficulty of comparing the way different international courts are organised was mentioned on a number of occasions. Comparative institutional *anatomy* – as it was termed at the conference – is an impossible exercise, as the differences in composition, terms of reference, resources and means of bringing prosecutions are considerable. Nevertheless, it was suggested that the range of international courts and tribunals could be divided into three categories:

- a) institutions that settle disputes between states/international organisations;
- b) institutions that determine the criminal liability of persons for international crimes;
- c) institutions that settle disputes between individuals and states.

6. Efforts also have to be made to ensure that international courts and tribunals reflect the various legal traditions, which also means that they must avoid monolingualism.

Making effectiveness the prime objective

7. The conference then turned to the emphasis placed by international courts and tribunals on the effectiveness and efficiency of international justice. Dealing with cases effectively is a major objective. There are various ways of increasing the effectiveness and efficiency of international justice. Discussions focussed successively on the independence, responsibility and training of judges. Reference was made to the need to deal rapidly with pending cases. Similarly, the fairness of proceedings and how decisions are executed are both important aspects of the effectiveness of international courts and tribunals' activities.

Pursuing the objective of quality, inseparable from effectiveness

8. It should also be noted though that whatever topic was raised, participants inevitably called for greater quality. The courts and tribunals are concerned with being effective but are also engaged in a so far uncompleted quest for a high standard of justice.

9. Attention was drawn to the need for a certain "cross-fertilisation", mutual acquaintance with their respective case-laws and a sharing of experience and approaches. One aspect of a high standard of international justice is the need to avoid inconsistencies and incompatibilities between the different international courts.

10. Independence and impartiality are inherent in the notion of justice. They are key features of genuine international justice, and of justice in general. International courts' credibility, quality and effectiveness depend on the existence of mechanisms to ensure this independence and impartiality.

11. If these principles are to be respected, there must be a ban on all interference, not only in the work of the courts but also in other areas, such as the selection of judges to ensure their security in the exercise of their duties and once their term of office expires. Administrative and financial independence are also key principles in this regard.

12. The discussions therefore once more confirmed the extent to which the quality of legal work and the effectiveness of judicial activity are inextricably linked and necessary.

Maintaining confidence in international justice

13. Effectiveness and quality also encourage confidence in international justice.

14. The first requirement is to maintain the confidence of individuals, who must believe in an international justice that can secure effective compliance with international standards. People then have to be convinced that their countries can reach agreement in a peaceful setting rather than resolving their differences through armed conflict.

15. There is also a fundamental need to maintain states' confidence in a system of international justice that occupies a growing place in a globalising world.

16. States expect each of the international courts and tribunals to abide by the terms of reference they have been assigned, as a means of preserving a relationship of confidence between governments and international courts and tribunals. This relationship has to be sustained by a high standard of judicial activity, and should also contribute to a dialogue between judges.

17. Finally, courts and tribunals can help to foster a continuing relationship of confidence through the good governance and management of their financial and human resources.

18. Good understanding between governments and courts and tribunals can help to maintain the integrity, impartiality and neutrality of international justice. This is probably assisted by the adoption of internal codes of ethics, as the European Court of Human Rights has done.

19. The conference took due note of the fact that it could sometimes be difficult to reconcile the objectives of fostering public confidence and maintaining that of governments. Sensitive situations arise that are best resolved by negotiation.

20. Thus, the pressing need for a court to carry out its duty, for example to protect individuals' fundamental rights, may have to be set against its obligation to stay within its mandate and its terms of reference, as laid down in the relevant instruments of international law.

21. However, dealing with such contradictions is the essence of the law. The need to retain the confidence of all those concerned while continuing to fulfil a key function – that of dispensing justice - must be constantly borne in mind. This challenge has to be met.

Ensuring that governments and international courts and tribunals exercise their responsibilities

22. Throughout the proceedings, consideration was given to areas where improvements could or must be made. It was also noted that other courts could be a valuable source of inspiration for this process.

23. On the one hand, courts want the support of states coupled with guarantees of their independence. On the other, states requires courts to abide by the rules under which they are set up and which determine the scope of their jurisdiction. Various questions were raised concerning the role of international courts in filling gaps in substantive law and on the subject of judicial self-restraint. Meanwhile, various practitioners choose to criticise both governments and the institutions themselves, while sometimes overloading the latter with unreasonable appeals or excessive documentation. In the end, all those concerned appear to be committed to the success of the international justice system, but at the same time each of them also contributes to its difficulties. It is therefore necessary to reconcile criticism and responsibility.

