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

16th meeting
Paris, 17 and 18 September 1998

MEETING REPORT

Secretariat Memorandum
prepared by the Directorate of Legal Affairs

A. INTRODUCTION

1. Opening of the meeting

1. The *ad hoc* Committee of Legal Advisors on Public International Law (CAHDI) held its 16th meeting on 17 and 18 September 1998 at the Council of Europe's Paris office. The meeting was chaired by the Chairman of the CAHDI, Ambassador G. SZENASI (Hungary). The list of participants appears in Appendix I.

2. Adoption of the agenda

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

3. Statement by the Secretariat

3. Mr DE VEL, Director of Legal Affairs, addressed the members of the CAHDI on behalf of the Secretary General of the Council of Europe. He referred to the important developments that had taken place since the last meeting of the CAHDI in March and stressed the importance that the Secretariat attached to the Committee and its activities.

4. He also welcomed the presence of the representatives of Japan, Mr KANEHARA and of the United States of Mexico, Ambassador RODRIGUEZ ARRIAGA, who were participating in the CAHDI for the first time.

5. As the members of the CAHDI had unanimously pointed out on several occasions, the Committee was a unique forum where the legal advisers of the Ministers of Foreign Affairs of Council of Europe member States could exchange and possibly coordinate their opinions in the field of public international law, to the application and development of which they contributed.

6. From this standpoint, the CAHDI was irreplaceable and constituted the only truly pan-European forum for such activities. This was why the role of the CAHDI should be consolidated and extended in the future. Mr De Vel informed the meeting of the Secretariat's willingness to do its utmost to ensure the success of the activities in which the CAHDI was involved.

7. In 1998 the CAHDI had made considerable efforts in the implementation of important activities which were being closely followed by friendly Organisations. Obvious progress had been made in the activity on reservations to international treaties which, thanks to the impetus given by Ambassador CEDE, had become a model of intergovernmental co-operation and co-operation between the Secretariats of international Organisations. In addition, the preparation of a report on the Council of Europe Pilot project on State practice relating to State succession and issues of recognition had permitted the participation of prestigious international law institutes and could, if the Committee so decided, constitute one of the Council of Europe's contributions to the United Nations Decade of International Law which was to end in 1999.

8. New horizons had opened up for the CAHDI as a result of the interesting proposals submitted by the Russian delegation to the Committee of Ministers, the discussion of which, notably with regard to the CAHDI's terms of reference, would be continued at the meeting. These proposals, as the CAHDI had indicated in its Interim Opinion for the attention of the Committee of Ministers, had led to a far-reaching and useful exchange of views and had triggered an on-going process of self-examination aimed at improving the CAHDI's efficiency and its capacity to respond to the needs and requests of member States and the Committee of Ministers.

9. These proposals had also inspired the CAHDI to decide to change the format and content of its agenda in order to be able to hold in-depth discussions on one or two important subjects relating to public international law which would constitute a major item of the agenda. At this meeting the CAHDI was to examine the European Convention on State Immunity and it was to be hoped that other steering committees and committees set up under Council of Europe

conventions would undertake, as the CAHDI had proposed to the Committee of Ministers, the examination of the conventions coming within their fields of competence.

10. In accordance with the Committee's instructions, the Secretariat had taken the necessary steps to consolidate the links with the International Law Commission through contacts with its Secretariat. It had thus been possible, as an exception, to obtain the provisional version of the report of the Fiftieth session of the International Law Commission which ended on 14 August, before its official publication. This would permit the members of the CAHDI to examine the results of this session and perhaps adopt positions with respect to texts produced by the ILC, as desired by the members of the International Law Commission themselves. It was desirable that the strengthening of the links with the ILC should be pursued to the fullest possible extent.

11. The Secretariat had also established contact with the Secretariat of the Council of the European Union aimed at facilitating the implementation of the European Observatory of reservations to international treaties, if the CAHDI should decide to pursue this. The participation of Mr JACQUÉ in the second meeting of the DI-S-RIT which had preceded this meeting of the CAHDI, also bore witness to the increasing consolidation of the links of co-operation between the European Union and the Council of Europe, which gave grounds for satisfaction.

12. Document CAHDI (98) 19 contains all the developments concerning the Council of Europe's treaties since the last meeting of the CAHDI. Attention should nevertheless be drawn in particular to the following:

- The European Convention on Extradition (1957) (ETS 24) had been signed and ratified by Albania on 19 May 1998 and its Protocol (ETS 86) by Albania and Moldova respectively on 19 May 1998 and 26 June 1998,
- The European Convention of Mutual Assistance in Criminal Matters (1959) (ETS 30) had been signed by Albania on 19 May 1998,
- The European Convention on the Transfer of Proceedings in Criminal Matters (1972) (ETS 73) had been signed by Albania on 19 May 1998,
- The European Convention for the protection of animals kept for farming purposes (1976) (ETS 87) had been signed by the Czech Republic on 24 June 1998
- The Convention on the conservation of European wildlife and natural habitats (1979) (ETS 104) had been signed by Ukraine on 17 August 1998,
- The European Outline Convention on transfrontier co-operation between territorial communities or authorities (1980) (ETS 106) had been signed by Bulgaria and the Czech Republic respectively on 2 June 1998 and 24 June 1998,
- The Convention on the transfer of sentenced persons (1983) (ETS 112) had been signed by Albania on 19 May 1998,
- The European Convention on spectator violence and misbehaviour at sports events and in particular at football matches (1985) (ETS 120) had been ratified by Romania on 19 May 1998,
- The Convention for the protection of the architectural heritage of Europe (1985) (ETS 121) had been signed by the Czech Republic on 24 June 1998,
- The European Charter of local self-government (1985) (ETS 122) had been signed by Albania on 27 May 1998 and the Czech Republic on 28 May 1998,
- The European Convention on transfrontier television (1989) (ETS 132) had been ratified by Latvia and Austria, respectively on 26 June 1998 and 7 August 1998,

- The Anti-Doping Convention (1989) (ETS 135) had been signed by Ukraine on 2 July 1998,
- The European Convention on the protection of the archaeological heritage (revised) (1992) (ETS 143) had been ratified by Andorra on 26 June 1998 and Portugal on 5 August 1998 and signed by Ukraine on 2 July 1998,
- The Convention-cadre for the protection of national minorities (1995) (ETS 157) had been ratified by Armenia and Russia respectively on 20 July 1998 and on 21 August 1998,
- The European Convention on the exercise of children's rights (1996) (ETS 160) had been signed by Slovakia on 22 June 1998,
- The European Social Charter (revised) (1996) (ETS 163) had been ratified by Sweden on 29 May 1998,
- The Convention for the protection of human rights and dignity of the human being with regard to the application of biology and medicine: convention on human rights and biomedicine (1997) (ETS 164) had been signed by the Czech Republic on 24 June 1998,
- The European Convention on nationality (1997) (ETS 166) had been ratified by Slovakia on 27 May 1998.

13. There had been other important developments concerning the work of the Committee of Wise Persons which had completed its report for the attention of the Committee of Ministers. The Committee of Wise Persons had stressed the very important role of legal activities and in particular the existing system of conventions. Regarding the respect of the commitments entered into by member States, the Committee expressed its hope that the Secretariat would be able to express opinions more readily.

