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

**38<sup>th</sup> meeting  
Strasbourg, 10-11 September 2009**

**MEETING REPORT**

Document prepared by the Secretariat of the CAHDI

## **A. INTRODUCTION**

### **1. Opening of the meeting by the Chair, Mr Rolf Einar Fife**

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 38th meeting in Strasbourg on 10 and 11 September 2009, with Mr Rolf Einar Fife in the Chair. The list of participants is set out in **Appendix I** to this report.

### **2. Adoption of the agenda**

2. The draft agenda was adopted without comment as set out in **Appendix II** to this report.

### **3. Approval of the report of the 37th meeting**

3. The CAHDI adopted the report of its 37th meeting (document CAHDI (2009) 8) without any comment. The Committee instructed the Secretariat to publish the report on the CAHDI webpage.

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

4. Mr Manuel Lezertua, Director of Legal Advice and Public International Law, briefed delegations about developments at the Council of Europe since the CAHDI's 37th meeting. His statement is set out in **Appendix III** to this report.

## **B. ONGOING ACTIVITIES OF THE CAHDI**

### **5. Committee of Ministers' decisions of relevance to the CAHDI's activities, including requests for the CAHDI's opinion**

5. The Chair presented document CAHDI (2009) 9, concerning the Committee of Ministers decisions of relevance to the CAHDI's activities. He highlighted in particular two recommendations of the Parliamentary Assembly – contained in the appendix to the said document – namely Recommendation 1870 (2009), entitled "Protecting financial aid granted by Council of Europe member States to poor countries against financial funds known as 'vulture funds'", and Recommendation 1871 (2009), entitled "Ban on cluster munitions".

6. The CAHDI took note of all the relevant decisions of the Committee of Ministers, in particular with respect to the aforementioned recommendations, on which it made no further comments, and of the decisions relating to follow-up of its work on the provisional application of certain provisions of Protocol No. 14.

### **6. Immunities of States and international organisations:**

#### **a. State practice and case-law**

7. The Chair presented document CAHDI (2009) Inf 11, referring to the database relevant to this item, and noted that the said database contained a new contribution submitted by the

Japanese observer. He emphasised the need to update contributions on a regular basis and invited delegations which had not yet done so to contribute to the database at their earliest convenience. He then invited delegations to give an oral presentation of recent developments in this field.

8. The delegation of Belgium presented its position and relevant case-law on this subject, and mentioned in particular two recently registered cases relating to conservatory attachments of embassies' bank accounts. In Belgium, this matter comes within the jurisdiction of the attachment judge (*judge des saisies*) of the court of first instance. The State to which the embassy belongs may request the conservatory attachment be withdrawn on the basis of the principle of inviolability of assets, provided that those assets are indeed intended for the functioning of the diplomatic mission. In this regard, Article 25 of the Vienna Convention on Diplomatic Relations and the principle of *ne impediatur legatio* are both applicable. The recent Belgian case-law has complied with these principles and placed on the attaching creditor the burden of proving that the assets are not intended for the functioning of the embassy. There is subsequently a presumption that the assets held by the bank are intended for the functioning of the embassy, although this presumption can be refuted under specific conditions. Nonetheless, the judge has a narrow margin of interpretation when considering whether the evidence makes it possible to determine whether the assets are intended for the functioning of the embassy. If there is clear evidence that this is not the case, the attachment is a valid course of action. That decision is then communicated to the embassies concerned. In accordance with the principle of separation of powers, the Ministry of Foreign Affairs does not intervene in the judicial proceedings.

9. The observer of Canada informed the Committee that some legislative changes had been proposed by the Government, particularly so as to eliminate the impunity of States designated as sponsors of terrorism, and that this legislation might have a bearing on Canada's consideration of the UN Convention on State Immunity and give rise to certain challenges in this regard. In this respect, the Government was working on a possible list enumerating certain countries. Even if that legislation were not to come into force, there were clearly some differences between the UN Convention and the Canadian State Immunity Act that might necessitate legislative amendments.

10. The delegation of the Russian Federation asked the Belgian delegation whether there was any legal procedure whereby the Ministry of Foreign Affairs of Belgium, or the executive branch in general, could submit its views relating to Belgium's obligations under international law to the Court in the cases that were pending, for example through an *amicus curiae* or the Ministry of Justice.

11. The delegation of Slovenia informed the Committee that a procedure had been started to set up an intergovernmental working group responsible for drafting a national law on the privileges and immunities of international organisations. The working group, under the leadership of the Ministry of Foreign Affairs, had been tasked with submitting to parliament next spring a comprehensive legal instrument on this subject.

12. The delegation of Sweden informed the Committee of the adoption by the Swedish Parliament of a bill on ratification of the UN Convention on State Immunity. The UN Convention had been incorporated into Swedish law without any additions, making its rules, as such, directly applicable in Sweden. Mentioning the draft legislation on State immunity, the delegation also informed the Committee of a study of Swedish case-law on State immunity showing that the Swedish courts were more inclined to grant immunity to States than is actually required under customary international law and under the UN Convention on State Immunity. The practical application of this new legislation would thus be of interest. The delegation also mentioned an interesting case pending in the Supreme Court, where an embassy had been in dispute with its landlord about the obligation to renovate the embassy's

premises. After the State in question had invoked State immunity, both the district court and the court of appeal had dismissed the case. The decision had been further appealed against and submitted to the Supreme Court, which would now have to take into account the new legislation coming into force, and especially the UN Convention on State Immunity as reflective of important rules of general international law. Finally, the delegate commented on the question asked by the Russian Federation and informed the Committee that, according to a special provision in the Swedish Constitution, if an issue arose before a court of law or an administrative authority which might affect Sweden's international obligations, the court or authority had to inform the Foreign Minister about the case. The Minister must be able to reply and inform the court or the authority about the implications that the case might have from a foreign policy point of view.

13. In reply to the Russian Federation's question, the delegation of Belgium informed the Committee that in Belgium there was no possibility of direct intervention by the Ministry of Foreign Affairs in the course of any judicial procedure. However, it was possible to transmit, via the Ministry of Justice to the Attorney General (*Parquet général*), a point-of-law memorandum explaining the principles of public international law raised by a pending case. The Attorney General was then free to forward this memorandum to the judge in charge of the case.

14. The delegation of Cyprus informed the CAHDI about a recent initiative of the Office of the Law Commissioner of the Republic of Cyprus to compile a comprehensive list of the treaties relating to privileges and immunities applicable to the country. It was expected that this project would have the practical effect of assisting the authorities involved in implementing such instruments.

15. The delegation of the Netherlands showed particular interest in the issue raised by the Belgian and Russian delegations. It informed the Committee that the OLA of the Netherlands Foreign Ministry had been faced with similar issues in relation to the immunity of international organisations. It mentioned a case pending before a Dutch court and related to events in Srebrenica, where the plaintiffs had instituted legal proceedings against the United Nations. The UN had clearly stated that it would not appear in court. Under procedural law, and in order to comply with public international law, there was nevertheless a need to formally introduce the issue of immunity before the court. If the UN itself did as a matter of policy not appear, there was a risk that the point was likely not to be made before the Court. The OLA of The Netherlands Foreign Ministry had therefore made use of a provision on the role of the Attorney General's Office, which is allowed to make points of law during court cases. Although, in practice, this provision had mainly been used before the Court of Cassation, there had seemed to be no impediment to its use in a court of first instance. After consultations, the Attorney General's Office had agreed to present a point of law on behalf of the Ministry of Foreign Affairs. The court of first instance then established that the UN did in fact have immunity. The issue had however been appealed, on the grounds that the State had interfered as a third party in breach of the law and contrary to the principle of the separation of powers. The case was pending before the court of second instance, and further information would be communicated to the Committee at its next meeting. This case clearly illustrated the challenges that may arise in presenting public international law issues in domestic courts.

16. The delegation of Switzerland informed the Committee that the Swiss Ministry of Foreign Affairs had recently faced a similar issue concerning the possibility of seizing an embassy's bank account in Switzerland. According to the legislation, such bank accounts enjoy diplomatic protection. The delegate explained that the Ministry advised States to provide them with the numbers of the bank accounts which were to be used for the functioning of their embassies. The details of the relevant bank accounts were then forwarded to the prosecution offices in Geneva and Bern, which, when a request for seizure

was made, verified whether the bank account in question had immunity, in which case they had *ex officio* power to refuse seizure of the account. The delegate stressed that this procedure was only used by the Ministry to protect embassies from unnecessary seizures, and was not intended to be used for any fiscal purpose.

17. The observer of Canada informed the Committee that, although States did have immunity in Canada, they still were required to formally claim it in court. Problems arose when certain States informed the Canadian Ministry of Foreign Affairs that they were, as a matter of policy, not willing to appear in any court. In such cases, the Ministry brought to their attention that failure to appear in court might lead to a default judgment against them. When the State concerned decided that it would appear before the court, the Ministry of Foreign Affairs had the capacity to issue a certificate, for the court's information, attesting to the status of that State or to the fact that it was a State. It could also refer to the relevant section of the State Immunity Act. The observer stressed that before the Canadian Ministry could intervene, it needed the State concerned to appear before the court. When this procedure was used, States did not acknowledge jurisdiction, but merely exercised their immunity by drawing it to the attention of the court.

18. The Chair observed in this regard that distinctions needed to be made, notably between making information available to and appearing to instruct the courts. This raised the question as to how Foreign Ministries best could ensure dissemination or communication of relevant information. Such issues would moreover not be limited to their own courts, but could also be relevant as regards foreign courts.

19. The delegation of Austria informed the CAHDI about the relevant procedures in Austria. A strict separation of powers applies, but the Ministry of Foreign Affairs is able to provide the international organisation or State concerned with a *note verbale* explaining the legal issue that the Austrian Government is willing to support. This note can then be presented to the court.

20. The delegation of Greece informed the Committee that, when questions of public international law were raised before domestic courts in Greece, it was up to those courts to seek the information needed about the development and use of public international law, particularly when cases involved State immunity issues. However, when the case relates to execution against foreign States' property, the law requires the consent of the Ministry of Justice, which is given – or not given – following consultation with the Ministry of Foreign Affairs. The Ministry of Justice is not obliged to follow the advice of the Ministry of Foreign Affairs, but usually does so in practice.

21. The observer of Interpol drew the Committee's attention to the financial aspects and concerns arising for an international organisation like Interpol in relation to procedures before national courts, particularly when the use of law firms' services might result in considerable fees, affecting the organisation's budget. Some countries voluntarily agreed to raise the issue of international organisations' immunities before their domestic courts, whereas other countries refused to do so. It was problematic in countries where law firms charged high fees for their services. Although domestic courts always recognised Interpol's immunities, the financial aspect remained. The observer therefore expressed his interest in closer co-operation with the Legal Departments of the Ministries of Foreign Affairs in this field.