24. Various specific features of international law were also raised. The international judicial power does not function alongside a legislature that has been formally constituted to maintain the balance of powers. This balance therefore has to be maintained by other means, in particular dialogue and diplomacy. This means that criticisms have to be expressed clearly and problems raised directly, which also means that all must accept their responsibilities. The role of governments is to provide the political and financial support necessary for the smooth running of the courts and tribunals, while the latter must show evidence of a certain efficiency and effectiveness and manage their affairs in a way that is beyond reproach. Finally, users must not abuse the court system and pointlessly overload it.

25. It will only be possible to strike a reasonable balance between criticism and responsibility against a background of sustained co-operation. Dialogue between courts, and between governments and courts, is now entering a new phase and could benefit from a certain institutionalisation.

Making citizens aware of the difficulties of international justice

26. Finally, international courts and tribunals must be accountable for their activities not just to states but also to citizens, using a form of communication that is neutral in tone but still clear. This should cover decisions reached, how those decisions are enforced and the impact of their activities, as well as the difficulties encountered, including if necessary those linked to the backlog of unexamined cases.

APPENDIX III

Ministers' Deputies CM Documents

CM(2009)26rev 4 February 2009⁸

1047 Meeting, 4 February 2009

1 General questions

1.6 Election of the Secretary General – Procedure Outline for the short listing of candidates

A. Criteria

1. The role and function of the Secretary General are described in the Statute (see appendix I). Article 37b states that “the Secretary General is responsible to the Committee of Ministers for the work of the Secretariat. *[He/she shall also] provide such secretariat and other assistance as the Parliamentary Assembly may require.*”

2. The criteria and procedure for his/her appointment are defined in Regulations adopted, with the agreement of the Assembly, by the Committee of Ministers in 1956 and subsequently modified (see appendix II). Article 2 of these Rules specify that:

“The following criteria shall determine the choice of candidates:

- a. The recruitment of persons of the highest ability and integrity and suitability for the post to be filled;
 - b. The qualifications and experience of persons already employed by the Council of Europe shall be taken into consideration, so that members of the Secretariat may have reasonable prospects of promotion ;
 - c. The desirability of ensuring an equitable geographical allocation of appointments among nationals of the Member States subject to the overriding interests of efficiency.
- No office in the Secretariat shall be considered to be the prerogative of any particular Member State”.

3. The desired profile has been further specified at the 117th Ministerial session (see appendix III) where the Committee of Ministers decided that “candidates [should] enjoy a high level of recognition, be well-known among their peers and the people of Europe, and have previously served as Heads of State or Government, or held senior ministerial office or similar status relevant to the post.”

These decisions have been taken as a specific follow-up to recommendation n°12 of the Juncker report. The high-level group entrusted with examining the follow-up to the Juncker report shared Jean-Claude Juncker’s view that some of the qualities required by Secretaries General are much the same as those expected from Presidents of the European Commission or Heads of State or Government. The suggested preference for a personality with experience, recognition and notoriety at this level among the candidates is based on the assumption that it could “make it easier to move ahead more rapidly on the pan-European issues for which the Council is responsible.” (see document CM(2007)75 final)

⁸ This document was classified restricted at the date of issue. It was declassified at the 1047th meeting of the Ministers’ Deputies (4 February 2009) (see CM/Del/Dec(2009)1047/1.6).

B. Procedure

4. The election of the next Secretary General will be the first opportunity to implement the decision taken at the 117th Session. In order to draw the attention of his colleagues to this and following a request by the Ministers' Deputies at their 1032nd meeting (9-10 July 2008), the Chairman of the Committee of Ministers, Mr Carl Bildt sent a letter to his colleagues Ministers for Foreign Affairs (see appendix IV).

5. After Governments have submitted candidates, and in order to implement the Ministers' decision, the Committee of Ministers is called upon to examine the candidatures, draw up and transmit a list of appropriate candidates to the Parliamentary Assembly (see Article 3 and 5 of the Regulations).

6. At the 1040th meeting of the Deputies, the Permanent Representative of the United Kingdom made a number of proposals to strengthen further the process for the selection of the next Secretary General. She suggested drawing up a list of qualities and competences required for the post which could guide the Committee in its tasks of short-listing candidates.

At the close of the discussion, the Chair concluded that, after close consultation with the incoming Chair and the Bureau, an informal meeting of all delegations should be organised on proposals made at the present meeting concerning the drawing up of job descriptions for the posts of Secretary General and Deputy Secretary General, as well as the modalities for the examination of candidatures.