14. In addition, the Committee of Ministers had decided to extend the co-operation and assistance programmes, known collectively as "ADACS", to all member States and to continue the monitoring of member States' compliance with their commitments, which at this stage concerned the functioning of the legal systems in member States.

15. This meeting of the CAHDI was particularly important and its agenda particularly full. The CAHDI had to elect a new Chair and a new Vice-chair, and Ambassador SZENASI was to be thanked for his work as Chair, as was Ambassador CAFLISH, Vice-chair of the CAHDI, who had recently been elected judge in the Court of Human Rights.

16. The CAHDI would also have to decide on the implementation of the European Observatory of reservations to international treaties, approve new terms of reference and possibly also approve terms of reference for the Group of Experts responsible for assisting the CAHDI in the implementation of its activities.

17. In addition, the CAHDI had to examine and possibly approve the report on the Pilot Project and decide whether it should be sent, through the Secretary General, to the United Nations as part of the Council of Europe's contribution to the United Nations Decade of International Law.

18. Lastly, the CAHDI might take very important decisions as to its future role. Thus, besides the modification of its terms of reference, it could decide to adopt a position concerning texts adopted in other fora, and in particular the International Law Commission.

19. Mr De Vel concluded by wishing every success to the members of the Committee in the important activities the Committee was implementing.

B. ONGOING ACTIVITIES OF THE CAHDI

4. Decisions of the Committee of Ministers concerning the CAHDI:

a. Follow-up to the Interim Opinion adopted by the CAHDI at its 15th meeting on the proposals by the Delegation of the Russian Federation on the CAHDI

20. At its 15th meeting, the CAHDI held an exchange of views on the proposals of the Russian Federation presented to the Committee of Ministers, on 16 December 1997, aimed at modifying 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 the ongoing work of the Organisation, in particular that of the Committee of Wise Persons. The Russian proposals were: 1) the preparation twice a year of a report for the attention of the Committee of Ministers, on topical issues of public international law ; and 2) the preparation of an inventory of all Council of Europe Conventions.

21. At the end of the discussion the Secretariat was asked to prepare a draft Interim Opinion and distribute it to the members of the CAHDI for approval by written procedure¹. The Secretariat mailed the draft Interim Opinion on 12 March 1998. After approval the Interim Opinion was transmitted to the Committee of Ministers with the report of the 15th meeting. In this Opinion the CAHDI informed the Committee of Ministers that it was to continue the examination of its terms of reference in order to determine whether they should be modified or not and that it would be in a position to adopt a position on this subject at its 16th meeting.

22. The CAHDI examined a draft Final Opinion for the attention of the Committee of Ministers prepared by the Secretariat.

23. The Croatian delegation stressed the importance of the Russian Federation's proposals which were particularly important for the countries in transition in so far as it was of the greatest use to indicate the importance of the Council of Europe's system of conventions and the relative importance of the different conventions.

24. The CAHDI amended and approved the Final Opinion for the attention of the Committee of Ministers, which appears in Appendix III to the report, and instructed the Secretariat to transmit it to the Committee of Ministers.

b. Opinion of the CAHDI on paragraph IV of the preliminary draft Declaration on the occasion of the 50th anniversary of the Universal Declaration of Human Rights

25. The preparatory Committee for the Colloquy to be held on the occasion of the 50th anniversary of the Universal Declaration of Human Rights had prepared a preliminary draft Declaration of the Council of Europe for the 50th anniversary of the Universal Declaration of Human Rights. In the course of the examination of this preliminary draft, the Committee of Ministers Rapporteur Group on Human Rights (GR-H), at its meeting of 3 September 1998, approved the proposal to transmit this preliminary draft Declaration to the *Ad hoc* Committee of Legal Advisers on Public International Law (CAHDI) for consultation on paragraph IV of the provisions of this text². In addition it pointed out that it was of the opinion that this question should certainly be taken up in the Declaration; however, the Group considered it necessary to consult the CAHDI as to the precise wording of this paragraph.

26. Paragraph IV of the preliminary draft Declaration calls on member States of the Council of Europe to support general comment No. 26 (61) adopted on 29 October 1997 by the Committee for Human Rights, which affirms that the International Covenant on Civil and

¹ See the meeting report, document CAHDI (98) 9, para. 32-33. The Interim Opinion appears in Appendix II to the report.

² See document CAHDI (98) 12 Add.

Political Rights is not subject to denunciation or withdrawal and calls on all governments to refrain from taking or supporting such steps.

27. General comment No 26 (61) on matters concerning the continuity of the obligations accepted by virtue of the International Covenant on Civil and Political Rights had been adopted by the Committee of Human Rights on the basis of paragraph 4 of article 40 of the International Covenant on Civil and Political Rights³.

28. The CAHDI examined a draft Opinion of the CAHDI on paragraph IV of the preliminary draft Declaration prepared by the Secretariat on the base of a common position adopted by the member States of the European Union on the occasion of the denunciation by North Korea of the International Covenant on Civil and Political Rights.

29. The CAHDI agreed on the principle that in so far as States are the masters of the treaty, the unilateral denunciation of a treaty was possible only with the agreement of all the States Parties. In this connection the Committee pointed out that article 54 of the Vienna Convention on the Law of Treaties was of a general nature, whereas article 56 concerned certain specific categories of treaty.

30. The Committee also agreed that it was preferable to make reference to the Opinion of member States of the Council of Europe rather than to the Opinion of the United Nations Committee of Human Rights.

31. The CAHDI amended the draft Opinion and adopted the Opinion, which appears in Appendix IV of the report, and instructed the Secretariat to transmit it to the Committee of Ministers Rapporteur Group on Human Rights (GR-H) as requested.

c. Draft specific terms of reference of the CAHDI for 1999-2000

32. The Secretariat presented preliminary draft specific terms of reference and explained the amendments that had been incorporated: possibility of coordination of the positions of member States and possibility for the steering and *ad hoc* committees of the Council of Europe to seek the opinion of the CAHDI on matters of public international law.

33. The Danish delegate referred to the mention of the European Committee on Legal Cooperation (CDCJ), in the present terms of reference of the CAHDI. The Secretariat explained that this reference appeared because until 1992 the CAHDI (under another name) had functioned as Committee subordinate to the CDCJ. In 1992 the CAHDI had become an *ad hoc* Committee and had been placed directly under the authority of the Committee of Ministers.

34. The delegations of Belgium, Croatia, Denmark, Greece, Ireland, Italy, the Czech Republic, Sweden and Switzerland were in favour of the CAHDI going a step further and, where appropriate, trying to coordinate its stances with a view to giving a more precise content to its terms of reference, considering that a certain degree of coordination was desirable and would promote the evolution of national practices in this field. The United Kingdom delegation nevertheless stated that the CAHDI should serve above all for the exchange of views.

35. Some delegations pointed out that the fact of giving the steering and *ad hoc* committees of the Council of Europe the possibility of referring matters to the CAHDI for legal opinion could give rise to practical problems, in particular the overloading of the Committee's agenda.

36. The Secretariat stated that it was a matter of giving this possibility only to the most important committees of the Council of Europe which were placed directly under the authority of the Committee of Ministers and that the number of referrals would probably not exceed one or two per year. In addition, the CAHDI could in any event judge the appropriateness or the legitimacy of the referrals for opinion addressed to it. It stated that the purpose of the modification of the terms of reference was to streamline the procedures for consultation between committees which at present required the intervention of the Committee of Ministers.

