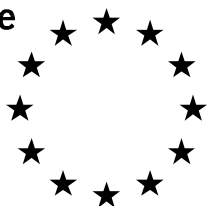


Council of Europe
Conseil de l'Europe



Strasbourg, 11/09/98

CAHDI (98) 9 Rev

**AD HOC COMMITTEE OF LEGAL ADVISORS
ON PUBLIC INTERNATIONAL LAW
(CAHDI)**

**15th meeting
Strasbourg, 3 and 4 March 1998**

MEETING REPORT

Secretariat Memorandum
prepared by the Directorate of Legal Affairs

INTRODUCTION

1. Opening of the meeting

1. The *ad hoc* Committee of Legal Advisers on Public International Law (CAHDI) held its 15th meeting on 3 and 4 March 1998 in Strasbourg. The meeting was chaired by the Chairman of the CAHDI, Ambassador G. SZENASI (Hungary). The list of the participants appears in Appendix I.

2. The Chairman stressed the particular importance of the CAHDI as the only forum where the heads of the legal affairs departments of the Ministries of Foreign Affairs of Member States of the Council of Europe and other states and international organisations can exchange views and discuss matters of common interest.

2. Adoption of the agenda

3. The representative of the United Kingdom pointed out that, generally speaking, the agenda for subsequent meetings of the CAHDI ought to be revised and that a discussion on this point could be held in the context of the debate on item 3.b, decisions of the Committee of Ministers concerning the CAHDI and, in particular, the Russian delegation's proposals about the CAHDI.

4. The agenda was adopted as it appears in Appendix II.

3. Statement by the Secretariat

a. Statement by Mrs M.-O. WIEDERKEHR, Deputy Director of Legal Affairs

5. The Deputy Director of the Legal Affairs informed the members of the CAHDI of recent developments concerning the Council of Europe since the last meeting of the Committee, in Strasbourg, on 9 and 10 September 1997.

6. Mrs WIEDERKEHR congratulated the members of the CAHDI who had been elected judges in the European Court of Human Rights and wished them every success in the difficult tasks they would be called upon to perform.

7. There have been no changes concerning applications for accession to the Council of Europe. There are five candidates at present: Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, and Georgia. Moreover, these countries enjoy special guest status with the Parliamentary Assembly, with the exception of Belarus whose special guest status is suspended. In addition, three countries have observer status with the Council of Europe: Canada, Japan and the United States.

8. The Second Summit of Heads of State and Government of the Council of Europe took place in Strasbourg on 10 and 11 October 1997, at the invitation of the President of the French Republic. The Summit was considered a great success, in particular in terms of the number of participants – over 20 Heads of State and a similar number of Heads of Government – the bilateral contacts that it made possible outside the plenary sessions, and the Declaration and Plan of Action adopted at the end of the Summit, which appear in the meeting file.

9. This Declaration and its Plan of Action include among other items: the entry into force of Protocol No. 11 to the Convention for the protection of Human Rights and Fundamental Freedoms, restructuring the machinery established by this Convention (the reform of the present structure and the replacement of the existing Commission and Court by a single permanent Court will be completed before the end of 1998); the appointment of a European Ombudsman for the protection of human rights; the restructuring of the activities of the Council of Europe in the social field, and a number of concrete actions in the legal field, such as bioethics, the protection of children, the fight against corruption, etc.

10. The monitoring of the honouring of commitments by member States after their accession to the Council of Europe continues to be pursued at the level of the Committee of Ministers and the Parliamentary Assembly. The monitoring by the Committee of Ministers concerns the functioning of the judicial power. For its part, the Parliamentary Assembly has already addressed recommendations to several member States concerning compliance with their obligations under the Council of Europe's legal instruments.

11. Relations between the Council of Europe and the European Union are growing and consolidating. There are regular meetings, both high level (bringing together the Secretary General of the Council of Europe, the President of the European Commission, the President of the European Parliament and the President in office of the European Union) and at an operational level.

12. Concerning the Council of Europe's cooperation programmes, the Committee of Ministers has decided that they will henceforth be open to all Council of Europe member States, whereas up to now they have been reserved to the central and eastern European countries. Twenty-two countries of this geographical area have been beneficiaries of assistance provided in the framework of the Council of Europe's Demo-droit (expertise and legislative reform) and Themis (training for the judiciary and the legal professions) programmes. There are still a number of joint programmes with the European Union which apply to certain eastern European countries, as well as the Octopus programme for the fight against corruption and organised crime, which currently covers 17 member States of the Council of Europe. For its part, the Venice Commission is continuing its work of supporting and assisting with the introduction and consolidation of constitutional systems in central and eastern European member States.

13. Mrs WIEDERKEHR drew the Committee's attention to some recent developments concerning the Council of Europe treaties, in particular:

- ratification of the European Convention on Human Rights and its additional Protocol as well as Protocols 2, 3, 4, 5, 7, 8 by Croatia, Moldova and Ukraine, and of Protocol No. 6 by Croatia and Moldova,
- ratification of the Convention on the Transfer of Sentenced Persons by Liechtenstein, Georgia and Israel,
- signature of the Outline Convention on Transfrontier Co-operation by Slovenia and Turkey,
- signature of the European Charter of Local Self-Government by Croatia and Ireland and its ratification by Croatia, Moldova, Romania and Ukraine,
- ratification of the European Convention for the Prevention of Torture by Croatia, Latvia and Moldova
- signature of the Convention on Laundering by Hungary and its ratification by Belgium, Croatia, Iceland and Ukraine
- ratification of the European Charter for Regional or Minority languages by Croatia, Liechtenstein and Switzerland.

14. In addition, the European Convention on Nationality was opened for signature on 6.11.97 and signed by 16 member States; an additional Protocol to the European Convention on the Transfer of Sentenced Persons was opened for signature on 18.12.97 and signed by 8 member States. Lastly, the additional Protocol to the European Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, prohibiting the cloning of human beings, was opened for signature in Paris on 12.1.98 and signed by 19 member States.

15. Mrs WIEDERKEHR informed the members of the CAHDI of the follow-up to the Council of Europe Pilot Project on State practice relating to State succession and issues of recognition, pointing out that a number of academic and research institutions had found this project very

interesting and that it might perhaps form part of the Council of Europe's contribution to the United Nations Decade of International Law (see point 11.a of the report).

16. Mrs WIEDERKEHR explained that the future role of the CAHDI had been discussed by the Committee of Ministers. These discussions arose out of two interesting Russian proposals, the discussion of which also appears on the agenda of the CAHDI (see item 3.b below). In this context, she also referred to the work of the Committee of Wise Persons of the Council of Europe. The Committee of Wise Persons was appointed by the Committee of Ministers to help the Organisation to consolidate its political profile and give it greater visibility and effectiveness through making recommendations and giving advice. It is chaired by Mr Mario SOARES, the former President of Portugal and held its first meeting on 29 January in Strasbourg. The "Wise Persons", represented by their Vice-Chair, Mrs HALONEN, Finnish Minister of Foreign Affairs, stressed the unique and necessary role of the Council of Europe, and the richness of its achievements and its assets.

17. Mrs WIEDERKEHR referred to the request of the United States of Mexico for the status of observer to the CAHDI (see item 13) and concluded her statement by stressing the growing interest aroused by the CAHDI, which already had a very considerable number of observers, both States and international organisations. She expressed the hope that the role of the CAHDI would develop further.

b. Decisions of the Committee of Ministers concerning the CAHDI

18. The Chairman invited the members of the CAHDI to hold an exchange of views on the Russian Federation's proposals concerning the activities of the CAHDI submitted to the Committee of Ministers on 16 December 1997, in the light of the Final Declaration of the Heads of State and Government at the Second Summit of the Council of Europe, and the work under way in the Organisation, in particular that of the Committee of Wise Persons. These proposals include: 1) the preparation twice a year of a report on topical issues of public international law for the attention of the Committee of Ministers; and 2) the preparation of an inventory of all Council of Europe Conventions.