22. The delegation of France pointed out that its position was based on absolute respect for the principle of the separation of powers. When a State or international organisation, refers to the Ministry of Foreign Affairs with regard to judicial proceedings that call into question their immunity, the Ministry reaffirms to the State or international organisation that the latter needs to assert, before a competent court in France, the immunities from which they benefit by virtue of applicable international law. On the other hand, the government can

present arguments to the pertinent French court in support of State or international organisation immunities through the public prosecutor's office (*Parquet*), in first instance or in an appeal. Difficulties could appear, in particular in the Court of Cassation, when certain international organisations claiming their immunities refuse to participate in the procedure.

23. The delegation of the Russian Federation, supported by the observer of Israel, proposed that a database be established to collect relevant information from Council of Europe member States and the observer States participating in the CAHDI. This database could contain information about national law and practice, including information about the ways in which States enabled – or did not enable – their executive branch to forward information relating to public international law to domestic courts when relevant.

24. The observer of Mexico suggested that the possible database could cover national legislation. The Ministry of Foreign Affairs of Mexico was currently working on a new Foreign Immunity Act; consequently it would be beneficial to Mexico to have access to other countries' legislation in this area.

25. The CAHDI noted the interest of the delegations to continue this exchange as part of its discussion on State practice and case-law concerning immunities of States and international organisations. In this regard, the Secretariat was instructed to circulate a pertinent questionnaire. Delegates were invited to submit their contributions by **1 March 2010**.

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

26. The Chair presented document CAHDI (2009) Inf 12 relating to the UN Convention on Jurisdictional Immunities of States and Their Property. He drew delegates' attention to the status of signatures and ratifications of the Convention, and asked whether there were any updates to be made.

27. The observer of Japan informed the Committee that the Parliament of Japan had consented to ratification of the UN Convention on Jurisdictional Immunities on 10 June 2009. He also informed the Committee that the Japanese Government had approved and ratified the implementing legislation on 24 April 2009. The national law was to be applied not just to the Parties of the Convention, but to all States. The observer added that the Supreme Court was working on a regulation to implement the aforementioned law, which might be ready by the beginning of 2010.

28. The delegation of Switzerland informed the Committee that the Swiss Council of States (upper house of parliament) had unanimously adopted the UN Convention on State Immunities, which would be considered during the winter session of the National Council. He thought that Switzerland was likely to accede to this Convention in the spring of 2010.

29. The Chair, in his national capacity, informed the Committee that, prior to ratifying the Convention, the Norwegian authorities had included in the White Paper to Parliament a substantial amount of information about the Convention. Such information was part of the *travaux préparatoires* and was as such placed at the disposal of national courts as a publicly available document. As there was no sovereign immunities legislation in Norway, reference could be made to this White Paper in matters relating to the State's international obligations. It was intended to be a source of information for national courts, and made it possible for the Ministry of Foreign Affairs to refer, as appropriate, to the White Paper as expressive of an analysis of the provisions of the Convention, largely reflective on several points of customary international law. The information provided could therefore be of relevance irrespective of whether or not the Convention had come into force.

**7. Organisation and functions of the Office of the Legal Adviser of the Ministry for Foreign Affairs:**

**a. Questions dealt with by the Office of the Legal Adviser which are of wider interest and relate to the drafting of implementing legislation, foreign litigation, the peaceful settlement of disputes, and other questions of relevance to the Legal Adviser**

**b. Updates of the website entries**

30. The Chair presented document CAHDI (2009) Inf 13 and referred to the existing database under this item. He noted that there had been no new/updated contributions since the previous CAHDI meeting. There were no other comments on this item.

31. The Chair underlined the usefulness of the database and invited the delegations that had not yet submitted information to do so at their earliest convenience.

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

32. The Chair drew attention to document CAHDI (2009) 15. He noted that, since the 37th meeting, the observer of the European Commission had updated its contribution.

33. The representative of the European Commission informed the Committee of the recent developments in this field, presenting the case of *Mohamed El Morabit v Council* decided by the Court of First Instance (CFI) on 2 September 2009 and the case of *Omar Mohammed Othman v Council and Commission* decided by the CFI on 11 June 2009. The representative of the European Commission informed the Committee that, in order to comply with the European Court of Justice's judgment in the *Kadi and al Barakaat International Foundation* cases, the Commission had communicated the narrative summaries of reasons provided by the UN Al-Qaida and Taliban Sanctions Committee to *Mr Kadi* and to the *Al Barakaat International Foundation*. After having carefully considered their comments, the Commission had adopted a new regulation adding the two applicants to the list. Both *Mr Kadi* and the *Al Barakaat International Foundation* had brought an action for annulment of the new regulation before the CFI, which were currently pending. The representative also informed the Committee that, in the legislative sphere, the EU's institutions were currently considering a proposal by the Commission for amendments to Council Regulation (EC) No. 881/2002 of 27 May 2002 with a view to the inclusion of due process provisions.

34. The observer from the United Nations Analytical Support and Sanctions Monitoring Team which supports the Al Qaida and Taliban Sanctions Committee informed the CAHDI that the Sanctions Committee had published approximately 75 narrative summaries of reasons for listing each individual and entity since March 2009, and had delisted four individuals. In addition, a number of States had proposed additional delistings that the Committee had been considering. The Sanctions Committee's mandate was due for renewal at the end of 2009, entailing the negotiation of a new resolution at that time. The Sanctions Committee had been considering a number of reforms proposed by the Monitoring Team and bearing on the due process issue. Another report had been submitted to the Sanctions Committee making additional recommendations for improving its procedures in the area of due process and human rights. A number of other groups, including a group of like-minded member States, had made recommendations to the Sanctions Committee, which it would consider during the preparatory phase leading up to the new resolution.

35. The delegation of Romania presented the outcome of the workshop on "Domestic Legal Implications of the UN Security Council Resolutions and Financial Sanctions against

Terrorism,” which had been hosted by Romania in April 2009. As a follow-up, Romania intended to work on a comparative study of domestic legislation relating to the implementation of international targeted sanctions in south-eastern Europe and the Black Sea area. The study would be a useful tool for States in the process of adjusting their domestic legislation to the new challenges of the international fight against the financing of terrorism.

36. The delegation of the Netherlands drew the attention of the CAHDI to a seminar on “Improving the Effectiveness and Legitimacy of the UN Targeted Sanctions” organised by the Netherlands in May 2009. Discussions had shown that UN financial sanctions procedures had improved considerably since targeted sanctions had been introduced, but that there were still considerable due process deficiencies. The idea of creating an independent panel to advise the Sanctions Committees on delisting requests was addressed, as deficiencies in respect of due process needed to be remedied in order to make the procedures more legitimate and to ensure that sanctions remained a counter-terrorism instrument of which the Security Council could make use. On the second day there had been a closed meeting of a group of 8 like-minded States. A non-paper on the idea of establishing such an independent panel had been discussed and finalised. Soon to be available, this would guide subsequent work when consultations took place on the possible extension of Resolution 1822 (2008). A number of States had also indicated that they would like to join this group.

37. The delegation of the United Kingdom welcomed the reform brought about by Resolution 1822 (2008) and agreed that further reform was needed with regard to the review process. The delegation was following with interest the proposals made by the Monitoring Team and the group of like-minded States. It also underlined the importance of the credibility of the sanctions regime and drew attention to the need to ensure that individuals and entities no longer meeting the respective criteria were removed from the list. Finally it highlighted the importance of recognising that the need for procedural reform in relation to sanctions was not limited to counter-terrorism regimes.

38. The observer of Canada shared the concerns expressed about the credibility and usefulness of the sanctions regime. He supplied the Committee with updated information about recent domestic court decisions, underlining the interventionist role recently played by the judiciary in determining whether the executive’s prerogative to deal with sanctions affecting Canadian citizens had been exercised in accordance with the Constitution. In the delegate’s view, this raised a number of interesting issues relating to the application of international law, and also with respect to the effect of the UNSC Resolutions and their domestic application. He believed that these issues were of real concern to governments. In his opinion, if a process that could really withstand the scrutiny of domestic courts was not put in place, governments would find domestic courts taking over that prerogative, which was undesirable.

39. The observer of the United States of America noted that the Security Council’s reforms, including the review process established by Resolution 1822 (2008), had greatly improved the procedure and agreed with those who had expressed the idea that further consideration of reforms was required. He expressed his conviction that it was possible to reconcile the battle against terrorism with support for justice and due process. The Security Council should focus on establishing fair and clear procedures designed in such a way as to ensure that they appropriately targeted individuals and entities that met the criteria and to ensure that the process of listing and delisting individuals was as fair and transparent as possible. The observer continued to support efforts by UN member States to address these issues both at the national and supranational level. He agreed that there was work to be done, and that the steps already taken had been useful. He suggested that the aim should be to achieve fair and clear procedures, rather than judicialisation of the process.

40. The delegation of Belgium informed the Committee that a person who had previously appeared on a sanctions list, but since been delisted, had taken legal action against the Belgian authorities in a Belgian national court claiming compensation for damages suffered. The delegate assumed that this case would cause certain problems for Belgium, and requested that Committee members and observers inform the Belgian delegation of any similar proceedings that might have occurred in their countries.

41. The delegation of Sweden expressed its satisfaction with the substantial improvements made to the sanctions system, especially the new delisting procedure. Sweden was, however, still concerned about the lack of control of the sanctions system. The delegate expressed the view that if nothing was done soon, there was a risk of these matters disappearing from the political arena and ultimately being decided in national courts on the basis of constitutional or human rights law. The delegate also informed the Committee about possible forthcoming amendments to the relevant Swedish legislation.

42. The delegation of the Russian Federation drew the Committee's attention to a document entitled "Introduction and implementation of sanctions imposed by the United Nations" which had been adopted during the last session of the UN Special Committee on the Charter of the United Nations, after several years of constructive work within the Special Committee. The delegate underlined the key provisions of this document that were relevant to the discussion, and expressed the hope that the General Assembly would adopt the document during the forthcoming session of the Assembly.

43. The delegation of France expressed its satisfaction with the development of the sanctions regime and recalled the involvement of France in the drafting of Resolutions 1730 (2006) and 1822 (2008). The delegate underlined the need for further work and the importance of providing information about how the programmes performed. The improvements of the 1267 Committee regime should be taken into account, bearing in mind the specific aspects of different regimes and remembering that the system of sanctions of the UN Security Council was established for the purpose of preserving peace and international security. The delegate finally underlined the need to conciliate efficiency of the sanctions regime and respect for human rights.