7. The Bureau discussed the matter with the Permanent Representative of the United Kingdom on two occasions and decided to submit to an informal meeting of Heads of Delegation firstly, and to the Deputies later, a draft outline to assist the Deputies in ensuring that candidatures are examined in an objective and transparent way, on the basis of the criteria required by the applicable texts.

8. The present document is the outcome of the informal meeting of Heads of Delegation, which took place on 22 January 2009.

C. Outline checklist

9. During the interview with the various candidates, delegations might wish to ask them questions drawing inspiration from the following outline, based notably on the criteria of the Regulations and of the decisions at the 117th Ministerial Session (see Appendix I). Candidates should be invited to answer from two angles: their past experience and their vision for the future. The motivation of the candidates to run for office should also be ascertained.

a) To assess the "suitability for the post" (*Regulations*):

- "high level of recognition", "well-known among their peers", "has previously served as Heads of State or government, or held senior ministerial office or similar status relevant to the post" (*117th Session's decisions*):

- strong and effective relations with governments of member states; ability to work with the Committee of Ministers at all levels;

- demonstrated commitment to human rights, democracy, rule of law;

- very good knowledge of at least one of the official languages of the Council of Europe;

b) To assess "highest ability" (*Regulations*):

- political vision and insight on international affairs; including the role of the Council of Europe; strategic thinking;
- leadership skills; trust-building; inspires and motivates a culturally diverse staff of 2,000 from 47 countries;
- skills to manage a large Organisation; delegates authority and empowers staff while remaining accountable; innovative thinking; promotes and accompanies change;
- pro-active planning ability and priority setting, both in his/her responsibility and in making proposals to the Committee of Ministers;
- delivers results, with efficiency and transparency;
- communication skills, both oral and written;
- negotiating skills; ability to tackle sensitive issues while promoting Council of Europe values;
- advocacy skills; proven ability to establish, maintain and use strong and effective networks; capacity to interact effectively with diverse interlocutors (political and cultural figures, officials, NGOs, media, etc); highly developed ability to explain and to persuade.

c) To assess "highest integrity" (*Regulations*)

- proven personal commitment to the ethical values of the Council of Europe;
- respect for diversity;
- openness to scrutiny.

* * *

Appendix I - Relevant provisions of the Statute of the Council of Europe

Article 10

The organs of the Council of Europe [*Committee of Ministers and Consultative (Parliamentary) Assembly*] "shall be served by the Secretariat of the Council of Europe".

Article 36.a

"The Secretariat shall consist of a Secretary General, a Deputy Secretary General and such other staff as may be required."

Article 37.b

"The Secretary General is responsible to the Committee of Ministers for the work of the Secretariat. Among other things, he shall, subject to Article 38.d, provide such secretariat and other assistance as the Consultative (*Parliamentary*) Assembly may require."

Appendix II - Regulations⁹ relating to the appointment of the Secretary General, Deputy Secretary General and Secretary General of the Assembly having the rank of Deputy Secretary General¹⁰

1. Submission of candidatures

a. When a vacancy occurs in any of the three senior posts of the Secretariat General, appointments to which are made by the Consultative (Parliamentary) Assembly on the recommendation of the Committee of Ministers, or in the case provided for in clause 8.b below, candidates may be proposed to the Committee of Ministers:

i. by one or more Member Governments;

ii. by the Secretary General, in respect of the posts of Deputy Secretary General and Secretary General of the Assembly.

Furthermore, when the post of Secretary General of the Consultative (Parliamentary) Assembly falls vacant, or in the case provided for in clause 8.b, proposals may be submitted to the Committee of Ministers by one or more groups of Representatives to the Consultative (Parliamentary) Assembly; they should bear not less than five and not more than ten signatures.

The Secretary General may only propose candidates who are already permanent or temporary members of the Secretariat General.

Candidates from the Secretariat General may also be sponsored by one or more Member Governments, provided that in the case of the Deputy Secretary General or Secretary General of the Consultative (Parliamentary) Assembly the Secretary General has been previously consulted and has given his assent.

b. Member Governments and Assembly Representatives shall send their proposals to the Secretary General, who will forward them, together with his own, to the Committee of Ministers.

2. Criteria determining the choice of candidates

The following criteria shall determine the choice of candidates:

a. The recruitment of persons of the highest ability and integrity and suitability for the post to be filled.

b. The qualifications and experience of persons already employed by the Council of Europe shall be taken into consideration, so that members of the Secretariat may have reasonable prospects of promotion.

c. The desirability of ensuring an equitable geographical allocation of appointments among nationals of the Member States subject to the overriding interests of efficiency. No office in the Secretariat shall be considered to be the prerogative of any particular Member State.