19. The representative of Russia presented these proposals to the members of the Committee. He stated that these proposals had been formulated with a view to meeting some of the criticisms levelled at the CAHDI in the Committee of Ministers. The Council of Europe is seeking to play a more important political role, and the CAHDI can help by giving itself a more prominent profile. In this connection he stressed that the CAHDI has a considerable potential. As a result, according to the first proposal, the CAHDI should have a more direct link with the Committee of Ministers through becoming an organ preparing certain of its decisions and through drawing its attention to important international law issues. The second proposal would open a new field of action for the CAHDI.

20. The members of the CAHDI agreed on the importance and usefulness for the CAHDI of considering its future role and felt that this should be an on-going process. They thanked the representative of Russia for having initiated this self-examination. They also agreed on the importance of the CAHDI as a forum for discussion and exchanges of views.

21. The representative of Sweden stated that the CAHDI was a useful forum because it brings together the legal advisers of the Ministers of Foreign Affairs of Europe. In addition, it helps raise the general awareness of certain issues, which is also successful in the European Union. Concerning Russia's first proposal, he pointed out that the CAHDI does not concentrate solely of questions concerning the Council of Europe, because it is in the interest of its members to deal more broadly with questions concerning all of the member States and also because there are specialist Committees for the different fields. The CAHDI should certainly have its rightful place in fields where it can play an active and important role, as for example the reservations to international treaties, where the activity of the CAHDI has considerable political implications and can give rise to very useful results. Thinking on the future role of the CAHDI

should therefore focus on seeking areas in which the Committee will have an important role to play. The future Permanent International Criminal Court may be one such field. The representative of Sweden saw difficulties with respect to implementing Russia's second proposal.

22. The representative of Slovenia considered Russia's second proposal very useful for certain member States who could thus define their priorities with respect to the different Council of Europe conventions. However, they considered that normally the evaluation of the importance of the conventions falls within the competence of the special organs and Committees which are in fact better placed for carrying out this exercise.

23. The representative of the United Kingdom considered that the CAHDI fulfils its allotted role. However, it is necessary to inform those who criticise the Committee of the work and achievements of the CAHDI. But it is also necessary to think hard about what could be added to the CAHDI agenda. The activity on reservations is very interesting and it is necessary to seek other similar activities. Concerning Russia's second proposal he was dubious in so far as the importance attached to the different conventions results from national priorities which vary according to the member State; furthermore, a substantial proportion of these conventions do not fall under the competence of the Ministries of Foreign Affairs of which the members of the CAHDI are the representatives but that of the Ministries specialised in the different fields covered by these conventions. The CAHDI is therefore not in a position to decide the importance to be attached to the different conventions. On the other hand, it would be very useful for the CAHDI to be able to have discussions on the Council of Europe's international legal instruments falling under its competence, some of which, such as the European Convention for the Peaceful Settlement of Disputes (ETS 23) and the European Convention on State Immunity (ETS 74), are of great importance. He therefore proposed that the CAHDI hold an exchange of views on these conventions at the appropriate time.

24. The representative of Germany rejected the criticisms made to the CAHDI, pointing out that the Council of Europe is a political institution covering the whole of Europe and it is therefore extremely useful for the legal advisers of the Ministers of Foreign Affairs to be able to discuss matters of common interest. The CAHDI is a very useful forum which does not concentrate solely on the activities of the Council of Europe but also considers other issues of public international law. Regarding Russia's first proposal and in accordance with the proposal of the representative of the United Kingdom, the agenda of the CAHDI could be amended so that the Committee regularly deals with a major aspect of international law, for example: State liability, a subject that the Committee could discuss in depth, allowing a substantial amount of time, such as half a day of the CAHDI meeting. Concerning Russia's second proposal, he did not feel competent to determine which are the most important conventions. He considered that the CAHDI is not in a position to do this either, since there are other, more specialised Committees within the organisation. This proposal should therefore be referred back to the Committee of Ministers for the consideration of the specialised Committees.

25. The representative of Greece said that the CAHDI must not become a negotiating forum. She supported the German proposal to regularly include in the agenda of the CAHDI a major subject to which a substantial part of the Committee meeting should be devoted. She also supported the United Kingdom's proposal to include the European Convention for the Peaceful Settlement of Disputes (ETS 23) as one of these subjects.

26. The representative of France pointed out that the terms of reference of the CAHDI are worded in such a way as to give the Committee very broad powers. He therefore did not consider it necessary to modify them in the way indicated in the Russian proposals. The first proposal would in fact introduce an undesirable element of rigidity and the second would go beyond the area of competence of the CAHDI and is already being discussed by the Committee of Wise Persons of the Council of Europe. He supported the German and United

Kingdom proposals aimed at including in the CAHDI agenda discussions on key issues of public international law.

27. The representative of Austria agreed with the preceding speakers on the interest of regularly examining a major aspect of international law in depth. In this connection, the already-mentioned Conventions on the Peaceful Settlement of Disputes and on State Immunity were of particular interest. He pointed out that the latter convention is at present being discussed by the United Nations International Law Commission (ILC) which is preparing draft articles on State immunity. With this in mind, there are several interesting aspects of this question that could be discussed by the CAHDI concerning in particular the relationship between the text being discussed by the ILC and the Council of Europe Convention so as to make an effective contribution to the work under way in the United Nations.

28. The representative of Romania suggested another subject that could be discussed in detail at a forthcoming meeting of the CAHDI: the principle of good neighbourliness in international law and the problems connected with its codification and development. Concerning Russia's second proposal, he agreed with the representative of Slovenia in considering that the CAHDI would have a role to play in the implementation of this proposal. He referred in this connection to the activity that the CAHDI pursued on a regular basis concerning the role of the depositories of treaties, in particular *vis-à-vis* conventions that have not entered into force despite having been opened for signature a long time ago.

29. The representative of Ireland supported the amendment of the terms of reference of the CAHDI to mention new roles, while acknowledging that the present wording is sufficiently broad to permit the visibility of the Committee to be enhanced. However, she was against the inclusion of the obligation for the CAHDI to regularly present a report to the Committee of Ministers, for the reason of rigidity already mentioned by the representative of France.

30. In the context of the discussion of Russia's second proposal, the representative of Denmark proposed dividing the list of Council of Europe conventions according to the different fields and recommending the Committee of Ministers to instruct the different specialised organs and Committees to discuss the usefulness and current relevance of these instruments. He also pointed out the interest for the Committee of Ministers of discussing, in this context, the preference for a multilateral treaty as against a cumbersome network of bilateral treaties. Lastly, he proposed other topics that could be subjects for in-depth discussion by the CAHDI, i.e. the role of the depositories in terms of enhancing the accessibility, publicity and dynamism of international law. He pointed out that the CAHDI had dealt with this question in connection with the use of the Internet and that this work should be pursued.

31. Following the different interventions, the representative of Russia said he was satisfied with the discussion triggered by his delegation's proposals, stressing that the aim of these proposals was not to put into question the role of the CAHDI but to consolidate and develop it. He supported the different proposals made concerning the inclusion of subjects of major importance in the agenda of the CAHDI and recommending the Committee of Ministers to instruct the different organs and Committees of the Council of Europe to undertake the examination of the conventions falling under their field of competence.

32. The Chairman concluded this item of the agenda by thanking the Russian delegation on behalf of the CAHDI for the interesting proposals it had submitted, which had led to a thorough and useful exchange of views and initiated an on-going process of self-examination aimed at enhancing the CAHDI's effectiveness and its capacity to meet the needs and demands of member States and the Committee of Ministers. He instructed the Secretariat to prepare an interim opinion of the CAHDI on these proposals reflecting the preceding discussion, to be distributed to the delegations for approval and transmission to the Committee of Ministers.