44. The delegation of Greece expressed its interest in seeing the sanctions system aligned with respect for human rights and insisted on the need to intensify and speed up the efforts already made to this end. Greece echoed the Swedish delegation's view that divergences between international and domestic legal orders were cause for great concern.

45. The delegation of Austria informed the Committee about possible forthcoming amendments to the Austrian law implementing the sanctions regimes, which applied when EU law was not relevant, particularly in relation to the freezing of land assets.

46. The delegation of Albania informed the Committee about proceedings in Albania in the *Kadi* case. The delegate would inform the Committee of further developments.

47. Delegations were invited to submit to the CAHDI Secretariat, by **1 March 2010**, information on the cases that have been submitted to national tribunals by persons or entities removed from the lists established by the UN Security Council Sanctions Committee.

## **9. Cases before the ECHR involving issues of public international law**

48. The Chair encouraged delegations to inform the Committee about any pending cases or events which might be of interest in this context.

49. The delegation of Georgia informed the Committee that Georgia had introduced two inter-State cases against Russia. He would provide further information at the next CAHDI meeting or via the Secretariat.

50. The delegation of France informed the Committee of recent developments in the case *Medvedyev and others v. France*, a case that concerned the apprehension by the French authorities of a ship flying a foreign flag on the high seas in the framework of the international fight against the trafficking of narcotics. The principal legal questions raised by this case were the applicability of the ECHR to acts committed on the high seas by a ship flying the flag of a country which was not a party to the Convention (Art. 1 of the Convention) and the scope of such an apprehension under Art. 5 ECHR with regard to members of the ship's crew who might be deprived of, or limited in, their right to liberty during their transfer on board ship from the time at which they were apprehended on the high seas to the time of their arrival in a French port. The parties were now awaiting the Court's judgment, which would be important not only in relation to the trafficking of narcotics, but also in respect of the fight against piracy.

51. The delegation of the United Kingdom updated the Committee on the developments that had occurred in the case of *Al-Saadoon & Mufdhi v. the United Kingdom*. It concerned two individuals held by British forces in Iraq on the basis of an Iraqi court order. The case had been declared admissible. The applicants were considered to be within the jurisdiction of the UK for ECHR purposes. The Court had decided to consider the merits separately and had put further questions to the parties prior to delivery of its judgement.

52. The delegation of Sweden informed the Committee about a new case recently communicated by the ECtHR to the Swedish Government. The case concerned the extradition to Rwanda of a Rwandan citizen who had been living in Sweden and was suspected of involvement in genocide and crimes against humanity in 1994. The Rwandan authorities had made a request for extradition to the Swedish authorities. The applicant claimed that he would not be given a fair trial if he were sent to Rwanda. The ECtHR had issued an interim order that the extradition should not be enforced pending receipt of the government's comments.

## **10. Peaceful settlement of disputes**

### **a. Compulsory jurisdiction of the ICJ (Article 36(2))**

53. The Chair drew attention to document CAHDI (2009) 10, which related to this item, and document CAHDI (2009) 13, containing a Georgian proposal for an amendment to document CAHDI (2009) 10. The Secretariat had proposed a new draft wording for the paragraph concerned (document CAHDI (2009) 14).

54. The delegation of the Russian Federation stressed that it would prefer not to have a description given by the Secretariat of the particular provisions of treaties concerning the ICJ's jurisdiction, but to have instead the actual text of the article concerned. In the delegation's view it would be more accurate to include the full text of the relevant article in the document, as it concerned all treaties, not just the treaty concerned. The delegation of the Russian Federation had no objection to the Secretariat's proposal, although it noted that the length of the summary was almost the same as the text of the article itself.

55. The Chair stressed that there should be no implications or interpretation that could stem from the choice of reference to any provision in this field. The Secretariat was instructed to reconsider the way this item was presented.

**b. Follow-up to Recommendation CM/Rec(2008)9 of the Committee of Ministers to member States on the nomination of international arbitrators and conciliators**

56. Regarding the implementation of Recommendation Rec(2008) 9 of the Committee of Ministers to member States on the nomination of international arbitrators and conciliators, the CAHDI reiterated the importance of maintaining and keeping 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 purposes of implementing provisions concerning the peaceful settlement of disputes. Delegations were invited to submit to the Secretariat any relevant information on this matter.

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

- **List of outstanding reservations and declarations to international Treaties (Document CAHDI (2009) 11)**

**Part I: Reservations and declarations relating to non-Council of Europe treaties**

**A. Convention on the Rights of Persons With Disabilities and Optional Protocol thereto, 13 December 2006**

**1) Reservation made upon signature by El Salvador**

57. The delegation of the Netherlands noted that El Salvador had ratified the Convention, contrary to the indication given in the document CAHDI (2009) 11 and pointed out that it had objected to this reservation.

58. The Chair confirmed the information given by the delegation of the Netherlands. He then asked whether the reservation would be upheld at the stage of ratification and whether this reservation would demand any kind of particular or thorough consideration by CAHDI members.

59. The delegation of Germany advised that it would object to it in the near future.

60. The delegation of Sweden confirmed that El Salvador had actually reiterated its reservation when the Convention was ratified, and said that Sweden had objected in January 2009.

61. The delegation of Finland indicated that the reservation made by El Salvador had been of concern to Finland, which had considered objecting to it.

62. The delegation of the United Kingdom informed the Committee that it was still considering this matter. The delegate would be interested to know in what terms the other delegations had objected. The very general nature of the reservation and its reference to constitutional provisions make it very difficult to know to what extent El Salvador had accepted the obligations of the Convention.

**2) Reservation made upon signature by Mauritius**

63. The delegation of the Netherlands expressed its concern about the broad scope of the reservation, considering that reservations with broad scope were in principle incompatible

with the object and purpose of the treaties concerned. The Netherlands was still considering the possibility of objecting to this reservation.

### 3) Reservation made by the Republic of Korea

64. The delegation of Sweden said that it had been informed that the reservation would be withdrawn, due to new national legislation, and therefore did not think it necessary to react.

## B. Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979

### 4) Reservations and declarations made by Qatar

65. The observer of Japan considered, where these declarations were concerned, that the first two paragraphs were interpretative declarations and that the third paragraph was permissible under Article 29 paragraph 2 of the Convention. Concerning the reservations, which were real ones in Japan's view, it had been decided not to lodge any objections. Although these reservations did not seem to be compatible with the object and purpose of the Convention, Japan had not objected to similar ones formulated by Oman and Brunei to the same Convention, bearing in mind the importance of having as many Islamic countries as possible supporting this instrument.

66. The delegation of Latvia informed the Committee of its probable intention to object to this reservation; however, as Latvia was still currently considering the reservation, it also expressed an interest in knowing other delegations' comments.

67. The delegation of Germany said that first readings seemed to justify objections to some of these reservations or declarations.

## C. Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), 8 December 2005

### 5) Declaration made by Israel

68. The delegate of Switzerland informed the Committee that, as depositary, it had notified the Parties of a clarification by Israel to that Declaration on 14 November 2008, and considered this issue to have been resolved. Only Sweden had reacted to the notification, expressing its satisfaction.

69. The delegation of the Netherlands noted that Israel had issued a new version of its statement in November 2008 and raised the general question of whether the one year period for reactions for which Article 20 of the Vienna Convention provided started again after a reformulation. It did not mean that the Netherlands wished to make a particular statement, but this was an interesting question of law that depositaries and/or the ILC rapporteur on reservations could consider.

70. The observer of Israel commented that there was no new declaration, but a clarification of the existing declaration, made in writing. The text of the declaration itself had not been changed. The observer went on to point out that the deadline for objections to it had passed.

71. The delegation of Sweden specified that the Swedish reaction to the Israeli clarification had merely been an interpretation of it.

#### D. International Covenant on Civil and Political Rights, 16 December 1966

##### 6) Reservation made by the Bahamas

72. The observer of Japan said that, after consideration of this reservation, Japan could not state definitely that it was incompatible with the purpose and object of the Covenant. Japan would therefore not object to it.

73. The delegation of the Netherlands expressed concern regarding the temporal element of this reservation, but had not yet decided how it would be appropriate to address it.

74. The Committee took note of this comment, and the Chair proposed further dialogue with the Bahamas in order to find out whether the situation was temporary or permanent.

#### E. Convention on Prohibitions or Restrictions on the Use of certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (Protocol III), 10 October 1980

##### 7) Reservation made by the United States of America

75. There were no comments on this reservation.

#### F. Convention on the Privileges and Immunities of the Specialized Agencies, 21 November 1947

##### 8) Reservation made by Saudi Arabia

76. The observer of Japan expressed concern regarding paragraph 2 of the reservation and noted that there had been similar issues with Bahrain and Qatar in relation to the Vienna Convention on Diplomatic Relations.

77. The delegation of Germany shared the Japanese observer's concerns and noted that it had some concerns about paragraph 2, but not about paragraph 1. Germany was considering its possible reaction.

78. The Chair, reminding the Committee of the deadline for possible reactions, emphasised that this reservation could still be considered at the next CAHDI meeting.

#### G. International Convention for the Suppression of Acts of Nuclear Terrorism, 13 April 2005

##### 9) Reservation made upon signature by Egypt

79. The observer of the United States of America raised a point relating to methodology. He noted that, in that particular case, the United States of America intended to issue upon ratification a statement that Egypt could not, by a unilateral declaration, extend the obligations of other countries beyond the obligations set out in the treaty without the express consent of those other countries. The observer then drew attention to the table of objections, noting that the legend on page 4 showed three possibilities: the State has objected, the State intends to object, or the State does not intend to object. In the observer's view, this list of three reactions did not cover the United States' proposed course of action. The observer believed that, for the purpose of clarity, it could be helpful to add another category to the legend to properly reflect the full range of possibilities with regards interpretative declarations.

80. The delegate of Norway recalled that, with regard to the Convention on the Law of the Sea, Norway had decided to issue a general statement in connection with its own ratification stating that it did not consider itself bound by certain kinds of statements, instead of responding to every one individually.

81. The delegate of Germany supported the proposal of the United States of America to add an additional category of reaction to the table.

82. The Committee instructed the Secretariat to amend the table and its legend in order to ensure that the table covers the full range of potential reactions that States might have to a particular reservation or declaration. This table can be found in **Appendix IV** to this report.