³ United Nations document, code CCPR/C/21/Rev.1/Add.8/Rev.1, of 8 December 1997

The example of the Steering Committee for Human Rights, which had had to request the intervention of the Rapporteur Group on Human Rights in order to refer a matter to the CAHDI for an opinion showed the value of giving such committees direct access to the CAHDI.

37. The CAHDI approved the specific draft of terms of reference of the CAHDI for 1999-2000, which appear in Appendix V of this report, and instructed the Secretariat to transmit it to the Committee of Ministers for adoption.

d. Draft specific terms of reference of the Group of Rapporteurs on reservations to international treaties (DI-S-RIT) (1999)

38. The Danish delegate pointed out that the work of the CAHDI in the field of reservations to international treaties, in particular in terms of raising the awareness of delegations, was one example of the vital subjects with which the Committee's activity should be concerned, and which helped make the Committee more operational, as desired by the Committee of Ministers.

39. The CAHDI examined preliminary draft terms of reference submitted by the Group of Specialists on reservations to international treaties (DI-S-RIT) (see point 6. below).

40. The CAHDI approved draft specific terms of reference for the Group of Experts on reservations to international treaties (DI-E-RIT) for 1999 which appear in Appendix VI to this report and instructed the Secretariat to transmit it to the Committee of Ministers for adoption.

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

41. The CAHDI examined the draft report on the Pilot Project of the Council of Europe on State practice relating to State succession and issues of recognition prepared under the aegis of the CAHDI by the T.M.C. Asser Institute (Dr Olivier Ribbelink), the Max-Planck Institute for comparative public law and international law (Dr Andreas Zimmermann) and the Erik Castren Institute for international law and Human Rights (Profs. Martti Koskenniemi and Jan Klabbers)⁴.

42. The CAHDI thanked the consultants for the preparation of the draft report and the Secretariat for follow-up to the activity on the Pilot Project which was an exemplary way of giving specific content to the activity of the CAHDI and ought to be pursued in other fields of activity of the CAHDI.

43. Some delegations pointed out factual errors in the draft report and drew the attention of the consultants to affirmations which could give rise to erroneous interpretations of State practice.

44. Several delegations announced that they wished to submit comments concerning the draft report.

45. The Italian delegate said it would be useful to regularly update the Pilot Project information. Other delegations also wished to make contributions concerning the Pilot Project of the Council of Europe.

46. The representative of the European Commission pointed out that the draft report made reference to the practice of European States as members of the European Union and reported that the European Commission wished to consult European Union member States on the matter.

47. The delegates of Germany and the United Kingdom said it was desirable that the report on the Pilot Project should be published as soon as possible and that it would not be possible at this stage to add new national contributions in so far as the activity on the Pilot Project had been completed in 1996 and the draft report was a follow-up to the Project, i.e. a research exercise on the initiative and under the aegis of the CAHDI but without necessarily reflecting the opinion of the Committee.

⁴ See document CAHDI (98) 13.

48. The CAHDI decided that delegations could send comments to the Secretariat up 30 October 1998, and instructed the Secretariat to transmit these comments to the consultants. The consultants were invited to take account of these comments and to incorporate them into the report as far as possible so that the views expressed in the report were those of the authors and not those of the CAHDI, nor of its member States.

49. The CAHDI approved the report and its publication, subject to the correction of factual errors and incorporation of delegations' comments. It also stated that the report could appear on the agenda of the next meeting of the CAHDI at the request of a delegation. Lastly, the CAHDI agreed that the report should constitute a complementary contribution of the Council of Europe to the United Nations Decade of International Law.

6. The law and practice relating to reservations to treaties and interpretative declarations concerning international treaties: 2nd meeting of the Group of Specialists on reservations to international treaties (DI-S-RIT), Paris, 14-16 September 1998⁵

50. Ambassador CEDE (Austria), Chairman of the Group of Specialists on reservations to international treaties (DI-S-RIT) informed the CAHDI about the second meeting of the DI-S-RIT which was held in Paris, from 14 to 16 September 1998⁶.

51. Mr PELLET, United Nations Special Rapporteur and member of the International Law Commission had reported to the Group on the ILC's work on reservations to international treaties. Mr IMBERT, Council of Europe Director of Human Rights had made a statement to the Group concerning reservations to international treaties. Lastly, Mr JACQUE, Director of the Legal Service of the General Secretariat of the Council of the European Union, had presented the activities of the Working Group on public international law (COJUR) of the Council of the European Union in the field of reservations to international treaties. The various presentations were followed by very fruitful exchanges of views.

52. At this meeting the Group of Specialists had examined preliminary draft model objection clauses to reservations to international treaties considered to be inadmissible submitted by the delegation of Sweden. In addition, it had examined a note submitted by the Netherlands delegation concerning the main problems connected with the formulation of reservations to international treaties. The Group had instructed the Secretariat to prepare a preliminary draft recommendation of the Committee of Ministers on the basis of these two texts (the first in the form of an Appendix to the recommendation and the second in the form of an explanatory report of the recommendation) for consideration at the next meeting of the Group.

53. The Group had proceeded to a pilot experiment of observation of reservations to international treaties and had concluded that such an exercise would be useful. It was therefore agreed to propose its implementation by the CAHDI. In this connection it had decided to propose to the CAHDI the continuation of the activity of the Group of Specialists (renamed Group of Experts) in order to assist the CAHDI in the implementation of the activity on reservations to international treaties in general and on the observation of reservations to international treaties in particular.

54. The Austrian delegate invited the CAHDI and the Group of Experts on reservations to international treaties to hold their next meeting Vienna.

55. The Chairman thanked the delegation of Austria for its kind invitation.

⁵ See the working documents of the DI-S-RIT available from the Secretariat. The Finnish delegation requested that the document "Some observations on the State practice concerning objections to reservations made to the Convention on the elimination of all forms of discrimination against women and the convention on the rights of the child (document CAHDI (98) 11) should be submitted to the CAHDI for information. The Chair of the Group had also instructed the Secretariat to submit to members of the CAHDI the communication from Mr IMBERT, Director of Human Rights, to the Council of Europe concerning reservations to international treaties (document CAHDI (98) 23).

⁶ See the meeting report, document DI-S-RIT (98) 10.

56. The delegation of Sweden thanked Ambassador CEDE for his excellent work and said it was open minded about the structure of the observatory of reservations.

57. The delegation of Germany stressed the fundamental importance of the subject of reservations and stated that, from the standpoint of the Council of Europe, it was essential to examine and observe the reservations formulated to the human rights treaties, including the Council of Europe treaties and the universal treaties with respect to which reservations were usually formulated for religious reasons. Germany often objected, but did not subscribe to the thesis of separability. State practice relating to objections would make it possible to give clear messages to States on the correct way to formulate reservations to treaties, which constituted undeniable progress. In this context, it was essential to reach a certain equilibrium and the position of the Sixth Committee of the United Nations did not seem to be able to manage this.

58. The delegation of Turkey made a declaration concerning the activity of the CAHDI on reservations to international treaties and expressed reservations as to the aim pursued, pointing out that the Vienna Convention on the Law of Treaties worked satisfactorily and that a more rigid approach to reservations might tend to reduce the number of States signing international treaties in the future.