33. This opinion should stress the unique and irreplaceable nature of the CAHDI, whose role should be consolidated and developed. Regarding the first proposal, the opinion should

state that the CAHDI considers that its present terms of reference allow it to report to the Committee of Ministers on important public international law issues, whenever this appears necessary by means of meeting reports and specific opinions. The inclusion in its terms of reference of the obligation to produce a report on topical issues of public international law for the attention of the Committee of Ministers on a regular basis would thus introduce an undesirable rigidity. However the CAHDI, inspired by the Russian proposal, agreed on the inclusion in its agenda of one or two topical issues of public international law for in-depth discussion. Regarding the second proposal, the opinion should reflect that the CAHDI considers that it is not in a position to undertake an evaluation of the usefulness of all the Council of Europe conventions for both technical and political reasons, because the CAHDI does not have the competence necessary for examining every field of activity of the Council of Europe and because the evaluation of the usefulness of the Council of Europe instruments implies the definition of national priorities, which can only be done by member States of the Council of Europe themselves. Lastly, the opinion should reflect the CAHDI's proposal to the Committee of Ministers to envisage the possibility of instructing steering and similar committees of the Council of Europe to carry out an evaluation exercise of the conventions falling under their field of responsibility¹.

34. The Chairman stated that the CAHDI will continue the examination of its terms of reference at its next meeting to determine whether or not it is necessary to modify them.

A. GENERAL ISSUES OF INTERNATIONAL LAW

4. Succession of States

35. The CAHDI decided to remove this item from its agenda with immediate effect. It will be reintroduced at a future date if necessary.

5. The role of the depositories of treaties

36. Nothing to report.

6. Implementation of international instruments protecting the victims of armed conflicts

37. The Representative of Switzerland informed the members of the CAHDI that the first periodical meeting on International Humanitarian Law (IHL) was held in Geneva from 19 to 23 January 1998. One hundred and twenty-nine states and thirty-six observers took part. The meeting was almost cancelled because of the political wrangling that preceded it, concerned with the status of the Palestinian delegation and the Federal Republic of Yugoslavia. These problems were resolved however, through resorting to the solutions adopted in 1995 on the occasion of the 26th International Conference of the Red Cross and the Red Crescent.

38. The first periodical meeting on IHL had been given the task of identifying the general problems posed by the implementation of IHL, finding possible solutions and reporting to the 27th International Conference of the Red Cross and of the Red Crescent. The subjects adopted for this first periodical meeting were: "The respect and security of the personnel of humanitarian organisations " and "Armed conflicts connected with the disintegration of a state's structures ". This turned out to be an excellent choice.

39. The procedure followed at the first periodical meeting was most unusual, at least in the context of conferences on IHL. Chaired by the representative of depository state, the Meeting had no elected bureau nor any rules of procedure; no minutes were kept. The discussions thus

¹ In accordance with the Committee's instructions, the Secretariat prepared a draft opinion which was distributed to all delegations by a letter of 12 March 1998. On the basis of the comments received, the Secretariat revised the draft and submitted it to the Committee of Ministers as it appears in Appendix III to this report.

being of an unofficial nature, it was not planned or even possible to negotiate and adopt, for the 27th Conference of the Red Cross and Red Crescent, any agreed conclusions or recommendations. It was therefore decided that at the conclusion of the debates the Chairman of the Meeting would draw his own conclusions, which would not commit any delegation, which would be then transmitted as they stood to the 27th Conference of the Red Cross and Red Crescent. This decision is in fact of little consequence; what matters is that the Conference should have a series of conclusions and proposals submitted to it. It will be up to the Conference to determine their fate, and its decision on this point will depend on the content of the conclusions and not on whether they were generally agreed on by the periodical meeting. It should be added that the Chairman of the meeting obviously made sure that his conclusions reflected the content of the discussions.

40. Regarding the first subject ("Respect and security of the personnel of humanitarian organisations"), the Chairman's conclusions begin by listing a number of factors which are at the origin of the present situation. Among these are the following facts: the parties to a conflict often take humanitarian personnel to be partisans of the adversary; many conflicts take place against a background of the disintegration of state structures; humanitarian actions are sometimes badly coordinated; the perpetrators of acts of violence are not pursued or punished with sufficient determination, are not extradited and cannot at present be brought before a permanent international criminal court.

41. Among the possible remedies are: the introduction of preventive mechanisms, the strengthening of the local humanitarian actors, in particular the national Red Cross and Red Crescent societies, the acceptance of a "code of conduct" by all humanitarian organisations, improved co-operation of these organisations with international peacekeeping operations, and the creation and operation of an independent international criminal court.

42. Regarding the second subject, it is obvious that the collapse of state structures before or during an armed conflict means that there are grave threats hanging over the humanitarian organisations whose intervention is nevertheless essential. This collapse leads to the disappearance of any authority capable of guaranteeing the security of these organisations and preventing acts of violence against the civilian population. Here again, certain remedies can be envisaged: the setting up of early warning systems, recognition of the applicability of the Article 3 common to the four Geneva Conventions of 1949, the reinforcement of the national Red Cross and Red Crescent societies so that they can continue to operate despite the collapse of the state structures, the promotion of minimum standards of humanity and the creation of an international criminal court, to cite just a few.

43. The Conclusions of the Chairman of the first periodical meeting were communicated to the States Parties to the Geneva Conventions, the other participants, and to the Standing Committee of the Red Cross and Red Crescent, responsible for preparing the 27th Conference, an event which is in fact part of the programme marking the conclusion of the United Nations Decade of International Law and completes the festivities celebrating the centenary of the Conference of The Hague of 1899².

44. The representatives of Germany and Finland stated that they had been able to participate in the first periodical meeting and said how useful it had been. The representative of Germany was pleased about the participation of a very large number of Third World delegations and about the fact that the political problems connected with the participation of certain delegations had been able to find a solution before the meeting. Concerning the holding of a second meeting, he considered that it would be difficult to be able to hold it in 1999 because there were very many international events scheduled for that year.

² In a letter from Ambassador KRAFFT of 11 March 1998, the Federal Foreign Affairs Department of Switzerland communicated to the Secretariat the report of the Chairman of the meeting in English, French and Spanish. It is therefore available to delegations on request.

7. The law and practice relating to reservations to and interpretative declarations concerning treaties: 1st meeting of the Group of Specialists on Reservations to International Treaties (DI-S-RIT), Paris, 26-27 February 1998

45. The Chairman of the Group of Specialists on Reservations to International Treaties (DI-S-RIT), Ambassador CEDE informed the members of the CAHDI of the first meeting of the Group, held in Paris on 26 and 27 February 1998. Seventeen member States of the Council of Europe and three observers participated. In addition to the documents prepared by the Secretariat, the Finnish delegation had submitted a working document entitled "*Observations on State practice with regard to two UN-Human Rights treaties*" and the United Kingdom delegation a list of the reservations updated to 12 February 1998, prepared in the context of the Working Group on public international law of the Council of the European Union (COJUR).

46. A very fruitful exchange of views was held with Professor PELLET, Special Rapporteur of the ILC, on the "Preliminary conclusions of the International Law Commission on reservations to normative multilateral treaties, including human rights treaties". For the first time the Special Rapporteur had the opportunity for an exchange of views with representatives of various European countries.

47. The Group shared the view of the ILC that the regime of the Vienna Convention is applicable to all treaties, including normative and human rights treaties, and that the regime should not be changed.

48. However, the Group considered that the question of the role of conventional bodies responsible for monitoring the application of treaties still required further examination. In addition, some delegations were unable to agree with preliminary conclusions 5 and following of the ILC concerning the articulation between the *lex lata* and *lex ferenda* provisions. On the whole however the Group agreed with the main thrust of the preliminary conclusions.

49. Regarding the DI-S-RIT's terms of reference³, the Group agreed on the need to avoid any duplication of the activities under way in the ILC. However, the Group considered that it could make a complementary contribution to advance the work of the ILC in a practical way. It thus decided that its activity should concentrate, in the first stage, on the universal human rights treaties, without excluding the possibility of dealing with other international instruments in the future.

50. In addition the Group agreed, regarding point a) of its terms of reference, to pursue the examination of the ways and means to assist member States in developing their practice regarding their response to reservations. On this subject the representative of Sweden offered to prepare a working document on model objections to reservations and the representative of the Netherlands a working document on the key issues regarding reservations at the different stages of the process of concluding treaties (negotiation, signature, ratification) and in the post-ratification stage.