## Part II: Reservations and declarations to Council of Europe Treaties

### A. Convention on Cybercrime, 23 November 2001

#### 1) Declaration made by Armenia

83. The Committee had no comments on this declaration.

### B. European Convention on Extradition, 13 December 1957

#### 2) Reservation made by San Marino

84. There were no comments from participants. The item was closed.

## **C. GENERAL ISSUES OF PUBLIC INTERNATIONAL LAW**

### **12. Exchange of views with the European Commission for Democracy through Law (Venice Commission) represented by its President, Professor Jan Erik Helgesen**

85. President Helgesen presented the history and current activities of the Venice Commission. The President also presented the Commission's methodology and emphasised its philosophy based on the idea that no sustainable democracy could exist unless it was based on the rule of law. The Commission also strongly supports the principle of ownership, as there could be no sustainability without ownership. He concluded by saying that, while taking into account countries' constitutional traditions, the Venice Commission had to strike the right balance between democracy and the rule of law, and promote this even at times when extraordinary events were happening.

86. The delegation of Norway asked President Helgesen to elaborate on the comparative advantages of the Venice Commission's working methods.

87. The delegation of Greece asked whether the Commission monitored the extent to which notice was taken of its opinions and whether it checked up on implementation.

88. The delegation of Switzerland agreed with the President's statement that there could be no democracy without the rule of law. There was a debate in progress on this issue in Switzerland. The Swiss delegate emphasised the importance of the Venice Commission's efforts to get the principle of the rule of law established. He asked the President of the Venice Commission how subjects were chosen and on the basis of what criteria. The delegate also expressed interest in how the Commission evaluated the practical and tangible effects of its work.

89. The delegation of Georgia pointed to the excellent and efficient work done by the Venice Commission and said that his country had benefited from the Commission's co-operation and advice even before its accession to the Council of Europe. The delegate asked whether the Commission had experience of working with other international organisations in addition to the European Union, and whether it had any experience of co-operating with UN agencies or other organisations.

90. The delegation of Hungary stressed the fact that Hungary had also requested advice on constitutional matters. The delegate asked the President whether he saw any danger in the tendency towards globalisation and the unification of constitutions.

91. President Helgesen replied to the comments. One of the advantages of the Commission was its composition, which enabled it to consider issues from different perspectives. The collective nature of the work on opinions and reports was also crucial. The President confirmed that the Commission monitored the action taken on its opinions. In this regard, he drew attention to the fact that it was necessary to distinguish between opinions and reports. Action was, in most cases, taken on opinions, whereas the practical effects of reports were very difficult to assess, as reports raised questions of a more theoretical nature. As to how subjects were chosen, issues could be raised by the Parliamentary Assembly, as well as by members of the Commission. Where the relationship between the Venice Commission and global bodies was concerned, there was no extensive involvement with the United Nations, but the Commission did have strong co-operation with European bodies. As to the question by the Hungarian delegation on the impact of globalisation, the President understood that it was impossible to force a system on a State unless that system had been adopted by the State and by its people. This question was therefore related to those of the ownership of the constitution and people's concept of such ownership.

92. The delegation of Switzerland emphasised the importance of the principle of ownership and its relationship with the concept of democracy.

### **13. The work of the International Law Commission (ILC) and of the Sixth Committee: exchange of views with Prof Georg Nolte, member of the ILC**

93. Professor Nolte informed the Committee of the latest developments and the work that had been done in the International Law Commission. He first updated the Committee on the ILC discussions of the responsibility of international organisations, making comments about the 7<sup>th</sup> report of the special rapporteur. He then discussed reservations to treaties, the special rapporteur having given his 14<sup>th</sup> report and having announced his intention of dealing in the next report with questions of the effects of invalid reservations. This 14<sup>th</sup> report consisted of two parts, the first relating to developments in the area of reservations to treaties in general, and the second covering reactions to reservations, such as acceptances, objections and interpretative declarations. The ILC had decided that the term "permissibility" should be used instead of "validity", as "validity" implied a particular legal effect. Where the expulsion of aliens was concerned, the special rapporteur had given his 5<sup>th</sup> report on the human rights aspects of the expulsion of aliens. The general approach was to identify the core human rights in the context of expulsion. The view taken was that all human rights were applicable in cases of expulsion, but that some of them might be of greater relevance, without prejudice to the others. Where the protection of persons in the event of disasters was concerned, the "rights-based" approach and the "needs-based" approach were discussed. Other issues discussed were the definition of "disaster" and the implications of States' duty to co-operate with each other in the event of a disaster. Finally, on the matter of shared natural resources, Prof Nolte pointed out that the ILC had asked States whether the issue of oil and gas should be considered. There was less support in the Commission for considering the issue of oil and gas than for dealing with other issues of shared natural resources.

94. The observer of the United States underlined the remarkable work done by the ILC, and by Prof Nolte in particular. The observer then commented at length on the different issues addressed by Prof Nolte. He concluded by expressing support for the work of the Commission and an interest in a more comprehensive overview of ILC activities on the occasion of the meeting of the General Assembly 6th Committee.

95. The delegation of Sweden asked Professor Nolte which topics in particular the ILC would like States to comment on this year. It also wondered which issues the ILC would be focusing at the meeting of the 6<sup>th</sup> Committee.

96. The observer of the European Commission, with regards the responsibility of international organisations, asked what the basis was for the ILC's choice of a specific rule as the applicable rule of international law in situations where there was limited practice. The observer also expressed an interest in the topic of the expulsion of aliens.

97. The Chair commented on the relationship between the 6th Committee and the ILC and asked to what extent messages passed via the 6th Committee were sent in an appropriate way to and from the ILC.

98. Prof Nolte noted the diversity of the membership of the 6<sup>th</sup> Committee as one of the factors that might explain the Commission's difficulties in engaging in very clear and result-oriented communication with it. Where the subject of shared natural resources was concerned, Prof Nolte said that the Commission's decision to write a feasibility study on oil and gas should not necessarily be seen as evidence that it had misunderstood the tensions that existed in the 6th Committee. Rather, it showed that the Commission was responsive to what States had said. Replying to the observer of the European Commission, Prof Nolte said that he concurred with his comments about the difficulty of formulating clear rules on the basis of limited practice. However, very limited practice did not necessarily indicate that there were no rules. On the one hand, there was the option of not trying to formulate rules about the responsibility of organisations until there was such practice. On the other hand, this might be a good time for codification on this subject, so as to orient practice in a certain direction. The same argument would not necessarily apply to shared natural resources, but the Commission was aware of that, he said. Replying to the Swedish delegate, Prof Nolte expressed the opinion that it was for States to determine which questions were of interest. With respect to reservations to treaties, Prof Nolte noted the importance of the forward-looking approach and highlighted, inter alia, the fact that the draft articles and commentaries considered interpretative declarations to be far less formalised than actual reservations. With respect to the expulsion of aliens, the Commission had adopted the view that the issue of human rights should be viewed in a different conceptual framework, but had noted that the special rapporteur had made a particular effort to base his proposals on international elements. He welcomed comments by States on this issue. Finally, concerning the "*aut dedere aut judicare*" issue, Prof Nolte reported that a working group had been established to reassess the Commission's approach, and an informal working paper had been drawn up. It would be best to wait until next year to see what happened in this field.

#### **14. Consideration of current issues of international humanitarian law**

99. The observer of the United States reminded participants of the 8<sup>th</sup> anniversary of the 11 September attacks and the 60<sup>th</sup> anniversary of the Geneva Conventions. He recalled that, at the previous CAHDI meeting, his deputy had reported on the steps taken in the early days of the Obama administration and had provided information about what President Obama had said in his inaugural address. The observer reported on subsequent developments in this area. In January 2009, three executive orders had been issued, creating three task forces. One was to conduct a review of all detainees held in US custody and was to be known as the

“detainee review task force”; this was an inter-agency task force. The second executive order set up a task force on interrogation and transfer practices. The third task force was created to look into the issue of future detention policy. On 21 May the President had made a speech at the National Archives pointing to some of the preliminary conclusions that had emerged and, in the course of litigation on 13 March, the US Government had taken up a position with regard to detention which made it clear that some changes had been made to US policies by the present administration.

100. The first was that detentions would be conducted in a manner consistent with the laws of war. The second was that, as a matter of domestic law, the US had dropped the so-called “Global war on terrorism” paradigm and shifted the focus instead to the application of the laws of war on particular battlefields. The detention policy task force was in operation and had issued some preliminary conclusions, but its final report would be delivered in a year’s time. The interrogation and transfers task force had already issued its conclusions and some preliminary statements had been made. The US Government was determined to close the Guantanamo facility as expeditiously as possible. Torture of prisoners would also be strictly forbidden, and interrogation procedures would be in accordance with the army field manual, which itself incorporated the key provisions of the Geneva Conventions. There would be no transfers to places where there was a possibility of torture. The “black sites” had been closed. The military commission legislation, which had been declared in part unconstitutional by the US Supreme Court, was now under legislative re-examination. The files of all Guantanamo detainees were under case-by-case review; in some cases there had been referrals to prosecution and transfer referrals. The Attorney General had asked a career prosecutor to look into matters of accountability. The Inspector General of the Central Intelligence Agency had recently released a report summarising the conclusions reached about the failures and operation of procedures, and there had been a very substantial release of internal documents from the previous period. This was only a mid-term report; the one-year deadline set by the President in his inaugural address would be reached in January 2010. The observer assumed that his delegation would be able to give a fuller report on these issues at the meeting of the CAHDI in March 2010.

101. The delegation of Sweden informed the Committee about the recent initiatives taken by the Swedish Presidency of the European Union in this area. The delegate mentioned the political statement made by the Presidency on the occasion of the 60<sup>th</sup> anniversary of the Geneva Conventions and pointed to the work done in relation to the implementation of international humanitarian law, including the specific “Guidelines on promoting compliance with international humanitarian law” which had been adopted by the European Union. The Swedish Presidency would ensure that these guidelines were taken into account. Thirdly, he drew attention to the ICRC guidance document on direct participation in hostilities. The ICRC had made a great effort in this particular context, and Sweden was now studying the document carefully before taking further steps.

102. The representative of the International Committee of the Red Cross (ICRC) informed the CAHDI about recent events organised by the ICRC within the framework of the 60<sup>th</sup> anniversary of the Geneva Conventions and the 150<sup>th</sup> anniversary of the ICRC. He referred in particular to the study of the direct participation in hostilities issue and the current study on the transfer of persons.

103. The delegation of Norway informed the Committee of the latest developments concerning the Convention on Cluster Munitions, which had been opened for signature in Oslo in December 2008. States that had not yet done so were strongly encouraged to sign and ratify the Convention.