59. The CAHDI agreed to continue the activity on reservations to international treaties, including its acting as European observatory of the reservations to international treaties, and instructed the Group of Experts on reservations to international treaties to report to it at the next meeting. In this connection it should be noted that the CAHDI had approved the draft specific terms of reference for a Group of Experts on reservations to international treaties (see point 4 above and Appendix VI to the report).

7. Consideration of conventions under the responsibility of the CAHDI: Examination of the Convention European on State Immunity (ETS 74)

60. The CAHDI began the examination of the European Convention on State Immunity (N° 74 in the European Treaties Series) on the basis of the document prepared by the Secretariat⁷.

61. The Belgian delegate stated that Belgium had been Party to this Convention since May 1975 and informed the members of the CAHDI about its experience, which was rather limited because very few States were Parties to it. A Belgian court had applied it in one case. She stated that the aim of the Convention was not quite reached because of its article 32⁸. It clearly emerged from the preparatory documents of the Convention that the privileges of diplomats were functional. They were therefore not equivalent to State immunity.

62. The delegate of the United Kingdom stated that his country was also Party to the Convention and that no particular problems had resulted from its application. He nevertheless pointed out that the moment chosen by the CAHDI for considering its application was both good and bad in so far as the International Law Commission was at present examining the question of State immunity. In his opinion, the European Convention constituted the bench mark for any future convention in the field which might be proposed by the ILC, and the United Kingdom was not in favour of any extension to the immunity of States. He noted that few States were Parties to the Convention and that the harmonisation of these rules at European level had not been possible. It was therefore even less likely that it would be possible at the universal level, which cast doubts on the outcome of the work being done by the ILC on this issue.

⁷ See document CAHDI (98) 14. For an overview of the legal texts coming under the responsibility of the CAHDI see document CAHDI (98) 16.

⁸ Article 32 of the European Convention on the immunity of States (ETS 74):

Nothing in the present Convention shall affect privileges and immunities relating to the exercise of the functions of diplomatic missions and consular posts and of persons connected with them.

63. He noted that three applications had been made before the European Commission of Human Rights concerning the compatibility between this convention and the European Convention of Human Rights⁹. It was thus possible that the European Court of Human Rights would have pronounced its judgement on these cases before the ILC had finished preparing its draft.

64. The Swiss delegate informed the CAHDI that in Switzerland there was no law on immunity, but the Federal Tribunal had developed case law in this field. The Convention had had a contradictory influence with many reversals of precedent. It continued to develop according to its own criteria. She concluded that the Convention had not produced the expected results and that it had to be admitted that there was a certain uncertainty of the law in this field. It would be desirable to concentrate on the work under way in the ILC, because the resulting text would be of a universal nature, which would in principle permit greater certainty of the law. It nevertheless had to be admitted that agreement would not be easy and that the very sensitive subject dealt with by article 32 of the European Convention had not been able to find a satisfactory solution.

65. The delegation of Sweden stated that Sweden had participated very actively in the preparation of the Convention but the final result had not permitted it to ratify it. He expressed doubts as to the usefulness of a regional convention and announced therefore that Sweden did not envisage acceding to it at present, while hoping that current developments on the international scene would permit a more favourable solution to be envisaged.

66. The CAHDI concluded the discussion by stressing the interest of continuing this exercise with other conventions under the responsibility of the CAHDI. Regarding the European Convention on State Immunity, the CAHDI concluded that there had been few ratifications and that the last accession dated from 1990 (Germany). Some States Parties had experienced no particular difficulties in the application of the Convention, while elsewhere its application had given rise to problems of compatibility with the European Convention of Human Rights. Other States based themselves more on customary law of and preferred a network of bilateral treaties rather than a regional convention.

⁹ The information given to the members of the CAHDI in this context is confidential and does not appear in the meeting report.

C. GENERAL ISSUES OF PUBLIC INTERNATIONAL LAW

8. Depositories of treaties

67. Nothing to report. The CAHDI nevertheless decided to keep this item on the agenda of its next meeting.

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

68. The delegate of Switzerland informed the CAHDI of the Meeting of the States Parties to the Geneva Conventions convened to examine the general problems of the implementation of the IVth Geneva Convention, to be held in Geneva.

69. Meeting in emergency session, the United Nations General Assembly had recently adopted a series of resolutions on the implementation of the IVth Geneva Convention in the Palestinian territories occupied by Israel. It had addressed recommendations to the States Parties to the Convention, as well as to Switzerland as Depositary of this instrument. In particular it had recommended States Parties to the Convention to convene a conference on the measures to be taken to impose the Convention in the Palestinian occupied territories.

70. Following on from these resolutions, Switzerland had undertaken to consult the States Parties as well as the States and organisations concerned. It had proposed to Israel and to the Palestine Authorities a package of two distinct and complementary measures. In so doing, it wished to contribute to a real improvement in the respect of humanitarian law on the ground, avoid the politicisation of this law and support the Middle East peace process.

71. The first of these measures consisted in the convocation of a meeting of Israeli and Palestinian experts, in the presence of a ICRC delegation, to deal specifically with the problems of implementation of the IVth Convention in the Palestinian territories occupied by Israel. This meeting was held in Geneva from 9 to 11 June 1998.

72. The second measure was the proposal submitted to the Parties to the IVth Geneva Convention leading to the holding of a meeting of experts this autumn to examine the problems of implementation of the Convention in general, and in the occupied territories in particular. The meeting would be held from 27 to 29 October 1998 in the International Conference Centre in Geneva.

73. As proposed, the meeting would be examining all the problems encountered in the implementation of the IVth Convention, and in particular the implementation of the provisions devoted to occupied territories. It was intended to help strengthen dialogue between States on the problems of implementing international humanitarian law and ways of solving them, with the aim of reducing the number of cases in which this law was not respected. The meeting would be of an informal nature, taking place without rules of procedure, and would be chaired by a representative of the Depositary. The debates would be summarised in a report by the Chair, which would be transmitted to the States Parties to the Convention and to the Secretary General of the United Nations. As proposed, the meeting would not be dealing with concrete situations or specific problems in particular States or regions, but would deal with general issues of interest to States Parties in a general way.

10. Draft Statute of an International Criminal Court (ICC)¹⁰

74. The Chairman thanked the Italian delegate for the welcome extended to the delegations which had participated in the Diplomatic Conference for the creation of the International Criminal Court and for the excellent organisation of this conference, which had been a success.

75. The Italian delegate informed the members of the CAHDI that the Conference had been held on 16 and 17 July. The Statute of the Court had been approved by 120 votes for, 7 votes against and 20 abstentions. In addition, 22 States had signed the Statute immediately and 47 States had signed the final Act. Since then, the Statute had been signed by 4 other States: Iceland, Norway, Belgium and Chile. The Italian Government was depositary of the texts until 17 October 1998. A follow-up meeting would be held in Rome on 7 October 1998 for countries interested in signing, those that participated to the Diplomatic Conference in July and those that had signed the final Act. It was expected that 10 States would sign the Statute of the ICC this meeting, which would also be concerned with new initiatives concerning the rules of the ICC.

76. The delegate of Slovakia proposed that this item should appear on the agenda of the next meeting of the CAHDI under the heading "Statute of Rome of the International Criminal Court".