51. Concerning point b) of the terms of reference, the Group agreed to set up an observation mechanism with a view to giving the CADHI the role of observatory of reservations to multilateral treaties. To this effect the Secretariat was requested to prepare for the next meeting of the Group a working document on the practical aspects of this mechanism.

³ Extract from the terms of reference of the DI-S-RIT :

"In the framework of the examination of questions relating to reservations to international treaties, in particular from the human rights perspective, with a view to contributing to the work undertaken by the International Law Commission and bringing the views of member States in this field closer, the Group of Specialists is called upon to:

- a. examine and propose ways and means and, possibly, guidelines to assist member States in developing their practice regarding their response to reservations and interpretative declarations actually or potentially inadmissible under international law and
- b. consider the possible role of the CAHDI as an observatory of reservations to multilateral treaties of significant importance to the international community raising issues as their admissibility under international law, as well as of the reactions by Council of Europe member States Parties to these instruments."

52. Lastly, the Group was in favour of holding a second meeting, preferably before the 16th meeting of the CAHDI. At this meeting, besides the documents mentioned under point 23, a Secretariat memorandum concerning the practical aspects of the functioning of the CAHDI as an observatory of reservations to multilateral treaties and a list of reservations giving rise to doubts as to their admissibility notified by the states concerned will be examined. This could serve as a pilot experiment to help define more concretely the functioning of the observatory within the CAHDI.

53. Ambassador CEDE concluded his intervention by stating that this activity, and in particular the first meeting of the DI-S-RIT, was a very interesting and useful exercise that should be continued.

54. The representatives of the Romania and of Finland stressed the importance of the role played by Ambassador CEDE in co-ordinating the work of the DI-S-RIT Group, which has made it possible to achieve concrete results. The representative of Finland also requested that the document "*Observations on State practice with regard to two UN-Human Rights treaties*" (in English only) mentioned by Ambassador CEDE, be distributed to the members of the CAHDI at the next meeting.

55. The representative of Germany stressed the particular importance of this activity whose aim is to examine the possibility of a coordinated objection to reservations considered to be inadmissible. At this connection he referred to the experience of intergovernmental co-operation within the European Union, where the attitude of member States towards North Korea provided a good example. Concerning the preliminary conclusions of the ILC, he pointed out that the *Strasbourg approach*, although not generally followed by States, was widely supported by the international bodies and had received certain amount of support in Commentary number 24 of the United Nations Committee of Human Rights. The general tendency being that in the field of reservations to international treaties, States, and they alone, decide unilaterally, it will be very important of carefully monitor developments in this field.

56. The Chairman of the CAHDI thanked Ambassador CEDE for his work as coordinator of the DI-S-RIT and, on behalf of the CAHDI, expressed his satisfaction at the results obtained by this Group, while stressing the support of the CAHDI for the continuation of the activity. In addition, the CAHDI decided that a second meeting of the DI-S-RIT will be held in Paris immediately before the next meeting of the CAHDI (see item 14).

B. UNITED NATIONS

8. Draft Statute of a Permanent International Criminal Court (PICC)

57. The representative of Italy informed the CAHDI of the preparation of the Diplomatic Conference on setting up of a Permanent International Criminal Court (PICC) where the draft statute of the PICC will be discussed. This conference will be held in Rome from 15 June to 17 July in the United Nations Food and Agriculture Organisation building. A meeting at Ministerial level is envisaged at the opening and possibly at the closing of the Conference. In addition to the participation of over 185 national or governmental delegations, the participation of a very large number of non-governmental organisations (NGOs) is expected, in particular in the plenary sessions of the conference and in the workshops which will be held in parallel with the conference.

58. The representative of Denmark stressed the importance of the participation of the NGOs, whose contribution to the preparatory work had been very useful and had also made it possible to raise the awareness of the citizens as to the implications of the project. As a result it would be desirable to give them an important role in the work of the diplomatic

conference, because otherwise there would be a risk of seeing them included in the national delegations.

59. The representative of the Netherlands informed the members of the CAHDI of the results of the last meeting of the Preparatory Committee of the Diplomatic Conference held in The Hague. The Preparatory Committee has produced a consolidated version of the Draft Statute of the PICC which contains the different proposals formulated. The Preparatory Committee will meet only once more before the Diplomatic Conference and a number of very important questions have still not been resolved, in particular: a) the procedure for setting up the PICC, b) the acceptance of the competence of the PICC by recognition of its own jurisdiction or by a declaration, c) the list of crimes coming under the jurisdiction of the PICC, d) the role the Security Council and its relations with the PICC, e) questions of complementarity, f) the co-operation obligations incumbent upon States *vis-à-vis* the PICC.

60. The representative of Italy pointed out that even though there is only one more meeting of the Preparatory Committee before the holding of the Diplomatic Conference, it should last three and a half weeks and make it possible to resolve a good many of these problems.

61. The representative of Russia pointed out that a great deal of the negotiation leading to the setting up of the PICC still remained to be done and that the discussions should concentrate on the biggest disagreements concerning the statute of the PICC rather than dwelling on the details.

9. Implementation and functioning of the Tribunals established by United Nations Security Council Resolutions 827 (1993) and 955 (1994)

62. The CAHDI took note of the agreements concluded between the International Criminal Tribunal for the Former Yugoslavia and the governments of Finland, the Republic of Italy and the Republic of Croatia.

10. The work of the General Assembly of the United Nations: activities and working methods of the Sixth Committee and of the International Law Commission (ILC)

63. The representative of Austria stated that it is essential to maintain links between the ILC and the CAHDI because the interaction between the experts and the national delegations is very important. This occurs already in the framework of the Sixth Committee of the United Nations between the members of the ILC and the national delegations. In this context, the exchanges between certain members of the ILC and the CAHDI as a regional forum are considered very useful. He therefore suggested inviting Professor SIMMA to participate in the next meeting of the CAHDI.

64. The delegate of Germany stated that Professor SIMMA will continue preparing the reports of the ILC sessions that he will publish in the *Nordic Journal of International Law*. He regretted that the CAHDI could not have these reports before its meetings and expressed doubts as to the possibility, for Professor SIMMA, of participating in the next meeting of the CAHDI.

65. The representative of Finland proposed that the Secretariat get in touch with the Secretariat of the ILC in order to regularly obtain for the members of the CAHDI the ILC working documents available before the meetings of the CAHDI. In this connection, the Chairman of the CAHDI pointed out that the ILC documents are confidential and that they are also drafts, while admitting that it would be useful to have them.

66. The representative of Russia also spoke of the value of consolidating the co-operation with the ILC but mentioned certain procedural difficulties that may appear, in particular if the links between the CAHDI and the ILC are of an institutional nature. The fact is that if the contacts are institutional, the members of the ILC invited to the meetings of the CAHDI will

express the views of the ILC, whereas if the contacts continue to be on an informal and individual basis the experts can give their expert opinion without necessarily representing the views of the ILC. He admitted that institutional contacts as well as informal and individual contacts have their advantages, but it is for the ILC to decide on the sending of representatives to the meetings of the CAHDI. As a result, a formal decision by the ILC appears necessary.

67. In this connection the representatives of Slovakia and the United Kingdom said that the contacts should not be of a formal or institutional nature but should be informal because this allows broader discussion. The former pointed out that the ILC already has informal contacts with other international legal fora at regional level, such as the Afro-Asian Legal Committee. As to the procedure, he proposed sending a letter of invitation to the Secretariat of the ILC asking it to transmit the invitation to the members of the ILC.

68. The Secretariat informed the CAHDI that, in accordance with the instructions of the Committee, informal contacts have been established with the Secretariat of the ILC, and that the co-operation between the two Secretariats is being consolidated. However, the attention of the members of the CAHDI was drawn to the fact that the budget of the ILC did not allow for the participation of members of the ILC in meetings of the CAHDI, so that this participation would be charged to the budget of the Council of Europe, which is not possible at present.