104. The observer of Canada noted that Canada had signed the Convention on Cluster Munitions and that it would seek to ratify the Convention in accordance with the relevant

domestic legislation. The observer also stressed, inter alia, how important it was for any new legal instrument to preserve NATO States' capacity to engage effectively in combined military operations with other States and expressed a wish for Canada to participate, under the auspices of the ICRC, in the work on the Montreux Document. The observer concluded by saying that Canada would continue to stress the importance of States as primary players in both the interpretation and the development of international humanitarian law.

105. The observer of Israel referred to the ICRC's work on direct participation in hostilities and noted the importance of this work and the valuable contribution that it made. However, he noted that a first reading gave the impression that some points still needed to be covered in greater detail, and more work done on them, such as the main criteria for determining membership of organised armed groups, some aspects of the definition of direct participation in hostilities, and the issue of the reacquisition of immunity after active involvement in hostilities ('revolving door'). He said that Israel was ready to participate in further deliberations on these issues.

## **15. Developments concerning the International Criminal Court (ICC)**

106. The Chair introduced the item by pointing out that a Review Conference was to take place in Kampala (Uganda), starting on 31 May 2010. It would comprise two main elements: consideration of proposed amendments to the Rome Statute of the ICC and consideration of the progress of international criminal justice. He also drew attention to the importance of the Assembly of States Parties to the Rome Statute, which was due to be held in The Hague from 18 to 26 November 2009.

107. The observer of the United States reported on recent developments relating to the International Criminal Court. He briefly reviewed the history of relations between the United States and the International Criminal Court since 1995. Now that the new United States administration was in place, both the President and the Secretary of State emphasised their intention to reconsider their relationship with the International Criminal Court. The Secretary of State had emphasised that there was now an opportunity to promote effective performance of the functions of the ICC in ways that served the United States' interest by bringing more criminals to justice. She had cautioned that it had to be borne in mind that the United States had more troops deployed overseas than any other nation. The United States wanted to ensure that these troops continued to enjoy maximum protection. It therefore intended to engage in full consultations involving the government, the military and non-governmental experts, and to examine the ICC's track record as a whole before making decisions about the way forward. The statements made had triggered a policy review within the United States government which was still under way. This was happening as part of a broader review of US policy on relations with the other international criminal justice institutions, including the International Criminal Tribunal for Yugoslavia, the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, the Special Tribunal for Lebanon and the Special Tribunal for Cambodia. Both administrations, present and previous, had expressed concern about whether the Rome Statute offered adequate protection from politically motivated prosecution and examination of this subject was continuing.

108. The work in progress on the crime of aggression was one of the main issues under review, including the question of whether the United States would attend the Kampala conference. However, the topic was of interest to the United States, whether or not it would attend the conference. A Security Council decision should be required before an investigation of a crime of aggression could proceed. A number of elements of the definition of the crime of aggression had been proposed; those which raised issues were under review. At the same time, the United States had given its support during a number of cases before the Court. The United States believed in the need for accountability for the serious crimes committed in Darfur and wanted the ICC's work on Darfur to succeed. The United States did

not support prosecution on the grounds of Article 16, however, it was expected that the Government of Sudan would comply with its obligations under Security Council Resolution 1593 to co-operate with the ICC, including by executing the arrest warrants issued by the Court. Although the United States had broader concerns about the ICC, which had led it to abstain from voting on that resolution, it continued to believe that the Court's work on these particular cases was important. The observer expected to have more to report on this matter at the next meeting.

109. The observer of Japan said that Japan attached great importance to universal and sustainable support from the international community for the International Criminal Court. In this regard, Japan and the Asian-African Legal Consultative Organization (AALCO) had held a successful joint seminar in New Delhi in March 2009 entitled "International Criminal Court: Emerging Issues and Future Challenges". Many countries which were not members of the ICC had attended the meeting and acquired practical knowledge about how to accede to the Court. During the seminar, many non-members had been quite vocal on the issue of the crime of aggression or on jurisdictional filter issues. Japan welcomed this commitment from non-States parties to ICC activities, but also appealed to the States concerned to join the ICC. An AALCO resolution had been adopted on that occasion, encouraging the organisation's member States which had not yet done so to consider ratifying the Rome Statute. The resolution had been adopted unanimously by AALCO member States. Lastly, the observer introduced an informal contribution paper relating to items to be discussed at the Review Conference.

110. The delegation of the United Kingdom expressed its hope that other members of CAHDI would join its opposition to the suggestion that the Review Conference should last for two full weeks. The delegation of the United Kingdom said that one week would be sufficient and financially appropriate in the current economic climate. The delegate also emphasised the need to avoid a situation in which the success of the conference was judged solely by the outcome of the discussions on the subject of aggression. The United Kingdom believed that it was important for the Review Conference to produce other outcomes as well. The delegate also expressed doubt that the Mexican proposal on nuclear weapons or the Belgian proposal on weaponry would be able to command consensus.

111. The delegation of the Czech Republic updated the Committee on the process of ratification of the Rome Statute by the Czech Republic. The Statute was due to come into force for the Czech Republic on 1 October 2009. The delegation also mentioned some domestic issues relating to implementation.

112. The delegation of Belgium informed the Committee of its intention to make amendment proposals by the end of the month. The delegate noted that Belgium, like Japan, wished to make the Rome Statute as universal as possible, and the success of the conference was an absolute priority. The delegate stressed that they did not intend to create difficulties for the Review Conference, particularly with regard to the crime of aggression. The delegate expressed his hope that the Review Conference would be an appropriate forum for acceptance by member States of Belgium's proposals.

113. The delegation of France expressed agreement with the United Kingdom delegation, noting that the success of the conference should not depend solely on the crime of aggression issue, which was a difficult matter. It was necessary to find a consensus, and in the French delegation's view there was a need to respect the provisions of the Charter of the United Nations.

114. The delegate of Greece emphasised the relative importance of the question of the duration of the conference. Where the crime of aggression was concerned, the delegate underlined the enormous amount of work already done. The delegate considered that there would be a unique opportunity to take stock and to derive the full benefit from the efforts

made, and the Kampala conference was a crucial opportunity to bring all these efforts to a productive conclusion. The delegate mentioned that, if the conference was overburdened with numerous proposed amendments, these might distract it from what should remain its principal focus, namely the finding of a solution and the reaching of consensus on the definition of the crime of aggression.

115. The observer of Mexico, with reference to the Mexican proposal to criminalise the use of certain weapons, gave a reminder that the criminalisation of weapons of mass destruction was not a new subject for discussion in the context of the Rome Statute. This was why Mexico was co-sponsoring the Belgian proposal. At the same time, Mexico considered that this question would not be dealt with fully unless attention was also given to the question of the use of nuclear weapons. The observer then gave some clarification with regard to the Mexican proposal, particularly pointing to the absolute need to distinguish between the criminalisation of nuclear weapons for the purposes of the Rome Statute and the question of nuclear disarmament.

116. The delegation of the Netherlands informed the Committee that the Netherlands intended to use the Review Conference as an opportunity to highlight to all the States Parties the kind of efforts that appropriate hosting of the ICC required from the host State. The delegation believed that there was a great deal of misunderstanding about the work involved, so this would be an opportunity to give further clarification of what had been done. In addition, the delegate said that the time had now come to start including the crime of terrorism as one of the crimes in respect of which the Court should have jurisdiction. The delegate recognised the complexity of the issue and noted that the Netherlands' suggestion was, in part, also a procedural proposal for the setting up of a working body to discuss the issue of how to include the crime of terrorism into the Court's jurisdiction.

117. The delegate of Italy emphasised the importance of the Kampala conference.

118. The delegation of Norway informed the Committee that Norway was considering amendments to the Rome Statute relating to the enforcement of sentences.

#### **16. Implementation and functioning of other international criminal tribunals (ICTY, ICTR, Sierra Leone, Lebanon, Cambodia)**

119. The observer of the United States updated the CAHDI on a recent contribution by the United States to the Special Court for Sierra Leone. The observer noted that a number of members of the CAHDI had helped the Special Court for Sierra Leone, particularly the United Kingdom, the Netherlands and Germany, in its efforts to ensure that Mr. Charles Taylor was brought to justice. The United States urged other members of the Committee to consider making a contribution to the Court in order to conclude these efforts.

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

120. The CAHDI considered the follow-up to the Outcome Document of the 2005 UN World Summit and agreed to pursue further considerations regarding this matter at its next meeting.

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

121. Mr Alexandre Guessel, Counter-Terrorism Coordinator of the Council of Europe, presented recent developments in the field of the fight against terrorism and the related events that had taken place within the framework of the Council of Europe over the past six months. Special reference was made to the 1st Consultation of the Parties of the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196), which was held in Madrid on 12

May 2009, in the margins of the 119th session of the Committee of Ministers.

122. The observer of Japan mentioned the draft protocol to the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, and in particular the discussion on the criminalisation of conspiracy or *association de malfaiteurs*. The main issue under discussion was whether it was possible to criminalise *association de malfaiteurs*, even if there had been no concrete act. The observer expressed concern as to the difficulties that some countries might experience if this new element were incorporated in their jurisdictions, Japan being one such case. He therefore invited CAHDI members to look at this matter and give due consideration to it.

#### **19. Topical issues of international law**

123. The observer of Japan informed the Committee about the outcome of the meeting of the Asian-African Legal Consultative Organization (AALCO) which had taken place in Putrajaya (Malaysia) from 16 to 21 August 2009.

### **D. OTHER BUSINESS**

#### **20. Election of the Chair and Vice-Chair**

124. As the first terms of the Vice-Chair and Chair expired at the end of 2009, and in accordance with its statutory regulations, the CAHDI unanimously re-elected Ms Edwige Belliard (France) as Vice-Chair Mr Rolf Einar Fife (Norway) as Chair of the Committee for one year, with effect from 1 January 2010.

#### **21. Date, place and agenda of the 39<sup>th</sup> meeting of the CAHDI**

125. The CAHDI decided to hold its next meeting in Strasbourg on 18 and 19 March 2010 and adopted a preliminary draft agenda for its 39<sup>th</sup> meeting, which is set out in **Appendix V** to this report.

#### **22. Other business**

- **Additional information presented by participants**

126. The delegation of Slovenia drew the Committee's attention to the organisation, during the Slovenian Chairmanship of the Committee of Ministers of the Council of Europe, of a Round Table on "Ways of Protection of the Right to a Trial within a Reasonable Time (Countries' Experiences) and on Short-Term Reform of the European Court of Human Rights", to be held on 21 and 22 September 2009 in Bled (Slovenia).

127. The observer of Mexico invited all legal advisers to be present at the forthcoming informal UN meeting which was to take place in New York on 26 and 27 October 2009, in the margins of the meeting of the 6th Committee during International Law Week.