77. The CAHDI decided to keep this item on the agenda of the next meeting.

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

78. The delegate of Romania informed the members of the CAHDI that Romania had adopted a law on co-operation with the Tribunals created by United Nations Security Council Resolutions 827 (1993) and 955 (1994). This text had been transmitted to the Government of the Netherlands.

12. Activity of the Sixth Committee of the General Assembly of the United Nations and the International Law Commission (ILC)

79. The CAHDI examined the report of the International Law Commission on the work of its 50th session held in Geneva and New York respectively from 20 April to 12 June and from 27 July to 14 August 1998¹¹, and the summary report prepared for the CAHDI¹² by Professor SIMMA, member of the ILC.

80. The CAHDI asked the German delegate to thank Professor Simma for his report, which was an invaluable guide for understanding the work of the ILC.

81. The Italian delegate informed the CAHDI that Mr FERRARI BRAVO had ceased to be a member of the ILC as he had been appointed judge in the European Court of Human Rights. Italy therefore intended to put forward a new candidate at the next elections.

82. Concerning links with the ILC, the CAHDI expressed its satisfaction at the improvement in relations with the ILC, one example of which was the fact that for the first time, the Committee had been able to obtain the report of the ILC session in good time and even before its publication.

a. ILC working methods

83. The Italian delegate said he was very happy that the rapporteurs were assisted by working groups because this made for greater efficiency. Furthermore, links between collegial bodies, such as the CAHDI and the ILC, and those between the Sixth Committee and the ILC, were vital and should be strengthened.

¹⁰ For information on the International Criminal Court, see site internet www.un.org/icc/

¹¹ Thanks to contacts with the Secretariat of the International Law Commission, the Secretariat was able to obtain a provisional version of this report before its publication (document CAHDI (98) 18).

¹² Document CAHDI (98) 20. The views expressed in this report of those of its author alone.

84. The German delegate raised the question sending to the ILC observations on its current work. There were two possibilities: the Sixth Committee and the submission of written observations to the Secretariat of the ILC. As for other possibilities, it appeared that the CAHDI could not make detailed observations on the work of the ILC because this was materially impossible.

85. In this connection, the delegate of Slovakia pointed out that the special rapporteurs did not wish to receive verbatim transcriptions of the contributions made to the Sixth Committee but rather analytical summaries prepared by the Secretariat.

b. Current activities of the ILC

State responsibility

86. The Italian delegate considered that the discussion on the distinction between international crimes and international delicts should be resumed.

87. In this connection the German delegate pointed out that the concept of State crime should be examined in depth in the light of the result of the work of the ILC, according to which it was individuals who were the authors of crimes.

88. The Greek delegation informed the CAHDI that he had sent observations to the special Rapporteur. He also agreed with the Italian delegate that the distinction between crime and delict was of vital importance.

89. The Slovak delegate also proposed maintaining a fundamental distinction between crime and delict according to the seriousness of the act.

90. The delegates of Italy and Germany agreed on the fact that it was necessary to focus on prevention because the obligation of reparation was doubtful.

Reservations to international treaties

91. The Italian and Greek delegates considered that the work of the ILC was much appreciated but that the results should be a guide for States, which was not the case at present.

92. The Swedish delegate pointed out that any observations concerning the preliminary conclusions of the ILC on reservations to international treaties should be addressed directly to the special Rapporteur in the form of a statement on the occasion of the meeting of the Sixth Committee¹³.

Nationality of legal persons in relation to the succession of States

93. The German delegate raised the question of the nationality of legal persons which could give rise to many problems if the ILC decided to deal with this question. The Swedish thought that this subject was not particularly useful.

94. The Greek delegate pointed out that the proposed solutions were inspired by the principles of domestic law rather than international law.

95. The German and Greek delegations informed the CAHDI that they would submit written observations to the Special Rapporteur, Mr Mikulka.

96. The Chairman concluded by saying that the exchanges of views had been most useful and that this point should therefore remain on the agenda of the next meeting.

¹³ Cf. footnote 35, Doc. UN A/C.N.4/491.

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

97. The Chairman of the CAHDI thanked the delegations of the Netherlands and the Russian Federation for their efforts in the organisation of events for celebrating the Centennial of the first International Peace Conference and for the closure of the United Nations Decade of International Law.

98. The CAHDI then discussed the preliminary draft special reports on the peaceful settlement of disputes prepared by Mr Orrego Vicuña and Mr Pinto (document CAHDI (98) 15), the development of international law relating to disarmament and arms control since the first Hague Peace Conference in 1899 prepared by Mr Hans Blix (document CAHDI (98) 21) and international humanitarian law and the laws of war prepared by Mr Christopher Greenwood (document CAHDI (98) 22)¹⁴.

99. The Netherlands delegate stated that the last preliminary draft report cited was not yet ready. Since it had not been possible to communicate these reports to the delegations of the CAHDI until very late, he suggested that the delegations should send their comments directly to the delegations of the Netherlands and the Russian Federation by the end of October 1998. On the basis of these comments a revised version of the draft report would be prepared and sent to the members of the CAHDI for discussion at the next meeting in March 1999. It was expected that the rapporteurs would finalise the preparation of the reports in January 1999. However delegations' comments would still be useful even if they arrived after the meeting of the legal advisers. In addition, the reports had been discussed by the International American Commission of Jurists of the Organisation of American States (OAS) last August and would be discussed by the Asian African Legal Consultative Committee (AALCC) in February 1999.

100. The Italian delegate proposed the inclusion in the Centennial events of the examination of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict in view of the results produced by the Convention for the protection of the world cultural and natural heritage, of 1972¹⁵. This proposal resulted from an initiative by Austria and Italy aimed at preventing illegal trafficking in works of art in situations of conflict, enlarging the special protection system, developing the control mechanism and improving the balance between "military necessity" and the protection of cultural goods.

101. The German delegate supported the Italian delegation's proposal concerning the preparation, in the context of the Conference to be held in the Hague, of an additional protocol on the protection of cultural goods in time of war, which he hoped would be a success. Regarding the commemoration programme, he thanked the delegations of the Netherlands and the Russian Federation, whose Queen and Tsar had encouraged the holding of the Hague Conferences a hundred years ago.

102. The Netherlands delegate expressed doubts as to the celebration of a Diplomatic Conference for the revision of the Hague Convention of 1954 on the protection of cultural property in the event of armed conflict, because it was too late to include this.

103. The Finnish delegate informed the members of the CAHDI how he envisaged the examination of the different reports. Contacts had been established with academics and researchers. He was happy with the reports, while admitting he had had doubts at first. New

¹⁴ These documents exist in English only. The titles in the French version of this report are therefore not official. The documents are available on the Internet, where they can be consulted freely on: www.minbuza.nl. For an update on progress concerning these reports see document UN A/C.6/53/10 of 12 November 1998 (original English), with the appended document: *Progress report on the action dedicated to the 1999 centennial of the first international Conference and the closing of the United Nations Decade of International Law*.

¹⁵ The texts of these conventions can be consulted on the internet:

www.unesco.org/general/fre/legal/cltheritage/index.html

paths were proposed: attribution to the International Court of Justice of the role of an international constitutional court, alternative systems for the settlement of disputes, etc.