⁹ Regulations adopted by the Committee of Ministers (43rd Meeting of the Ministers' Deputies on 3 to 6 December 1956) with the agreement of the Assembly, subsequently amended as to paragraphs 1 and 8 as a result of a proposal by the Assembly (Recommendation 289 of 23 September 1961), by the Committee of Ministers (107th Meeting of the Ministers' Deputies on 13 to 20 March 1962), with the agreement of the Standing Committee (Meeting of 30 March 1962).

¹⁰ By Resolution (49) 20 (see p. 264 above) the Committee of Ministers, pending the amendment of articles 36 and 37 of the Statute, authorised the Assembly to appoint, on the recommendation of the Committee of Ministers, a Chief of the Administrative Services (Clerk) of the Assembly, having the rank of Deputy Secretary General. In January 2000, this title was replaced by Secretary General of the Assembly, see Rule 64 of the Assembly's Rules of Procedure.

3. Preliminary examination of candidatures by the Committee of Ministers

The Committee of Ministers shall examine the list of candidates. The latter may be summoned to an interview by the Committee itself or by a Sub-Committee appointed for the purpose.

4. Consultation of the Assembly by the Committee of Ministers

Before transmitting to the Consultative (Parliamentary) Assembly a recommendation for the appointment of any one of the three senior officials of the Secretariat General, the Committee of Ministers shall consult the Assembly on the subject through the medium of the Joint Committee.

This consultation shall take place, unless otherwise agreed to by the Joint Committee, not less than thirty days before the date of the opening of the Session during which the Assembly will be called upon to make the appointment.

5. Nomination of candidates

a. Unless it has been otherwise agreed after discussion in the Joint Committee, the Committee of Ministers shall draw up a list containing at least two names, which shall be submitted to the Assembly.

b. In the case of candidates for the posts of Secretary General and Deputy Secretary General, the Committee of Ministers shall be free to list the names in order of preference, should it so desire.

6. Procedure in the Bureau

The proposals submitted to the Assembly by the Committee of Ministers shall be examined by the Bureau, which may summon candidates to an interview. The Bureau shall then transmit the proposals to the Assembly, indicating, if it thinks fit and where appropriate, its own order of preference and the order of preference of the Committee of Ministers with regard to the candidates.

7. Procedure in the Assembly

a. The Assembly shall proceed to make the appointment.

b. Voting shall be by secret ballot.

c. An absolute majority of the votes cast¹¹ shall be required at the first ballot and a relative majority at the second¹².

8. Term of office and possible re-appointment¹³.

a. The three senior officials shall henceforth be appointed for a period of five years.

b. Not less than six months before the expiry of the term of any such official, the procedure laid down in the preceding clauses shall be set in motion; the official may be put forward again as a candidate in accordance with clause 1, and his term may always be renewed for a period specified

¹¹ Only those ballot papers bearing the names of persons who have been duly entered as candidates shall be taken into account for the purpose of calculating the number of votes cast. (Rule 35.8 of the Rules of Procedure of the Assembly).

¹² For the other modalities of the appointment by the Assembly see the provisions above p. 100.

¹³ This paragraph was altered as a result of Recommendation 289 of the Assembly, adopted on 23 September 1961 (see Doc. 1326) and the joint decision of the Committee of Ministers and the Assembly (see Doc. 1431).

in advance by agreement between the Assembly and the Committee of Ministers in the Joint Committee.

Appendix III - Decisions of the Committee of Ministers

CM(2007)PV Addendum 14 May 2007

Report by the high-level group entrusted with examining the follow-up to the Juncker report (CM(2007)75 final)

“The Committee of Ministers

i...

ii) agrees, concerning the procedure for election of the Secretary General, that it will henceforth present to the Parliamentary Assembly candidates who enjoy a high level of recognition, are well-known among their peers and the people of Europe, and have previously served as Heads of State or Government, or held senior ministerial office or similar status relevant to the post, and asks the governments of member states to present candidates who match this profile;

iii) asks the High-Level Follow-Up Group to present regular reports on the Juncker recommendations at the future Ministerial Sessions.”

Appendix IV - Letter from the Chairman of the Committee of Ministers to all Ministers for Foreign Affairs of the Council of Europe member states

The Chairman

Please quote: SecCM/OUT(2008)219

Stockholm, 22 July 2008

Dear Colleague,

I am writing to you concerning the election of the Secretary-General of the Organisation, which will take place in June 2009.