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

128. The Committee adopted the abridged report of the meeting, as it appears in **Appendix VI** to this report.

## APPENDIX I

### LIST OF PARTICIPANTS

**ALBANIA/ALBANIE:**

Mme Ledia HYSI, Director of Legal Affairs and International Law Department, Ministry of Foreign Affairs

**ANDORRA/ANDORRE: -**

**ARMENIA/ARMENIE:** Apologised/Excusé

**AUSTRIA/AUTRICHE:**

Mr Helmut TICHY, Ambassador, Deputy Legal Adviser, Federal Ministry for European and International Affairs

**AZERBAIJAN/AZERBAIDJAN: -**

**BELGIUM/BELGIQUE:**

M. Paul RIETJENS, Directeur général des Affaires juridiques, Service public fédéral des Affaires Etrangères

M. Patrick DURAY, Conseiller Général à la Direction Générale des Affaires Juridiques, Service public fédéral des Affaires Etrangères

**BOSNIA AND HERZEGOVINA/BOSNIE-HERZEGOVINE: -**

**BULGARIA/BULGARIE:**

Mr Mihail BOZHKO, Deputy to the Permanent Representative of Bulgaria to the Council of Europe

**CROATIA/CROATIE: -**

**CYPRUS/CHYPRE:**

Mrs Mary-Ann STAVRINIDES, Senior Counsel of the Republic, The Law Office of the Republic

**CZECH REPUBLIC/REPUBLIQUE TCHEQUE:**

Mr Milan DUFEK, Counsellor-Minister, International Law Department, Ministry of Foreign Affairs

**DENMARK/DANEMARK:**

Mr David KENDAL, Deputy Head of Department, Ministry of Foreign Affairs

Mr Jacques HARTMANN, Head of Section, Department of International Law, Ministry of Foreign Affairs

**ESTONIA/ESTONIE:**

Ms Aino LEPIK von WIRÉN, Undersecretary, Ministry of Foreign Affairs

**FINLAND/FINLANDE:**

Ms Päivi KAUKORANTA, Director General, Legal Service, Ministry for Foreign Affairs

Ms Anu SAARELA, Director, Legal Service, Unit for Public International Law, Ministry for Foreign Affairs

**FRANCE:**

Mme Edwige BELLiard, Directeur des affaires juridiques, Ministère des Affaires Etrangères (**Vice-Chair/Vice-Présidente**)

M. Antoine OLLIVIER, Rédacteur, Direction des Affaires Juridiques, Ministère des Affaires Etrangères

**GEORGIA/GEORGIE:**

Ms Nino KALANDADZE, Deputy Foreign Minister of Georgia, Ministry of Foreign Affairs

M. Mamuka JGENTI, Envoy Extraordinary and Plenipotentiary, Deputy Permanent Representative of Georgia to the Council of Europe, Permanent Representation of Georgia to the Council of Europe

**GERMANY/ALLEMAGNE:**

Ms Susanne WASUM-RAINER, Director General a.i., Legal Affairs, Federal Foreign Office

Mr Guido HILDNER, Head of Division 500, Federal Foreign Office

**GREECE/GRECE:**

Mrs Phani DASCALOPOULOU-LIVADA, Legal Adviser, Head of the Section of Public International Law, Ministry for Foreign Affairs

Mr Michael STELLAKATOS-LOVERDOS, Deputy Legal Adviser, Legal Department, Ministry of Foreign Affairs

**HUNGARY/HONGRIE:**

Dr István HORVÁTH, Legal Adviser, Department of International and EU Public Law, Ministry for Foreign Affairs

**ICELAND/ISLANDE:**

Mrs Sigrídur EYSTEINSDÓTTIR, Legal Officer, Ministry of Foreign Affairs

**IRELAND/IRLANDE:**

Mr James KINGSTON, Legal Adviser, Department of Foreign Affairs

**ITALY/ITALIE:**

Mr Alessandro LEVI SANDRI, Legal Counsellor, Ministry of Foreign Affairs

Mr Paolo PALCHETTI, Ministry of Foreign Affairs

**LATVIA/LETTONIE:**

Ms Irina MANGULE, Director of the Legal Department, Ministry of Foreign Affairs

**LIECHTENSTEIN:**

Mr Dominik MARXER, Deputy Permanent Representative to the Council of Europe, Office for Foreign Affairs

**LITHUANIA/LITHUANIE:**

Mr Andrius NAMAVICIUS, Director of Law and International Treaties Department, Ministry of Foreign Affairs, Law and International Treaties Department

**LUXEMBOURG:**

Mme Anne KAYSER-ATTUIL, Représentante Permanente Adjointe, Représentation Permanente du Luxembourg auprès du Conseil de l'Europe

**MALTA/MALTE:**

Mrs Marvic SCIBERRAS ABDILLA, Senior Lawyer, Office of the Attorney General

**MOLDOVA:**

M. Anatol CEBUC, Adjoint au Chef du Département du droit international, Ministère des Affaires Etrangères et de l'Intégration européenne

**MONACO:**

M. Bernard GASTAUD, Conseiller pour les Affaires Juridiques et Internationales, Ministère d'Etat

**MONTENEGRO:**

Ms Dragana LAKOVIC, Councilor, International Law Department, Ministry of Foreign Affairs

:

**NETHERLANDS/PAYS-BAS:**

Mrs Liesbeth LIJNZAAD, Legal Adviser, Head of the International Law Division, Ministry of Foreign Affairs

**NORWAY/NORVEGE:**

Mr Rolf Einar FIFE, Director General, Department for Legal Affairs, Ministry of Foreign Affairs  
**(Chair/Président)**

Mr Jo HOVIK, Senior Adviser, Section for International Humanitarian and Criminal Law, Ministry of Foreign Affairs

Mr. Kjell Kristian EGGE; Deputy Director General, Ministry of Foreign Affairs

**POLAND/POLOGNE:**

Mr Remigiusz HENCZEL, Director, Legal and Treaty Department, Ministry for Foreign Affairs

**PORTUGAL:**

Mr Miguel DE SERPA SOARES, Legal Adviser, Director of the Department of Legal Affairs, Ministry of Foreign Affairs

**ROMANIA/ROUMANIE:**

Mr Matei CRISTEA, 3<sup>rd</sup> Secretary, Directorate for International Law and Treaties, Ministry of Foreign Affairs

**RUSSIAN FEDERATION/FEDERATION DE RUSSIE:**

Mr Roman KOLODKIN, Director, Legal Department, Ministry of Foreign Affairs

Mr Ivan VOLODIN, Head of Division, Legal Department, Ministry of Foreign Affairs

**SAN-MARINO/SAINT-MARIN: –**

**SERBIA / SERBIE :** Apologised / Excusé

**SLOVAK REPUBLIC/REPUBLIQUE SLOVAQUE:**

Mr Milan KOLLÁR, Director General for Legal Affairs, Ministry for Foreign Affairs

**SLOVENIA/SLOVENIE:**

Ms Simona DRENIK, Minister Plenipotentiary, Head of the International Law Division, Ministry for Foreign Affairs

Ms Danijela HORVAT, III. Secretary, International Law Division, Ministry of Foreign Affairs

**SPAIN/ESPAGNE:**

Mme Concepción ESCOBAR HERNÁNDEZ, Professeur de droit international, Chef du Département Juridique International, Ministère des Affaires Etrangères et de la Coopération

M. Maximiliano BERNAD ALVAREZ DE EULATE, Professeur de Droit international public et d'Institutions et droit communautaire européens, Université de Zaragoza

**SWEDEN/SUEDE:**

Mr Carl Henrik EHRENKRONA, Director General for Legal Affairs, Ministry for Foreign Affairs

**SWITZERLAND/SUISSE:**

M. l'Ambassadeur Paul SEGER, Directeur, Jurisconsulte, Direction du droit international public, Département fédéral des affaires étrangères

**"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"/"L'EX-REPUBLIQUE YOUGOSLAVE DE MACEDOINE":**

Mr Goran STEVCHEVSKI, Director, International Law Directorate, Ministry of Foreign Affairs

**TURKEY/TURQUIE:**

Mr Omer ALTUG, Ambassador, Chief Legal Adviser, Ministry of Foreign Affairs

**UKRAINE :**

Mr Volodymyr KROKHMAL, Director for Legal Affairs, Ministry of Foreign Affairs

**UNITED KINGDOM/ROYAUME-UNI:**

Mr Paul McKELL, Legal Counsellor, Foreign and Commonwealth Office

Ms Joanne NEENAN, Assistant Legal Adviser, Foreign and Commonwealth Office

**EUROPEAN UNION / UNION EUROPEENNE**

**EUROPEAN COMMISSION / COMMISSION EUROPEENNE**

Mme Sonja BOELAERT, Service Juridique, Relations Extérieures

**OBSERVERS / OBSERVATEURS**

**CANADA:**

Mr Alan H. KESSEL, The Legal Adviser, Foreign Affairs and international Trade

**HOLY SEE/SAINT-SIEGE:**

Rév. Frère Olivier POQUILLON, o.p. Délégué Permanent de l'Ordre des Dominicains auprès des Nations Unies

**JAPAN/JAPON:**

Mr Masataka OKANO, Director for International Legal Affairs, Ministry of Foreign Affairs

Mr Hiroyuki MINAMI, Consul, Consulate General of Japan

**MEXICO/MEXIQUE:**

Mr Joel HERNANDEZ, Legal Adviser, Ministry of Foreign Affairs

**UNITED STATES OF AMERICA/ETATS-UNIS D'AMERIQUE:**

Mr Harold HONGJU KOH, Legal Adviser of the US Department of State

Mr Sam McDONALD, US Department of State

Mr Todd BUCHWALD, Assistant Legal Adviser for United Nations Affairs, US Department of State

**ISRAEL/ISRAËL:**

Mr Ehud KEINAN, Legal Adviser, Ministry of Foreign Affairs

**AUSTRALIA/AUSTRALIE:**

Ms Melissa O'ROURKE, First Secretary, Australian Embassy and Mission to the European Communities, BRUSSELS

**UNITED NATIONS/NATIONS UNIES:**

Mr Brian WILSON, Legal Expert, Al-Qaida/Taliban Monitoring Team

**ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT/ORGANISATION DE COOPERATION ET DE DEVELOPPEMENT ECONOMIQUES (OCDE):** Apologised/Excusé

**EUROPEAN ORGANISATION FOR NUCLEAR RESEARCH (CERN)/ORGANISATION EUROPEENNE POUR LA RECHERCHE NUCLEAIRE (CERN):** Apologised / Excusé

**THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW/CONFERENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVE:** Apologised/Excusé