104. The Norwegian delegate referred to the report on the peaceful settlement of disputes which, in his opinion, demonstrated the usefulness of the exercise. He proposed also considering issues of a political nature in order to find a method that would permit the discussions on the occasion of the events to be as useful and effective as possible. He referred to the proliferation of systems and methods of settling disputes as a shocking situation and wondered about its usefulness and appropriateness in so far as this proliferation could constitute a threat to the unity of the system. The rapporteur stressed the central role of the International Court of Justice. In this connection attention should be given to two elements: the setting up of the Court of Conciliation and Arbitration (set up in the framework of the Organisation for Security and Cooperation in Europe, OSCE) because of the mistrust of certain States, in particular certain republics of the former Soviet Union vis-à-vis of the ICJ and the possible roles of the International Court of Justice in different respects. Thus in the OECD negotiations on multilateral investments, European Union member States refused any attribution of jurisdiction to the ICJ because the European Union did not have access to it. This was a political issue that warranted examination.

105. He said that in this context the CAHDI was a very useful institution. In addition, the Court of arbitration in the Hague was still operational, but it might be asked whether it was useful because the arbitration system in this context was very weak. In conclusion, the big question was: "How to give new vitality to the Permanent Court of Arbitration through eliminating the *ad hoc* arbitration systems whose usefulness was limited?"

106. In this connection, the Chairman observed that adherence to the different systems of arbitration varied account to the State, so that it would be useful to compare them.

107. The Spanish delegate agreed with what the Norwegian delegate had said. The report was extremely useful and would permit the delegations to discuss the unity and the fragmentation of the international law system in so far as the proliferation of tribunals and the attempts to individualise certain fields of international law ran counter to the coherence and importance of international law.

108. In this connection the Italian delegate pointed out that the proliferation of jurisdictions stemmed from the specificity of international law, which resulted in the requirement for specialist judges to sit on the competent bodies.

D. OTHER

14. Election of the Chair and Vice-chair of the CAHDI for a one-year term

109. The Chairman referred to the document prepared by the Secretariat (CAHDI (98) 10) concerning the election of the Chair and Vice-chair of the Committee.

110. The Finnish delegate thanked Ambassador SZENASI for his work as Chairman of the CAHDI and proposed the candidature of Ambassador Dr. HILGER (Germany) who had participated in the work of the Committee since 1991 and constituted an integral part of the institutional memory of the CAHDI.

111. Pursuant to article 17 of Appendix 2 to Resolution of the Committee of Ministers (76) 3, the CAHDI elected Ambassador Dr. HILGER Chair of the Committee for a term of one year expiring on 31 December 1999.

112. The German delegate thanked the members of the CAHDI for the honour done to him by his election. He also thanked in particular the out-going Chair and the Vice-chair for their contribution to the work of the Committee.

113. The delegate of the Czech Republic proposed Ambassador TOMKA (Slovakia) for the post of Vice-chair of the Committee, drawing attention to his excellent work in the Sixth Committee of the United Nations.

114. Pursuant to article 17 of the Appendix 2 to Resolution of the Committee of Ministers (76) 3, the CAHDI elected Ambassador TOMKA Vice-chair of the Committee for a term of one year expiring on 31 December 1999.

115. The Slovak delegate thanked the members of the CAHDI for their show of confidence in him and stated that his last participation in the meetings of the CAHDI before his return in March 1998 dated from 1991.

116. The Irish delegate suggesting drawing the attention of the Committee of Ministers of the Council of Europe to the sexist language of Resolution (76) 3 and proposing that it should be revised.

15. Date, place and agenda of the 17th meeting of the CAHDI

117. Accepting Ambassador CEDE's kind invitation, the CAHDI decided to hold its 17th meeting in Vienna, on 8 and 9 March 1999, subject to the approval of the Committee of Ministers. It also decided to hold the 1st meeting of the Group of Experts on reservations to international treaties (DI-E-RIT) in Vienna, on 5 March 1999.

118. Concerning the agenda for the next meeting of the CAHDI, the Italian delegate proposed the inclusion of an item on the protection of the cultural heritage in the event of armed conflict (see item 13 above).

119. The CAHDI supported this proposal and agreed on the preliminary draft agenda for the 17th meeting as it appears in Appendix VII.

16. Other business

120. The Croatian delegate, Ambassador NICK, informed the members of the CAHDI that he was leaving his functions of Legal Advisor because of retirement. He stressed his appreciation of the Committee and expressed his pleasure at the years of mutual cooperation, support and friendship.

121. The representative of the United States of Mexico thanked the members of the CAHDI for their support and the admission of his country to the CAHDI as an observer. He informed the meeting that similar requests had been made concerning the Council for Cultural Cooperation (CDCC), the European Committee on Legal Cooperation (CDCJ) and the European Committee for criminal problems (CDPC). He expressed his country's interest in making a useful contribution to the work of these committees, and in particular the CAHDI.

122. The Chairman thanked Ambassador NICK for his valuable contribution to the work of the CAHDI and spoke of the importance that the CAHDI attached to the participation of the United States of Mexico.

123. The Chairman closed the meeting of the CAHDI by thanking the members of the Committee for their aid and support, stressing the quite exceptional role of the CAHDI in the framework of the Council of Europe.

124. The CAHDI approved an abridged report for the attention of the Committee of Ministers, which appears in Appendix VIII of this report.

APPENDIX I
LIST OF PARTICIPANTS

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

ANDORRA /ANDORRE: -

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

Mr Georg STILLFRIED, Attaché, Ministry of Foreign Affairs

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

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

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

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

ESTONIA/ESTONIE: Mrs Triin PARTS, Director, Division for International Law, Ministry of Foreign Affairs

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

Mr Erki KOURULA, Ambassador extraordinary and plenipotentiary, Permanent Representative of Finland to the Council of Europe

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

Monsieur Jean-Michel FAVRE, Direction des Affaires Juridiques, Sous direction du droit international public, Ministère des Affaires étrangères

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

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

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

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

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

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

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

NORWAY/NORVEGE: Mr Hans Wilhelm LONGVA, Director General, Department of Legal Affairs, Royal Ministry of Foreign Affairs

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

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

FEDERATION OF RUSSIA/FEDERATION DE RUSSIE: Mr Leonid SKOTNIKOV, Ambassador, Director of the Legal Department, Ministry of Foreign Affairs

Mr Kirill GUEVORGUIAN , Deputy Director, Legal Department, Ministry of Foreign Affairs

SAN MARINO/SAINT-MARIN: -

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

SWEDEN/SUEDE : Mr Lars MAGNUSON, Director General for Legal Affairs, Ministry for Foreign Affairs

SWITZERLAND/ SUISSE : Monsieur Nicolas MICHEL, Directeur de la Direction du droit international public, Département fédéral des Affaires étrangères

Mme Evelyne GERBER, Chef du Service diplomatique et consulaire, Direction du Droit international public, Département fédéral des affaires étrangères

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TURKEY/ TURQUIE : Mme Nehir ÜNEL, Legal Adviser to the Foreign Ministry, Legal Section,

UKRAINE : Mr Vasyi KORZACHENKO, Head of Legal and Treaty Department, Ministry for Foreign Affairs

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

EUROPEAN COMMUNITY /COMMUNAUTE EUROPEENNE

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

OBSERVERS/ OBSERVATEURS

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JAPAN/JAPON : Mr Nobukatsu KANEHARA, Director of Legal Affairs Division, Ministry of Foreign Affairs