69. At the end of a fruitful discussion the CAHDI decided that it did not wish to alter its position concerning links with the ILC. It therefore agreed to pursue the consolidation of links with the ILC on an informal basis and with the aim of encouraging active and in-depth interaction between the two bodies. In this connection it was noted that at its 14th meeting, the CAHDI had already authorised its Chairman to send invitations to the ILC experts on an individual and specific basis.

11. United Nations Decade of Public International Law from 1990 to 1999

a. Pilot Project on the collection and diffusion of documentation on State practice relating to State succession and issues of recognition

70. Further to the statement by Mrs WIEDERKEHR (see item 3.a), the Secretariat informed the members of the CAHDI of the follow-up to the Pilot Project on State practice relating to State succession and issues of recognition. In accordance with the decision of the CAHDI, taken at its last meeting, to prepare a report on the basis of the material collected in the framework of the Pilot Project of the Council of Europe, the Secretariat concluded a contract with the directors of the T.M.C. Asser Institute (Netherlands), the Max-Planck Institute (Germany) and the Erik Castrén Institute for International Law and Human Rights (Finland).

71. The Secretariat presented a document containing general information concerning the preparation of this report, a draft table of contents and a summary analytical report developing in some detail the draft table of contents prepared by the expert consultants in co-operation with the Secretariat. As proposed, the report could possibly include a foreword by the Secretary General of the Council of Europe (one page), an introduction by the Chairman of the CAHDI and/or the Director of Legal Affairs of the Council of Europe (5-10 pages), an analytical part (70-80 pages), a conclusion (5-10 pages), and documentary appendices containing a selection of the documents attached to the national reports (120-170 pages). The total length of the report will thus be around 180-220 pages. The analytical part, with the documentary appendices, will constitute the core of the publication. According to the draft table of contents which appears in Appendix IV, the analytical report will be divided into three chapters: recognition of States and governments (Chapter 2), State succession in respect of treaties (Chapter 3) and State succession in respect of other matters (property, archives and debts, nationality) (Chapter 4). To avoid duplication, the analytical part will begin with a general introduction of 5-10 pages (Chapter 1), in which basic

information (dates and events) will be given for all the cases of State succession dealt with in the publication, information that the authors of the specific reports can refer back to. Lastly, an overall conclusion will follow the analytical part and summarise the main points in it.

72. The chapters in the analytical part will examine in chronological order major examples of State succession, i.e.: Germany, the Union of Soviet Socialist Republics (USSR), the Socialist Federal Republic of Yugoslavia (SFRY) and the Czech and Slovak Federal Republic (CSFR). In each chapter of the analytical section reference will be made to the practice of the member States of the Council of Europe who participated in the Pilot Project, as reflected in the different national reports. In addition, reference will be made where appropriate to any other relevant information available through other sources such as academic works dealing with the issues involved.

73. Chapter 2 will be drafted by Mr Olivier Ribbelink of the T.M.C. Asser Institute, Chapter 3 by Mr Andreas Zimmermann, of the Max-Planck Institute and Chapter 4 by Mr Martti Koskenniemi and Mr Jan Klabbers of the Erik Castrén Institute.

74. As for the documentary appendices to the report, these will total 120-170 pages containing selected Pilot Project texts, i.e. national contributions presented in the form of fact sheets. Depending on their format, length, content and original language, the texts appearing in the appendices may take one of the following formats: the original documents submitted by the national rapporteurs; excerpts from these documents; the standardised forms filled in by delegations or, where appropriate extracts from these forms; or a combination of these documents.

75. It is expected that the draft report will be submitted to the CADHI for approval at its 16th meeting in the last quarter of 1998. Once approved by the CADHI, the report will be issued as a joint publication by Kluwer Law International (KLI) and the Council of Europe. After approval of the report by the CAHDI the Secretariat will ensure coordination between the consultants, the CAHDI delegations and KLI. It is envisaged that the report will be published in the first quarter of 1999.

76. Lastly, the Secretariat stated that the report on the Pilot Project could form part of the Council of Europe's contribution to the United Nations Decade of International Law. The Committee was informed that at the request of the CAHDI, the Secretary General of the Council of Europe sent to the Secretary General of the United Nations the Committee of Ministers Recommendations R (97) 10 on debts of diplomatic missions, permanent missions and diplomatic missions with "double accreditation", as well as those of their members, and R (97) 11 on the amended model plan for the classification of documents concerning State practice in the field of public international law as part of the Council of Europe's contribution to the United Nations Decade of International Law.

77. The representative of Denmark thanked the Secretariat for the follow-up work to the Pilot Project and pointed out that an initiative of the Netherlands delegation was at the origin of this activity. Although he had been sceptical at first about the follow-up to the Pilot Project, in view of the expected results and the further work proposed, he was very satisfied. He suggested that the report should concentrate on contemporary practice rather than on theory.

78. The representative of Croatia joined the representative of Denmark in thanking the Secretariat and suggested a series of modifications to the draft table of contents of the report concerned in particular with the introduction of a distinction between multilateral and bilateral treaties because State practice differs greatly in this respect. In addition, he proposed making a distinction within the category of multilateral treaties between those treaties that constitute the basis for membership of an international organisation and the rest. Lastly, he suggested that the examination of the question of nationality should form a separate section of the analytical part.

79. The representative of Austria congratulated the Secretariat on the proposed follow-up and said it would be interesting for the report to identify the shortcomings of the conventions of Vienna in terms of concepts, the notion of "newly independent States" ("Etats récemment indépendants") and other types of succession. This item could be included in the conclusion.

80. The representative of the Netherlands suggested that in addition to the practice of the executive and legislative powers the practice of the judicial power should be introduced into the report.

81. The representative of Russia stated that the CAHDI must pay special attention to the analytical part of the report on the Pilot Project since this will deal with issues that are very sensitive for certain member States.

82. In this connection, the representatives of Slovakia and Germany pointed out that the report would not constitute the adoption of a stance by the CAHDI but would be an expert report published under the aegis of the CAHDI.

83. The Secretariat stated that the experts have been advised that the report must not be of a political nature and their analyses must be concerned solely with State practice as such.

84. As a result of the interest shown by the representatives of Greece, Lithuania and the United States of America, delegations who so desired were invited to submit to the Secretariat contributions for the Pilot Project to be included in the report being prepared. The deadline for submitting these contributions was the end of May 1998.

85. After a thorough discussion, the CAHDI approved the proposed follow-up to the Pilot Project and congratulated the Secretariat on the work done on it. The CAHDI then agreed that the project should be submitted to the delegations for approval before the 16th meeting of the CAHDI. Once approved, the report will be published and the resulting work may constitute the second part of the Council of Europe's contribution to the United Nations Decade of Public International Law.

b. Centennial of the First International Peace Conference and Closure of the United Nations Decade of International Law

86. The representatives of the Netherlands and Russia provided members of the CAHDI with information on progress in the preparation of activities for the Centennial of the First International Peace Conference and Closure of the United Nations Decade of International Law. United Nations document GA A/C6/52 L5 contains details on the organisation of these celebrations.

87. An international commemorative conference will be held in The Hague in May 1999 and a commemorative meeting in St Petersburg in June 1999. In addition, the 27th session of the International Red Cross will be held in Geneva.

88. An action programme has been approved, involving the preparation of expert reports on the various topics discussed at the First International Peace Conference (armaments, humanitarian law, law and custom of war, peaceful settlement of international disputes). The aim of the reports will be to highlight what has been achieved in international law since 1899 and also the gaps remaining in it in order to identify the problems that could be brought to the attention of the 54th meeting of the United Nations General Assembly. They may also be discussed in regional international fora. The CAHDI will therefore need to devote part of its next meeting to a discussion of these reports⁴.

⁴ In a letter from Mr BÜCHLI of 26 May 1998, the Ministry of Foreign Affairs of the Netherlands communicated to the Secretariat the first of the special reports on the peaceful settlement of disputes, asking it to circulate it to the members of the CAHDI for discussion at its next meeting. This report is the subject of document CAHDI (98) 15 (in English only) and its discussion appears under item 13 of the agenda for the next meeting of the CAHDI (see point 14 of the report).

89. In this connection the representative of Germany stated that the reports should take stock of developments during the 20th century in the different subject-areas and in so doing they should be an intellectual exercise of a descriptive nature rather than a political nature.