**INTERPOL:**

M. Joël SOLLIER, Director of Legal Affairs, General Secretariat

**INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC)/COMITE INTERNATIONAL DE LA CROIX ROUGE (CICR):**

Ms Maria Teresa DÜTLI, Head of the Advisory Service on International Humanitarian Law

**NORTH ATLANTIC TREATY ORGANISATION (NATO) / ORGANISATION DU TRAITE DE L'ATLANTIQUE NORD (OTAN) : -**

**SPECIAL GUESTS/INVITES SPECIAUX**

Mr Jan Erik HELGESEN, President of the European Commission for Democracy Through Law, University of Oslo, Norwegian Centre for Human Rights

Mr Georg NOLTE, International Law Commission

**SECRETARIAT GENERAL**

**DIRECTORATE OF LEGAL ADVICE AND PUBLIC INTERNATIONAL LAW / DIRECTION DU CONSEIL JURIDIQUE ET DU DROIT INTERNATIONAL PUBLIC**

M. Manuel LEZERTUA, Director of Legal Advice and Public International Law/Directeur du Conseil Juridique et du Droit International Public

**CAHDI SECRETARIAT / SECRETARIAT DU CAHDI**

M. Alexandre GUESSEL, Secretary to the CAHDI / Secrétaire du CAHDI, Head of the Public International Law and Anti-Terrorism Division / Chef de la Division du droit international public et de la lutte contre le terrorisme

Mme Albina OVCEARENCO, Co-Secretary to the CAHDI / Co-Secrétaire du CAHDI, Public International Law and Anti-Terrorism Division / Division du droit international public et de la lutte contre le terrorisme

M. Jean-Etienne KAUTZMANN, Lawyer/Juriste, Public International Law and Anti-Terrorism Division / Division du droit international public et de la lutte contre le terrorisme

Mrs Ana SALINAS DE FRIAS, Legal Adviser/ Conseiller Juridique, Public International Law and Anti-Terrorism Division / Division du droit international public et de la lutte contre le terrorisme

Mme Francine NAAS, Assistant/Assistante, Public International Law and Anti-Terrorism Division / Division du droit international public et de la lutte contre le terrorisme

Mme Isabel CRISTOVAM-BELLMANN, Assistant/Assistante, Public International Law and Anti-Terrorism Division / Division du droit international public et de la lutte contre le terrorisme

**INTERPRETERS/INTERPRETES:**

Ms Pascale MICHLIN, Ms Corinne McGEORGE, Mr Nicolas GUITTONNEAU

## APPENDIX II

### AGENDA

#### **A. INTRODUCTION**

1. Opening of the meeting by the Chair, Mr Rolf Einar Fife
2. Adoption of the agenda
3. Approval of the report of the 37<sup>th</sup> meeting
4. Statement by the Director of Legal Advice and Public International Law, Mr Manuel Lezertua

#### **B. ONGOING ACTIVITIES OF THE CAHDI**

5. Committee of Ministers' decisions of relevance to the CAHDI's activities including requests of the CAHDI's opinion
6. Immunities of States and international organisations:
  - a. State practice and case-law
  - b. UN Convention on Jurisdictional Immunities of States and Their Property
7. Organisation and functions of the Office of the Legal Adviser of the Ministry for Foreign Affairs:
  - c. Questions dealt with by offices of the Legal Advisers which one of wider interest and relate to drafting of implementing legislation, foreign litigation, peaceful settlement of disputes, other questions of relevance to the Legal Adviser
  - b. Updates of the website entries
8. National implementation measures of UN sanctions and respect for human rights
9. Cases before the ECHR involving issues of public international law
10. Peaceful settlement of disputes
  - a. Compulsory jurisdiction of the ICJ (Article 36(2))
  - b. Follow-up to Recommendation CM/Rec(2008)9 of the Committee of Ministers to member States on the nomination of international arbitrators and conciliators
11. Law and practice relating to reservations and interpretative declarations concerning international treaties: European Observatory of Reservations to International Treaties:
  - List of outstanding reservations and declarations to international Treaties

**C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW**

12. Exchange of views with the European Commission for Democracy through Law (Venice Commission) represented by its President, Professor Jan Erik Helgesen
13. The work of the International Law Commission (ILC) and of the Sixth Committee : exchange of views with Mr. Georg Nolte, member of the ILC
14. Consideration of current issues of international humanitarian law
15. Developments concerning the International Criminal Court (ICC)
16. Implementation and functioning of other international criminal tribunals (ICTY, ICTR, Sierra Leone, Lebanon, Cambodia)
17. Follow-up to the outcome document of the 2005 UN World Summit – Advancing the international rule of law
18. Fight against terrorism - Information about work undertaken in the Council of Europe and other international bodies
19. Topical issues of international law

**D. OTHER**

20. Election of the Chair and Vice-Chair
21. Date, place and agenda of the 39th meeting of the CAHDI
22. Other business

## APPENDIX III

### **Statement by Mr M Lezertua, Director of Legal Advice and Public International Law (Jurisconsult), at the 38th meeting of the CAHDI (Translation)**

Chairman,

Ladies and gentlemen,

I am delighted to welcome you to Strasbourg again for the 38th meeting of the CAHDI, which will be more like its usual format this time. You will no doubt recall that much of the 37th meeting was taken up by the drafting of the opinion on the provisional application of certain provisions of Protocol No 14 to the European Convention on Human Rights. We will not be held up by imperatives of that kind at this meeting.

As is customary, I will spend a few minutes reviewing the latest developments in the organisation. Allow me to begin by mentioning the Committee of Ministers' action following the opinion which you adopted at your last meeting.

You concluded that the issue of the provisional application of certain provisions of Protocol No 14 could be resolved, in particular, by two means:

- firstly, the adoption of a new legal instrument stipulating the procedures in question which would enter into force following the deposit of a specific number of ratifications, with respect to those states that had expressed their consent;
- secondly, the holding of a conference or a meeting of the states parties to the European Convention on Human Rights resulting in an agreement – adopted by consensus – which would decide on the provisional application of the relevant provisions of Protocol No 14, with respect to those states that had expressed their consent.

The Committee of Ministers not only took account of the CAHDI's opinion, but actually followed it in full; in the end, it even decided not to choose between the options but to apply them both in parallel. The states parties to the European Convention on Human Rights are now therefore free to apply one or other option or neither one or, indeed, to apply the two in succession. I would underline that one of you briefly mentioned this "third option" at our last meeting, as is indicated in the meeting report you have just adopted.

On 12 May, at the Madrid ministerial session, the ministers adopted an agreement on the provisional application of certain provisions of Protocol No 14 – having first convened as the Conference of High Contracting Parties to the ECHR – and also adopted the text of Protocol No. 14bis.

Eight states have already consented to the agreement on the provisional application of Protocol No 14.

For its part, Protocol No 14bis was opened for signature on 27 May and will enter into force on 1 October 2009. Its entry into force required ratification by three states parties to the ECHR. It has already been ratified by seven and signed by six.

Accordingly, a third of the member states have already consented to the provisional application of the single-judge procedure and the new competence of the committees of

three judges. It should be noted that by 1 June, barely two months after our meeting ended, the new procedures were already being applied in respect of two states.

This remarkably quick process demonstrates the desire of all concerned to make sure that the Court can once again function in a manner in keeping with its important role.

As the CAHDI made a vital contribution to the success of this exercise, I wished to thank you for your efforts and for the flexibility and commitment you showed in completing your work at the last meeting. I should also like to inform you of the great appreciation for your work expressed by the Committee of Ministers and other leading organs of the Council.

I would add that the current Slovenian chairmanship of the Committee of Ministers of the Council of Europe has announced its intention to continue the process of reform of the Court and play an active part in seeking solutions to deal with cases more efficiently and reduce the backlog as soon as possible. It is now a matter of coming up with solutions which could facilitate the work of the Court, quite apart from the question of the entry into force of Protocol No 14.

Lastly, as the matter is vital, I must mention a major forthcoming conference on the future of the European Court of Human Rights. Switzerland will hold the event in Interlaken in February 2010, during its chairmanship of the Committee of Ministers of the Council of Europe. The aim of the conference will be to reassert states' commitment to the protection of human rights in Europe and draw up a road map for the future development of the Court, which is celebrating its 50th anniversary this year.

\* \* \*

I come now to the other main developments over the last few months.

First of all, the most important political event was clearly the **session of the Committee of Ministers of the Council of Europe in Madrid on 12 May 2009**, which marked the end of the successful Spanish chairmanship.

Apart from the issues I have already mentioned, the session provided an opportunity for the ministers to assess the implementation of the Action Plan of the Third Summit of Heads of State and Government adopted in Warsaw in 2005. The ministers also adopted a key declaration on making gender equality a reality.

In addition, the ministerial session discussed the issues surrounding the election of the next Secretary General. As you are aware, the election was deferred and is now due to take place during the next session of the Parliamentary Assembly, from 28 September to 2 October 2009.

Various other **major conferences** have been held since your last meeting and I will mention only a few of them.

Firstly, the **29th Conference of Ministers of Justice**, which was held in Tromsø on 18 and 19 June. The main theme of the conference was the fight against domestic violence, in particular the silence and the impunity surrounding it. The conference also saw the opening for signature of the Council of Europe Convention on Access to Official Documents, which I will come back to in a moment.

On 30 June and 1 July, the **4th European Conference of Judges and Prosecutors** took place in Bordeaux. The theme of the conference was the relationship between judges and prosecutors, with a focus on the complementarity and autonomy of their respective roles.

With regard to the **Council of Europe treaty series**, apart from Protocol No. 14bis, which I have already mentioned at length, I should like to say a bit more about the **Council of Europe Convention on Access to Official Documents**, which was opened for signature in Tromsø in June. It has already been signed by 12 states.

It is the first binding international legal instrument to recognise a general right of access to official documents held by public authorities. Limitations on the right of access are, of course, provided for in order to protect certain interests like national security, defence and privacy. The convention sets forth minimum standards to be applied in the processing of requests for access to documents and covers the issue of review procedures and complementary measures. A Group of Specialists on Access to Official Documents will monitor the implementation of the convention by the parties.

Another important event was the entry into force on 1 May 2009 of the **Council of Europe Convention on the avoidance of statelessness in relation to State succession**. The treaty builds on the European Convention on Nationality and develops more detailed rules to be applied by states with a view to preventing, or at least reducing as far as possible, cases of statelessness arising from state succession.

Finally, the **Group of Experts on Action against Trafficking in Human Beings (GRETA)**, in charge of monitoring the Council of Europe Convention on Action against Trafficking, met for the second time on 15 June. The convention, which entered into force on 1 February 2008, now has 26 states parties.