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

HOLY SEE/SAINT-SIEGE : Apologised/Excusé

ARMENIA/ARMENIE: Apologised/ Excusé

AUSTRALIA/AUSTRALIE : -

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NEW ZEALAND/ NOUVELLE ZELANDE : -

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

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NORTH ATLANTIC TREATY ORGANISATION / ORGANISATION DU TRAITE DE L'ATLANTIQUE NORD: M. Baldwin DE VIDTS, Conseiller Juridique, Service juridique de l'OTAN

SECRETARIAT

Directorate of Legal Affairs/Direction des Affaires Juridiques

M. Guy DE VEL, Director of Legal Affairs/Directeur des Affaires Juridiques

M. Alexey KOZHEMYAKOV, Head of the Public and International Law Division/Chef de la Division du Droit Public et international

M. Rafael BENITEZ, Secretary of the CAHDI/Secrétaire du CAHDI, Public and International Law Division/Division du Droit public et international

Mme Francine NAAS, Assistant/Assistante, Public and International Law Division/Division du Droit public et international

APPENDIX II**AGENDA****A. INTRODUCTION**

1. Opening of the meeting
 - Report of the 15th meeting of the CAHDI (Strasbourg, 3-4 March 1998) **CAHDI (98) 9**
2. Adoption of the agenda **CAHDI (98) OJ 2 rev. 3**
3. Communication by the Secretariat
 - Statement by Mr Guy DE VEL, Director of Legal Affairs
 - Recent developments concerning Council of Europe treaties **CAHDI (98) 19**

B. ONGOING ACTIVITIES OF THE CAHDI

4. **Decisions of the Committee of Ministers concerning the CAHDI:** **CAHDI (98) 12**
 - **Follow-up to the Interim Opinion adopted by the CAHDI at its 15th meeting on the proposals presented by the Delegation of the Russian Federation on the CAHDI**
 - **Draft-specific terms of reference of the CAHDI for 1999-2000**
 - **Draft-specific terms of reference of the Group of rapporteurs on reservations to international treaties (DI-S-RIT) (1999)**
 - **Opinion of the CAHDI on paragraph IV of the Declaration on the occasion of the 50th anniversary of the Universal Declaration of Human Rights** **CAHDI (98) 12 Add**
5. **Pilot project on the collection and dissemination of documentation on State practice relating to State succession and issues of recognition**
 - Draft report on the Pilot Project of the Council of Europe on State practice relating to State succession and issues of recognition **CAHDI (98) 13**
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, 14-16 September 1998
 - Report of the 1st meeting of the DI-S-RIT (Paris, 26-27 February 1998) **DI-S-RIT (98) 5**
 - Some observations on the State practice concerning objections to reservations made to the Convention on the elimination of all forms of discrimination against women and the Convention on the rights of the child submitted by the Delegation of Finland **CAHDI (98) 11**
 - Summing up of the President of the Group of Specialists on Reservations to International Treaties concerning the Second meeting of the Group (Paris, 14-16 September 1998) **CAHDI (98) 17**
7. **Consideration of conventions under the responsibility of the CAHDI:** **CAHDI (98) 16**

- Examination of the European Convention on State Immunity (ETS 74) **CAHDI (98) 14**

C. GENERAL ISSUES OF INTERNATIONAL PUBLIC LAW

- 8. Depositaries of treaties
- 9. Implementation of international instruments protecting the victims of armed conflicts
- 10. Statute of the International Criminal Court (ICC)
- 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)
 - Report of the International Law Commission on the work of its Fiftieth session (20 April-12 June and 27 July-14 August 1998) **CAHDI (98) 18**
 - Report on the work of the International Law Commission at its Fiftieth session (1998), by Mr. Bruno SIMMA **CAHDI (98) 20**
- 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**
 - Preliminary report on Peaceful Settlement of Disputes **CAHDI (98) 15**
 - Preliminary report on the Development of International Law relating to Disarmament and Arms Control since the first Hague Peace Conference in 1899 **CAHDI (98) 21**
 - Preliminary report on International Humanitarian Law and the Laws of War **CAHDI (98) 22**

D. OTHER

- 14. **Election of the Chair and Vice-Chair of the CAHDI for a one-year term** **CAHDI (98) 10**
- 15. Date, place and agenda of the 17th meeting of the CAHDI
- 16. Other business

APPENDIX III**FINAL 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 16th meeting in Paris on 17-18 September 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 consider the terms of reference of the CAHDI in the light of the exchange of views which took place at the 15th meeting of the CAHDI (Strasbourg, 3-4 March 1998) and the ensuing *Interim Opinion of the CAHDI* on the proposals of the Russian Federation to the Committee of Ministers concerning the role of the CAHDI.

The above-mentioned Russian proposals included: 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. At its 15th meeting the CAHDI had been asked to consider them and their possible influence in the terms of reference of the Committee 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.

FINAL 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 also 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, decided that at 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 that 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.

The CAHDI considers that it is up to the Committee of Ministers to define the criteria which shall guide this exercise. However, the CAHDI would like to propose to the Committee of Ministers that the evaluation be carried out from a practical point of view. Accordingly, the committees concerned should consider the current and future practical importance of the conventions under their scope of responsibility. In the assessment of the practical importance of conventions, the Committees concerned could consider whether in the given case a multilateral regime is preferable to a network of bilateral agreements. Similarly they could consider other legal instruments prepared outside the framework of the Council of Europe which deal with the same subject matter and, if appropriate, carry out a comparison with the Council of Europe's instruments

In this connection, the CAHDI considers that it would be a useful exercise to assess the current suitability of the conventions falling under its field of competence, namely: European Convention for the Peaceful Settlement of Disputes (1957, ETS 23), European Convention on Consular Functions (1967, ETS 61) and its protocols (61A, 61B), 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). Thus, at its last meeting (Paris, 17-18 September 1998) the CAHDI held an exchange of views as the European Convention on State Immunity (1972, ETS 74) and its Protocol (ETS 74A.).

Finally, as regards the terms of reference of the CAHDI, the CAHDI considers that in their current formulation they allow the CAHDI to carry out the tasks entrusted to it. However it agrees that it would be appropriate to reformulate them in view of reflecting more precisely the unique role of the CAHDI, 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. In addition, the CAHDI considers that it would be advisable that Steering and *Ad Hoc* Committees of the Council of Europe are allowed to ask the opinion of the CAHDI on matters of public international law.

Therefore, the CAHDI wishes to propose to the Committee of Ministers that its specific terms of reference be amended along the lines that are mentioned in the paragraph above.

APPENDIX IV

OPINION OF THE AD HOC COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI) CONCERNING PARAGRAPH IV OF THE DECLARATION ON THE OCCASION OF THE 50TH ANNIVERSARY OF THE UNIVERSAL DECLARATION ON HUMAN RIGHTS

Foreword

The *Ad Hoc* Committee of Legal Advisers on Public International Law (CAHDI) held its 16th meeting in Paris on 17-18 September 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 consider the Preliminary-draft Declaration on the occasion of the 50th Anniversary of the Universal Declaration on human rights and to give an opinion on its paragraph IV.