90. The representative of Finland pointed out that because of the discussion of the reports the agenda of the next meeting of the CAHDI will be very full. Furthermore, the subjects of the special reports may be the type of topical issues of international law to which the members of the CAHDI referred during the discussion of the revision of its agenda. For this reason, if the CAHDI did not have sufficient time, it would be necessary to postpone the discussion of other important issues to a later meeting.

91. The representative of Croatia mentioned the preparation by Mr CORELL, Deputy Secretary General of the United Nations, of a publication on the role of Legal Advisers which will mark the end of the United Nations Decade of Public International Law. It is expected that this publication will be ready in 1999.

C. EUROPE

12. Recent developments in international law in Europe

a. The Council of Europe

92. The Secretariat presented the document on recent developments concerning Council of Europe treaties (see document CAHDI (98) 6 rev.). In accordance with the instructions of the CAHDI, such a document is prepared regularly and submitted to each meeting of the Committee.

93. Following the proposal by the representative of the United Kingdom, the CAHDI decided that this item be included in the statement by the Secretariat.

b. The OSCE

94. The representative of Switzerland informed the CAHDI that the Seat Agreement concerning the Court on Conciliation and Arbitration within the OSCE was signed on 17 November 1997 by Mr BADINTER, President of the Court, and by Ambassador KRAFFT on behalf of the Swiss Federal Council. The Court is thus fully operational.

13. Request of the United States of Mexico for the status of observer to the CAHDI

95. The Chairman informed the members of the CAHDI of the request made by the United States of Mexico for the status of observer to the CAHDI.

96. The members of the CAHDI supported this request, pointing out that while the CAHDI is a pan-European forum, it is in its interest to be able to benefit from exchanges of views with Legal Advisers from other, non-European States. Furthermore, Mexico is a member of the OECD, as are a substantial number of member States of the Council of Europe and NAFTA as well as Canada and the United States of America which are already observers to the CAHDI.

97. In accordance with Article 5 of Resolution (76) 3 of the Committee of Ministers, the CAHDI unanimously granted the status of observer to the CAHDI to the United States of Mexico "for the whole duration of the Committee".

98. The members of the CAHDI looked forward to the future participation of Legal Advisers from the Ministry of Foreign Affairs of the United States of Mexico and expressed their confidence in the fruitful contribution they can make to the activities of the Committee.

D. OTHER

14. Date, place and agenda of the 16th meeting of the CAHDI

99. In accordance with the Intergovernmental Programme of activities of the Council of Europe, the CAHDI decided to hold its 16th meeting in Paris on 17 and 18 September 1998 and adopted the preliminary-draft agenda which appears in Appendix IV. The CAHDI also decided to hold the 2nd meeting of the Group of Specialists on Reservations to International Treaties (DI-S-RIT) in Paris from 14 to 16⁵ September 1998, immediately before the meeting of the CAHDI in order to permit the greatest possible number of members of the CAHDI to participate in the DI-S-RIT meeting.

15. Other Business

100. The Chairman informed the members of the CAHDI that the Representative of Spain, Mr PASTOR RIDRUEJO will cease to be a member of the Committee because he had been elected to be a judge in the European Court of Human Rights. On behalf of the CAHDI, the Chairman congratulated Mr PASTOR RIDRUEJO on his election, wished him every success in his new position and thanked him for his contribution to the work of the Committee.

101. Mr PASTOR RIDRUEJO thanked the Chairman for his kind words, saying that he was sorry to be leaving the CAHDI even though he was looking forward to his new responsibilities.

⁵ The dates initially envisaged were 14 et 15 September 1998 for the Group of Specialists on reservations to international treaties (DI-S-RIT) and 16 and 17 September 1998 for the CAHDI. With the agreement of the Chairman of the CAHDI and the Chairman of the DI-S-RIT, the meeting of the DI-S-RIT has been extended by one day in order to permit more thorough discussions within the DI-S-RIT.

APPENDIX I

LIST OF PARTICIPANTS

ALBANIE/ALBANIA: Mr Qiriako QIRJAKO, Director of the Legal and Consular Department, Blvd. "Zhan d'Ark", Ministry of Foreign Affairs

ANDORRE/ANDORRA: -

AUTRICHE/AUSTRIA: Mr Franz CEDE, Legal Adviser, Ministry of Foreign Affairs,

BELGIQUE/BELGIUM: Mme R. FOUCART, Directeur Général Jurisconsulte, Ministère des Affaires Etrangères

Mme. A.M. SNYERS, Conseiller Général, Droit international public/Traités, Ministère des Affaires Etrangères, Direction Générale des Affaires Juridiques

BULGARIE/BULGARIA: Mr Aliocha I. NEDELTCHEV, Director of International Law Directorate, Ministry of Foreign Affairs

CROATIE/CROATIA: Mr Stanko NICK, Ambassador, Chief Legal Adviser, Ministry of Foreign Affairs

CHYPRE/CYPRUS: M. Andrea M. ANGELIDES, Attorney of the Republic, The Legal Services of the Republic of Cyprus

REPUBLIQUE TCHEQUE/CZECH REPUBLIC: M. Milan BERÁNEK, Director of International Law Department, Ministry of Foreign Affairs

DANEMARK/DENMARK: Mr Laurids MIKAELSEN, Ambassador, Head of the Legal Service, Ministry of Foreign Affairs

ESTONIE/ESTONIA: Mr Peter KAPTEN, Counsellor, Head of Division for International Treaties, Legal Department, Ministry of Foreign Affairs

FINLANDE/FINLAND: Mr Holger ROTKIRCH, Ambassador, Director General for Legal Affairs, Ministry for Foreign Affairs

FRANCE: M. Jean-François DOBELLE, Directeur adjoint des Affaires Juridiques, Ministère des Affaires Etrangères

M. Jean-Marie MAGNIEN, Sous-directeur du droit international public, Ministère des Affaires étrangères

ALLEMAGNE/GERMANY: Dr Reinhard HILGER, Ambassador, Director of the Public International Law Section

GRECE/GREECE: Ms Phani DASCALOPOULOU-LIVADA, Legal Adviser, Deputy Head of the Legal Department, Ministry of Foreign Affairs

HONGRIE/HUNGARY: Mr György SZENASI, Ambassador, Head of International Law Department, Ministry of Foreign Affairs (**Président/Chairman**)

ISLANDE/ICELAND: -

IRLANDE/IRELAND: Dr. Alpha CONNELLY, Legal Adviser, Legal Division, Department of Foreign Affairs

ITALIE/ITALY: M. Umberto LEANZA, Chef du Service Juridique, Ministère des Affaires Etrangères

Mme Ida CARACCIOLO, Lecturer of International Law, Ministry of Foreign Affairs, Legal Service

LETTONIE/LATVIA: Mr Raimonds JANSONS, Director of Legal Department, Ministry of Foreign Affairs

LIECHTENSTEIN: (excusé/apologised)

LITUANIE/LITHUANIA: Mrs Sigute JAKŠTONYTE, Deputy Director, Legal and International Treaties Department, Ministry of Foreign Affairs

LUXEMBOURG: -

MALTE/MALTA: Dr Lawrence QUINTANO, Senior Counsel for the Republic, Office of the Attorney General

MOLDOVA: Mr Oleg LUPAN, Second Secretary, Department of International Law, Ministry of Foreign Affairs

PAYS-BAS/NETHERLANDS: Dr J.G. LAMMERS, Dep. Legal Adviser, Ministry of Foreign Affairs

NORVEGE/NORWAY: Mr Jens EIKAAS, Deputy Director General, Department of Legal Affairs, Ministry of Foreign Affairs

POLOGNE/POLAND: Mr Krzysztof PIORKOWSKI, Counsellor to the Minister, Legal and Treaty Department, Ministry of Foreign Affairs

PORTUGAL: M. José Maria TEIXEIRA LEITE MARTINS, Directeur du Département des Affaires Juridiques, Ministère des Affaires Etrangères