That brings me to the end of this quick review of the Council of Europe's activities. The Secretariat will, of course, be glad to provide any further information. All that remains is for me to wish you a very pleasant and fruitful 38th meeting.

Thank you for your attention.

## APPENDIX IV

### TABLE OF OBJECTIONS

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

##### Legend / Légende:

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

● State has objected / *L'Etat a fait objection*

○ State intends to object / *L'Etat envisage de faire objection*

□ State does not intend to object / *L'Etat n'envisage pas de faire objection*

##### TREATIES / TRAITÉS

- A. Convention on the Rights of Persons with Disabilities and Optional Protocol thereto / *Convention relative aux droits des personnes handicapées et son protocole facultatif*, New York, 13 December / décembre 2006
- B. Convention on elimination of all forms of discrimination against women / *Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes*, New-York, 18 December/décembre 1979
- C. Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the adoption of an additional distinctive emblem (Protocol III) / *Protocole additionnel aux conventions de Genève du 12 août 1949 relatif à l'adoption d'un signe distinctif additionnel (Protocole III)*, 8 December/décembre 2005
- D. International Covenant on Civil and Political Rights / *Pacte international relatif aux droits civils et politiques*, New-York, 16 December/décembre 1966
- E. Convention on prohibitions or restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects (Protocol III) / *Convention sur l'interdiction ou la limitation de l'emploi de certaines armes classiques qui peuvent être considérées comme produisant des effets traumatiques excessifs ou comme frappant sans discrimination (Protocole III)* / Geneva/Genève, 10 October/octobre 1980
- F. Convention on the Privileges and Immunities of the Specialized Agencies / *Convention sur les privilèges et immunités des agences spécialisées*, New-York, 21 November/novembre 1947
- G. International Convention for the Suppression of Acts of Nuclear Terrorism / *Convention internationale pour la répression des actes de terrorisme nucléaire*, New York, 13 April/avril 2005

States / États	Convention	A B C D E F G								
		1	2	3	4	5	6	7	8	9
	Reservation/ Réserve	El Salvador	Mauritius Maurice	Korea Corée	Qatar	Israel	Bahamas	USA	Saudi Arabia Arabie Saoudite	Egypt Egypte
	Deadline Délai	23/01/09	Sign.	17/12/09	07/05/10	21/11/08	05/01/10	04/02/10	03/04/10	Sign.
	Albania / Albanie									
	Andorra / Andorre									
	Armenia / Arménie									
	Austria / Autriche	●								
	Azerbaijan / Azerbaïdjan									
	Belgium / Belgique									
	Bosnia and Herzegovina / Bosnie- Herzégovine									
	Bulgaria / Bulgarie									
	Croatia / Croatie									
	Cyprus / Chypre									
	Czech Republic / République tchèque									
	Denmark / Danemark									

Estonia / <i>Estonie</i>									
Finland / <i>Finlande</i>	○								
France									
Georgia / <i>Géorgie</i>									
Germany / <i>Allemagne</i>	○								
Greece / <i>Grèce</i>									
Hungary / <i>Hongrie</i>									
Iceland / <i>Islande</i>									
Ireland / <i>Irlande</i>									
Italy / <i>Italie</i>									●
Latvia / <i>Lettonie</i>				○					●
Liechtenstein									
Lithuania / <i>Lituanie</i>									
Luxembourg	□	□							□
Malta / <i>Malte</i>									
Moldova	□	□							□
Monaco									
Montenegro									
Netherlands / <i>Pays-Bas</i>	●								
Norway / <i>Norvège</i>									
Poland / <i>Pologne</i>	○								
Portugal									
Romania / <i>Roumanie</i>									
Russian Federation / <i>Fédération de Russie</i>									○*
San Marino / <i>Saint-Marin</i>									
Serbia / <i>Serbie</i>									
Slovakia / <i>Slovaquie</i>	○								
Slovenia / <i>Slovénie</i>									
Spain / <i>Espagne</i>									
Sweden / <i>Suède</i>	●	○							
Switzerland / <i>Suisse</i>									
"the former Yugoslav Republic of Macedonia" / "l'ex-République yougoslave de Macédoine"									
Turkey / <i>Turquie</i>									
Ukraine									
United Kingdom / <i>Royaume-Uni</i>									
Canada									
Holy See / <i>Saint-Siège</i>									
Israel									
Japan / <i>Japon</i>				□		□			
Mexico / <i>Mexique</i>									
United States of America / <i>Etats-Unis d'Amérique</i>									□ <sup>1</sup>

(\*) Consideration of political statement / *Considération d'une déclaration de nature politique*

(\*\*) If confirmed upon ratification / *Si confirmé lors de la ratification*

(\*\*\*) Considers it a late reservation and therefore not in force / *Considère ceci comme une réserve tardive et donc pas en vigueur*

<sup>1</sup> The delegation of the United States of America expressed the wish to see the table amended in order to better reflect its position/ *La délégation des Etats-Unis d'Amérique a fait part de son souhait de voir le tableau amendé en vue de mieux refléter sa position.*

## APPENDIX V

### PRELIMINARY DRAFT AGENDA FOR THE 39<sup>th</sup> MEETING

#### A. INTRODUCTION

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

#### B. ONGOING ACTIVITIES OF THE CAHDI

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

**C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW**

12. Consideration of current issues of international humanitarian law
13. Developments concerning the International Criminal Court (ICC)
14. Implementation and functioning of other international criminal tribunals (ICTY, ICTR, Sierra Leone, Lebanon, Cambodia)
15. Follow-up of the outcome document of the 2005 UN World Summit – Advancing the international rule of law
16. Fight against terrorism - Information about work undertaken in the Council of Europe and other international bodies
17. Topical issues of international law

**D. OTHER**

18. Date, place and agenda of the 40<sup>th</sup> meeting of the CAHDI
19. Other business

## APPENDIX VI

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

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 38<sup>th</sup> meeting in Strasbourg, on 10 and 11 September 2009, with Mr. Rolf Einar Fife in the Chair. The list of participants is set out in Appendix I of the meeting report<sup>2</sup>.

2. The CAHDI adopted its agenda as set out in **Appendix I** of the present report. It also adopted the report of its 37<sup>th</sup> meeting (Strasbourg, 19-20 March 2009), and authorised the Secretariat to publish it on the CAHDI's website.

3. The CAHDI was further informed about the developments concerning the Council of Europe since the last meeting of the Committee, in particular those concerning the Council of Europe Treaty Series. The intervention on this matter of Mr. Manuel Lezertua, Director of Legal Advice and Public International Law, Jurisconsult, is set out in Appendix III of the meeting report.

4. The CAHDI considered the decisions of the Committee of Ministers relevant to its work and requests of the CAHDI's opinion. In particular, it took note of the Parliamentary Assembly of the Council of Europe (PACE) Recommendation 1870 (2009) – "Protecting financial aid granted by Council of Europe member States to poor countries against financial funds known as "vulture funds", and PACE Recommendation 1871 (2009) – "Ban on cluster munitions".

It further welcomed the adoption of the Protocol No. 14 bis to the European Convention on Human Rights during the 119<sup>th</sup> Ministerial Session of the Committee of Ministers of the Council of Europe, held in Madrid on 12 May 2009.

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

In addition, the CAHDI discussed the existing practice of Legal Advisers to follow cases pending in national tribunals that concern States' or international organisations' immunities and the possibilities, when possible, to present all related points of law. The CAHDI noted interest of the delegations to continue this exchange as a part of its discussion on State practice and case-law concerning immunities of States and international organisations. In view of this exchange, the Secretariat was instructed to circulate a pertinent questionnaire. Delegations were invited to submit their contributions by **1 March 2010**.

6. The CAHDI further considered the issue of organisation and functions of the Office of the Legal Adviser of the Ministry for Foreign Affairs and invited the delegations to submit or update their contribution at their earliest convenience.

7. The CAHDI further discussed the issue of the national implementation of UN sanctions and respect for human rights on the basis of contributions by the delegations, including those to the relevant CAHDI database. It invited the delegations to submit or update their contribution to the said database at their earliest convenience.

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<sup>2</sup> Document CAHDI (2009) 16

Furthermore, the delegations were invited to submit to the CAHDI Secretariat - **by 1 March 2010** - information on the cases, that have been eventually submitted to national tribunals, by persons or entities removed from the lists established by the UN Security Council Sanctions Committees.

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

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

Regarding the implementation of Recommendation Rec(2008) 9 of the Committee of Ministers to member states, on the nomination of international arbitrators and conciliators, the CAHDI reiterated the importance of maintaining, and keeping 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. The delegations had been invited to submit to the Secretariat any relevant information on this matter.

10. In the framework of its activity as the European Observatory of Reservations to International Treaties, the CAHDI considered a list of outstanding reservations and declarations to international treaties and the follow-up given to them by the delegations. The amended table summarising the delegations' positions is set out in **Appendix II** of the present report.

Furthermore, the CAHDI instructed the Secretariat to amend the table and its legend in order to ensure that the table covers the range of potential reactions that States might have to a particular reservation or declaration.

11 The CAHDI held an exchange of views with Mr. Georg Nolte, member of the International Law Commission (ILC), on the work of the 61<sup>st</sup> session of the ILC and that of the Sixth Committee.

The CAHDI also held an exchange of views with the European Commission for Democracy through Law (Venice Commission), represented by its President, Professor Jan Erik Helgesen.

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

13. The CAHDI considered the follow-up to the Outcome Document of the 2005 UN World Summit and agreed to pursue further considerations regarding this matter at its next meeting.

14. The CAHDI took note of the work undertaken in the Council of Europe in the field of the fight against terrorism, in particular of the first Consultation of the Parties to the Council of

Europe Convention on the Prevention of Terrorism (CETS No. 196), which was held in Madrid on 12 May 2009, in the margins of the 119<sup>th</sup> session of the Committee of Ministers.

15. The CAHDI considered some topical issues of international law on the basis of contributions from delegations.

16. In accordance with the statutory regulations, the CAHDI elected Mr. Rolf Einar Fife (Norway), and Ms Edwige Belliard (France), respectively as Chair and Vice-Chair of the Committee for one year, as of 1 January 2010.

17. Under other business, the CAHDI took note of the information on the “Round Table on ways of Protection of the Right to a Trial within reasonable Time – Countries’ Experiences and on short-term Reform of the European Court of Human Rights”, to be held on 21-22 September in Bled (Slovenia) in the frame of Slovenian Chairmanship of the Committee of Ministers of the Council of Europe

18. The CAHDI decided to hold its next meeting in Strasbourg on 18 and 19 March 2010 and adopted the preliminary draft agenda as it appears in **Appendix III** of the present report.