In order to further consolidate the oldest political institution in Europe and make the most of its *acquis* and its potential, it is my conviction that we need to appoint a person of the highest ability and integrity to this post.

We should therefore strive to elect a Secretary-General with strong support by governments and member states, thereby giving him or her a strong mandate to lead and reform the organisation, and to provide it with genuine means of action. In line with the recommendations in the report of the Prime Minister of Luxembourg, Jean-Claude Juncker, we agreed that future Secretary-Generals should be recognised European political figures. The election in June 2009 will be the first occasion to implement this decision.

I therefore ask you to encourage candidates in our member states that have the required profile and competence. Following this, the Committee of Ministers will transmit to the Parliamentary Assembly of the Council of Europe a list of candidates who match that profile.

I will personally be following this issue, and hope to be able to discuss it with you at the earliest opportunity.

Yours sincerely,

(Signed)

Carl Bildt
Chairman of the Committee of Ministers
Minister for Foreign Affairs of Sweden

APPENDIX IV

Parliamentary Assembly
Assemblée parlementaire



Recommendation 1822 (2008)*

Developments as regards the future status of Kosovo

1. Referring to its Resolution 1595 (2008) on developments as regards the future status of Kosovo, the Parliamentary Assembly strongly affirms that in no way should the status process shift the attention of the Provisional Institutions of Self-Government (PISG) and the international community from the implementation of the Standards for Kosovo. In fact, putting a renewed and resolute focus on standards is even more necessary to foster trust and facilitate reconciliation in the current climate of political tension, determined by the failure to reach a compromise.

2. The Assembly reiterates its aspiration for Kosovo to be, irrespective of its status, a multi-ethnic area which is safe for all those who live in it, where Council of Europe standards of democracy, the rule of law, protection of human rights and rights of national minorities, and good governance are fully enforced; where the most important international and European instruments in these fields, in particular the European Convention on Human Rights (ETS No. 5), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126) and the Framework Convention for the Protection of National Minorities (ETS No. 157) are fully applicable and their respective control mechanisms fully in force; and where the values of democracy, tolerance and multiculturalism are shared by its people and institutions.

3. As regards the status itself, the Assembly considers that it should allow the full implementation of the Standards for Kosovo, the strengthening of human rights protection mechanisms in Kosovo and ownership of reforms by Kosovo institutions, as well as the increased accountability of all parties concerned, including of the international community, in Kosovo.

4. The Assembly also welcomes the possible deployment of a European Union Rule of Law Mission to Kosovo and, in this context, reaffirms that the Council of Europe, as the leading human rights watchdog in Europe, should be closely associated with any such mission.

5. Being convinced that the Council of Europe should continue to play a major role to ensure that this aspiration becomes a reality, the Assembly asks the Committee of Ministers to:

5.1. reinforce the current Council of Europe field office in Kosovo;

5.2. make every effort to ensure that the most important Council of Europe international instruments in the field of human rights and rights of minorities are fully implemented, including their respective control mechanisms;

5.3. provide its support and expertise to the relevant authorities in Kosovo in the following areas:

5.3.1. constitutional and legal issues;

5.3.2. protection of human rights and strengthening of human rights protection mechanisms, including the ombudsperson institution and other mechanisms aimed, *inter alia*, at ensuring accountability of the international community in Kosovo;

5.3.3. durable solutions for all asylum seekers, refugees and internally displaced persons (IDPs);

5.3.4. protection of minority rights, including those of the Roma, Ashkali and Egyptian (RAE) community, and the use of minority languages;

5.3.5. protection of the Serbian community and its cultural heritage in Kosovo;

5.3.6. independence and efficiency of the judiciary, including the fight against impunity;

5.3.7. fight against corruption, organised crime, money laundering and trafficking in human beings;

5.3.8. democratisation, financing of political parties and good governance;

5.3.9. decentralisation and effective local government;

5.3.10. protection of cultural and religious heritage;

5.3.11. intercultural dialogue;

5.3.12. education;

5.3.13. support for civil society and measures to foster reconciliation.

**Assembly debate* on 22 January 2008 (3rd and 4th Sittings) (see Doc. 11472, report of the Political Affairs Committee, rapporteur: Lord Russell-Johnston; and Doc. 11498, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Omtzigt). *Text adopted by the Assembly* on 22 January 2008 (4th Sitting).