ROUMANIE/ROMANIA: M. Tudor MIRCEA, Directeur de la Direction Juridique et des Traités, Ministère des Affaires Etrangères

Mr Titus CORLATEAN, Attaché Juridique, Représentation Permanente de la Roumanie auprès du Conseil de l'Europe, Strasbourg

FEDERATION DE RUSSIE/FEDERATION OF RUSSIA: M. Kirill GUEVORGUIAN, Deputy Director, Legal Department, Ministry of Foreign Affairs

SAINT-MARIN/SAN MARINO: -

SLOVAQUIE/SLOVAKIA: M. Peter TOMKA, Ambassadeur, Directeur Général aux affaires juridiques et consulaires, Ministère des Affaires Etrangères

SLOVENIE/SLOVENIA: Mr Borut MAHNIČ, Head of the International Law Department, Ministry for Foreign Affairs

ESPAGNE/SPAIN: M. José Antonio PASTOR RIDRUEJO, Chef du Service Juridique International, Ministère des Affaires Extérieures

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UKRAINE: Mr Volodymyr KROKHMAL, Acting Director of Legal Department, Ministry for Foreign Affairs

ROYAUME-UNI/UNITED KINGDOM: Mr Christopher WHOMERSLEY, Legal Counsellor, Foreign and Commonwealth Office

COMMUNAUTE EUROPEENNE/EUROPEAN COMMUNITY

1.1.1.1.1.1.1.1 COMMISSION EUROPEENNE/EUROPEAN COMMISSION : Mr Alessandro IANNIELLO, Directorate-General IA, External Relations: Europe and the New Independent States, Common Foreign and Security Policy and External Service

OBSERVATEURS/OBSERVERS

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AUSTRALIE/AUSTRALIA: -

AZERBAIDJAN/AZERBAIJAN: Mr Djevdet MAMEDOV, Treaty and Legal Department, Ministry of Foreign Affairs

CANADA: Mme Isabelle POUPART, Délégation du Canada auprès de l'OTAN, BRUXELLES

GEORGIE/GEORGIA: Mr Guiorgui KADJAÏA, Ministre Plénipotentiaire, PARIS

SAINT-SIEGE/HOLY SEE: Madame Odile GANGHOFER, Docteur en Droit

JAPON/JAPAN: Mr Akira ANDO, Consul, Consulate General of Japan, Strasbourg

NOUVELLE ZELANDE/NEW ZEALAND: -

ETATS-UNIS D'AMERIQUE/UNITED STATES OF AMERICA: Mr Robert E. DALTON, Assistant Legal Adviser for Treaty Affairs, Department of State

CONFERENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVE/THE HAGUE
CONFERENCE ON PRIVATE INTERNATIONAL LAW: (excusé/apologised)

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ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT: Mr David
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ORGANISATION: M. Baldwin DE VIDTS, Conseiller Juridique, Service juridique de l'OTAN

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M. Rafael A. BENITEZ, Secrétaire du Comité, Division du Droit Public et International, Direction
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Mme Francine NAAS, Assistante, Division du Droit Public et International, Direction des
Affaires Juridiques

APPENDIX II

AGENDA 15th meeting of the CAHDI (Strasbourg, 3-4 March 1998)

Introduction

1. Opening of the meeting
2. Adoption of the agenda CAHDI (98) OJ 1
3. Statement by the Secretariat
 - a. intervention by Mrs Marie-Odile WIEDERKEHR, Deputy Director of Legal Affairs
 - b. decisions of the Committee of Ministers concerning the CAHDI CAHDI (98)1

A. General questions of international law

4. State succession CAHDI (97) 14, paras. 15-16
5. The role of the depositaries of treaties CAHDI (97) 1, paras. 17-22
 - a. Council of Europe
 - b. Other depositaries
6. Implementation of international instruments protecting the victims of armed conflicts CAHDI (97) 14, paras. 23-24
7. The law and practice relating to reservations to international treaties and interpretative declarations: 1st meeting of the Group of Specialists on Reservations to International Treaties (DI-S-RIT), Paris, 26-27 February 1998

CAHDI (97) 8 rev.
CAHDI (97) 14, paras. 25-36, 60-65

B. United Nations

8. Draft Statute of a Permanent International Criminal Court (PICC) CAHDI (97) 14, paras. 37-40
9. Implementation and functioning of the Tribunals established by UN Security Council Resolutions 827 (1993) and 955 (1994) : CAHDI (97) 14, paras. 41-47

Agreement between the international criminal tribunal for the former Yugoslavia and the Government of Finland on the enforcement of sentences of the international tribunal CAHDI (98) 2

Agreement between the Government of the Italian Republic and the United Nations on the enforcement of sentences of the international criminal tribunal for the former Yugoslavia CAHDI (98) 3

Constitutional Act on the co-operation of the Republic of Croatia with the international criminal tribunal CAHDI (98) 4

10. The work of the General Assembly of the United Nations and working methods of the Sixth Committee and the International Law Commission (ILC)
CAHDI (97) 14, paras. 48-65

11. The United Nations Decade of Public International Law from 1990 to 1999:

- a. Pilot project on the collection and dissemination of documentation on State practice relating to State succession and issues of recognition

CAHDI (98) 5

CAHDI (97) 14, paras. 66-69

- b. Centennial of the first International Peace Conference and closure of the United Nations Decade of International Law

CAHDI (97) 14, paras. 70-71

C. Europe

12. Recent developments in international law in Europe

- a. The Council of Europe

CAHDI (98) 6

CAHDI (97) 14, paras. 72-74

- b. The OSCE

CAHDI (97) 14, paras. 75-76

D. Other

13. Request of the United States of Mexico for the status of observer in the CAHDI

CAHDI (98) 7

14. Date, place and agenda of the 16th meeting of the CAHDI

15. Other business

APPENDIX III

INTERIM OPINION **OF THE AD HOC COMMITTEE OF LEGAL ADVISERS** **ON PUBLIC INTERNATIONAL LAW (CAHDI)** **CONCERNING THE RUSSIAN FEDERATION'S PROPOSALS** **ABOUT THE CAHDI**

Foreword

The Ad Hoc Committee of Legal Advisers on Public International Law (CAHDI) held its 15th meeting in Strasbourg on 3-4 March 1998. The agenda included an item on "Decisions of the Committee of Ministers concerning the CAHDI". In the framework of this item, members of the CAHDI were invited to hold an exchange of views on the proposals of the Russian Federation to the Committee of Ministers, dated 16 December 1997, to modify the activities of the CAHDI in the light of the Final Declaration of the Heads of State and Government at the Second Summit of the Council of Europe, and work already under way in the Organisation, in particular by the Wise Persons Committee.

The above-mentioned Russian proposals include: 1) the preparation of a report on topical issues of international public law in Europe for the attention of the Committee of Ministers by the CAHDI twice a year; and 2) the preparation of an inventory of all Council of Europe conventions. The Russian delegate in the CAHDI presented these proposals to the members of the CAHDI

INTERIM OPINION

The CAHDI wishes to thank the Russian delegation for the interesting proposals submitted for its consideration. These proposals have led to a thorough and useful exchange of views and they have initiated an ongoing process of self-examination aimed at improving the efficiency and suitability of the CAHDI in responding to the needs and demands of member States and the Committee of Ministers.

Members of the CAHDI unanimously wish to stress that the CAHDI is a unique forum where legal advisers of the Ministers of Foreign Affairs of the member States of the Council of Europe can exchange and possibly co-ordinate their views in matters of public international law to the application and development of which they contribute. From this point of view, the CAHDI is irreplaceable and it is the only truly pan-European framework for such activities. Thus, the CAHDI should not only be preserved but consolidated and its role increased in the future.

Concerning the first proposal, the CAHDI considers that its terms of reference as they stand today, allow the CAHDI to report to the Committee of Ministers on topical issues of public international law whenever necessary. This can be done by means of the CAHDI reports which are submitted to the Committee of Ministers regularly after each meeting and possibly, by means of specific opinions of the CAHDI.

The CAHDI is by its very nature a flexible framework for discussion and exchange of views. The inclusion in its terms of reference of the duty to prepare a report on topical issues of public international law for the attention of the Committee of Ministers on a regular basis would bring in an element of rigidity which is not desirable.

However, the CAHDI, inspired by the Russian proposal, has now decided that at all its future meetings it will hold a substantial discussion on one or two topical issues of public international law as a central part of its agenda. Some topical issues suggested include the following: reservations to multilateral treaties, the role of the depositaries and the use of new information technologies, the European Convention on State Immunity, in the light of developments on the draft articles on the same subject produced by the International Law Commission, etc. On the other hand, a number of items which have become a routine and have lost their purpose will be taken out of the agenda.

Concerning the second proposal, the CAHDI considers that it is not in a position to undertake the evaluation of all the conventions of the Council of Europe for technical and political reasons. Members of the CAHDI do not have the necessary expertise to go into every field of activity of the Council of Europe and in this respect, conventional or steering committees are in a better position to undertake this exercise regarding the conventions falling under the sector of activity for which they are competent. Moreover, assessing the suitability of Council of Europe instruments involves definition of national priorities what can only be done by member States of the Council of Europe themselves.

Accordingly, the CAHDI wishes to propose to the Committee of Ministers that it considers the possibility of instructing steering and analogous committees of the Council of Europe to carry out such an exercise in relation to the conventions under their scope of responsibility.

In this connection, the CAHDI considers that it would be a useful exercise to assess the current suitability of the conventions falling under its area of competence, namely: European Convention for the Peaceful Settlement of Disputes (1957, ETS 23), European Convention on Consular Functions (1967, ETS 61), European Convention on the Abolition of Legalisation of Documents Executed by Diplomatic Agents or by Consular Officers (1968, ETS 63), European Convention on State Immunity (1972, ETS 74) and its Protocol (1972, ETS 74A).

Finally, the CAHDI considers that it requires to pursue further the examination of its terms of reference in order to determine whether they need to be amended or not. The CAHDI will be able to take a position on this issue at its 16th meeting, 16-17 September 1998.

APPENDIX IV

REPORT ON THE PILOT PROJECT ON STATE PRACTICE RELATING TO STATE SUCCESSION AND ISSUES OF RECOGNITION

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- B. Introduction by the Chairman of the CAHDI/Director of Legal Affairs of the Council of Europe**
- C. Analytical Part**

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- 1.2 Germany
- 1.3 Union of Soviet Socialist Republics (USSR)
- 1.4 Socialist Federal Republic of Yugoslavia (SFRY)
- 1.5 Czech and Slovak Federal Republic (CSFR)

CHAPTER 2: RECOGNITION OF STATES AND GOVERNMENTS

- 2.1 Introduction
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- 2.3 Union of Soviet Socialist Republics (USSR)
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 - 2.3.3 Other former Republics of the USSR
- 2.4 Socialist Federal Republic of Yugoslavia (SFRY)
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 - 2.4.2 Bosnia-Herzegovina
 - 2.4.3 Croatia
 - 2.4.4 Slovenia
 - 2.4.5 "The Former Yugoslav Republic of Macedonia"
- 2.5 Czech and Slovak Federal Republic (CSFR)
 - 2.5.1 Czech Republic
 - 2.5.2 Slovak Republic

CHAPTER 3: STATE SUCCESSION IN RESPECT OF TREATIES

- 3.1 Introduction
- 3.2 Germany
 - 3.2.1 Federal Republic of Germany (FRG)
 - 3.2.2 German Democratic Republic (GDR)

- 3.3 Union of Soviet Socialist Republics (USSR)
 - 3.3.1 Baltic States
 - 3.3.2 Russian Federation
 - 3.3.3 Other former Republics of the USSR
- 3.4 Socialist Federal Republic of Yugoslavia (SFRY)
 - 3.4.1 Federal Republic of Yugoslavia (Serbia/Montenegro)
 - 3.4.2 Bosnia-Herzegovina
 - 3.4.3 Croatia
 - 3.4.4 Slovenia
 - 3.4.5 "The Former Yugoslav Republic of Macedonia"
- 3.5 Czech and Slovak Federal Republic (CSFR)
 - 3.5.1 Czech Republic
 - 3.5.2 Slovak Republic

CHAPTER 4: SUCCESSION IN RESPECT OF STATE PROPERTY, ARCHIVES AND DEBTS, AND NATIONALITY

- 4.1 Introduction
- 4.2 Germany
 - 4.2.1 property, archives and debts
 - 4.2.2 nationality
- 4.3 Union of Soviet Socialist Republics (USSR)
 - 4.3.1 Baltic States
 - 4.3.1.1 property, archives and debts
 - 4.3.1.2 nationality
 - 4.3.2 Russian Federation
 - 4.3.2.1 property, archives and debts
 - 4.3.2.2 nationality
 - 4.3.3 Other former Republics of the USSR
 - 4.3.3.1 property, archives and debts
 - 4.3.3.2 nationality
- 4.4 Socialist Federal Republic of Yugoslavia (SFRY)
 - 4.4.1 Federal Republic of Yugoslavia (Serbia/Montenegro)
 - 4.4.1.1 property, archives and debts
 - 4.4.1.2 nationality
 - 4.4.2 Bosnia-Herzegovina
 - 4.4.2.1 property, archives and debts
 - 4.4.2.2 nationality

4.4.3 Croatia

4.4.3.1 property, archives and debts

4.4.3.2 nationality

4.4.4 Slovenia

4.4.4.1 property, archives and debts

4.4.4.2 nationality

4.4.5 "The Former Yugoslav Republic of Macedonia"

4.4.5.1 property, archives and debts

4.4.5.2 nationality

4.5 Czech and Slovak Federal Republic (CSFR)

4.5.1 Czech Republic

4.5.1.1 property, archives and debts

4.5.1.2 nationality

4.5.2 Slovak Republic

4.5.2.1 property, archives and debts

4.5.2.2 nationality

D. Conclusion

E. Appendices

App. 1: Table of contents for the appendices

App. 2: List of countries having participated in the Pilot Project

App. 3: Model plan for the classification of documents concerning State practice in the field of public international law (as amended in 1997)

App. 4: List of documents attached

App. 5: Attached documents

APPENDIX V

PRELIMINARY-DRAFT AGENDA⁶ 16th meeting of the CAHDI Paris, 16-17 September 1998

A. INTRODUCTION

1. Opening of the meeting
2. Adoption of the agenda
3. Statement by the Secretariat

B. ONGOING ACTIVITIES OF THE CAHDI

4. **Decisions of the Committee of Ministers concerning the CAHDI:**
 - **Follow-up to the Iterim Opinion adopted by the CAHDI at its 15th meeting on the proposals presented by the Delegation of the Russian Federation on the CAHDI**
 - **Draft-terms of reference of the CAHDI for 1999-2000**
5. **Pilot project on the collection and dissemination of documentation on State practice relating to State succession and issues of recognition**
6. **The law and practice relating to reservations and interpretative declarations concerning to international treaties: 2nd meeting of the Group of Specialists on Reservations to International Treaties (DI-S-RIT), Paris, 14-15 September 1998**
7. **Consideration of conventions under the responsibility of the CAHDI: European Convention on State Immunity (ETS 74)**

C. GENERAL ISSUES OF INTERNATIONAL PUBLIC LAW

8. Depositaries of treaties
9. Implementation of international instruments protecting the victims of armed conflicts
10. Draft Statute of a Permanent International Criminal Court (PICC)
11. Implementation and functioning of the Tribunals established by UN Security Council Resolutions 827 (1993) and 955 (1994)
12. The work of the General Assembly of the United Nations and the Sixth Committee, and the International Law Commission (ILC)

⁶ Items where significant discussion is likely to take place appear **in bold**

13. **The United Nations Decade of Public International Law from 1990 to 1999: Centennial of the first International Peace Conference and closure of the United Nations Decade of International Law: Discussion of the Special Reports**

D. OTHER

14. **Election of the Chair and Vice-Chair of the CAHDI for a one-year term**
15. Date, place and agenda of the 17th meeting of the CAHDI
16. Other business