Paragraph IV states that "[The member States of the Council of Europe] support the general comment adopted by the Human Rights Committee on 29 October 1997 affirming that the International Covenant on Civil and Political Rights is not subject to denunciation or withdrawal and call on all governments to refrain from taking or supporting such steps."

OPINION

The CAHDI considers that the International Covenant on Civil and Political Rights (ICCPR) does not expressly permit denunciation or withdrawal. In these circumstances, under public international law, as codified by the Vienna Convention on the Law of Treaties 1969, denunciation or withdrawal is only possible if it was the intention of the parties to permit it or if such a possibility can be implied from the nature of the Treaty.

If that is not the case, denunciation or withdrawal is therefore only possible with the consent of all the States parties.

The CAHDI considers that it was not the intention of the parties that denunciation or withdrawal should be possible nor can it be implied from the nature of the ICCPR for the reasons given in the general comment No. 26 (61) adopted by the Human Rights Committee.

The CAHDI takes note of paragraph IV of the Preliminary-draft Declaration on the occasion of the 50th Anniversary of the Universal Declaration to the effect that unilateral denunciation or withdrawal of the ICCPR is not legally permissible. The CAHDI considers that express reference should be made to the fact that a State party may withdraw from the Covenant by consent of all the parties after consultation with the other contracting States.

Moreover, the CAHDI considers that, in so far as the Declaration states the position of the member States of the Council of Europe, it is advisable that this position be expressed directly by member States rather than endorsing the general comment of the Human Rights Committee.

The CAHDI therefore suggests that paragraph IV of the preliminary-draft Declaration be worded as follows: "[The member States of the Council of Europe] affirm that the International Covenant on Civil and Political Rights is not subject to unilateral denunciation or withdrawal without the consent of all the States parties, and call on all governments to refrain from taking or supporting such steps."

Finally, the CAHDI wishes to propose to the Committee of Ministers that the preliminary-draft Declaration be re-examined in the whole to ensure legal accuracy.

APPENDIX V

DRAFT SPECIFIC TERMS OF REFERENCE

1. Name of committee: *AD HOC COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)*
2. Type of committee: *Ad hoc* committee of experts
3. Source of terms of reference: Committee of Ministers
4. Terms of reference:

Under the authority of the Committee of Ministers, the Committee is instructed to examine questions of public international law, to exchange and, if appropriate, to co-ordinate the views of member States at the request of the Committee of Ministers, Steering Committees and *Ad Hoc* Committees and at its own initiative.

5. Membership of the Committee:
 - a. The Committee is composed of experts by member States, preferably chosen among the Legal Advisers to the Ministries of Foreign Affairs. Travel and subsistence expenses of one expert per member State (two for the State assuming the Chair of the Committee) are borne by the Council of Europe budget.
 - b. The European Community may send representatives, without the right to vote or to a refund of expenses, to meetings of the Committee.
 - c. The following States having observer status with the Council of Europe may send a representative without the right to vote or to a refund of expenses to meetings of the Committee: Canada, Japan, United States of America.
 - d. The following non-member States or organisations may send a representative, without the right to vote or to a refund of expenses (1), to meetings of the Committee:²
 - The Holy See
 - Armenia (1)
 - Azerbaijan (1)
 - Australia
 - Bosnia and Herzegovina (2)
 - Georgia (2)
 - United States of Mexico (3)
 - New Zealand
 - The Hague Conference on Private International Law
 - NATO (3)
 - The Organisation for Economic Co-operation and Development
 - The United Nations and its specialised agencies.
6. Structures and working methods: -
7. Duration: The present terms of reference expire on 31 December 2000.

(1) Except in the case of special provisions application to States marked with *. Adopted: see CM/Del/Concl(91)455/24, Appendix 5, Revised: (1) see CM/Del/Dec(96)557, item 2.1

(2) Subject to their request

(3) see CM/Del/Dec/Act(93)488/29 and CM/Del/Concl(92)480/3

(4) Admitted as observer "for the whole duration of the Committee" by the CAHDI, 15th meeting, Strasbourg 3-4 March 1998

APPENDIX VI

1. Name of committee: GROUP OF EXPERTS ON RESERVATIONS TO INTERNATIONAL TREATIES (DI-E-RIT)
2. Type of committee: Committee of Experts
3. Source of terms of reference: *Ad hoc* Committee of Legal Advisers on Public International Law (CAHDI)

4. Terms of reference:

In the framework of the operation of the CAHDI as a European observatory of reservations to multilateral treaties of significant importance to the international community and of reactions by Council of Europe member States Parties to these instruments, the Group is called upon to:

- a. assist the CAHDI in carrying out the observation procedure;
 - b. examine reservations and interpretative declaration to multilateral treaties of significant importance to the international community;
 - c. bring to the attention of the members of the CAHDI those reservations and interpretative declarations which raise issues as to their admissibility from the point of view of international law and in particular from the human rights perspective;
 - d. prepare reports concerning the admissibility of the above-mentioned reservations and interpretative declarations for the attention of the members of the CAHDI; and
 - e. contribute in any other related manners to the activity of the CAHDI as an European observatory of reservations to international treaties.
5. Membership of the committee:
 - a. All member States may appoint an expert in the Group.
 - b. The Council of Europe bears the travel and subsistence expenses of 7 experts, one from each of the following countries: Croatia, Finland, Netherlands, Romania, Russia, Spain and Turkey.
 - c. The European Community may appoint a representative without reimbursement of expenses nor right to vote.
 - d. Representatives of the following organisations and countries will be invited to take part as observers in the meetings of the Group:
 - The Hague Conference on Private International Law
 - Organisation for Economic Co-operation and Development (OECD)
 - North Atlantic Treaty Organisation (NATO)
 - Armenia
 - Australia
 - Azerbaijan
 - Canada
 - Holy See
 - Japan
 - New Zealand

- United States of America
- United States of Mexico (*)
- The United Nations and its specialised agencies

6. Working structures and methods:

- a. The Group is co-ordinated by the representative of Austria in the CAHDI, Ambassador Franz CEDE.
- b. In carrying out its terms of reference, the Group may have recourse to specialists.

7. Duration: The present terms of reference expire on 31 December 1999.

(*) Admitted following decision of the CAHDI (15th meeting, Strasbourg, 3-4 March 1998).

APPENDIX VII
PRELIMINARY DRAFT AGENDA¹⁶

17th meeting
Vienne, Hofburg, 8-9 March 1999

A. INTRODUCTION

1. Opening of the meeting by the Chairman, Ambassador Hilger
 - Report of the 16th meeting of the CAHDI
 (Paris, 17-18 September 1998) CAHDI (98) 24
2. Adoption of the agenda CAHDI (99) OJ 1
3. Communication by the Secretariat
 - Statement by Mr De Vel, Director of Legal Affairs
 - Recent developments concerning Council of Europe treaties CAHDI (99) 1

B. ONGOING ACTIVITIES OF THE CAHDI

4. **Decisions of the Committee of Ministers concerning the CAHDI** CAHDI (99) 2
 - *Report of the Wise Persons Committee*
5. **The law and practice relating to reservations and interpretative declarations concerning to international treaties:**
 - *[Written version of the] Statement by Mr Imbert, Director of Human Rights of the Council of Europe during the 2nd meeting of the Group of Specialists on Reservations to International Treaties (DI-S-RIT) (Paris, 14-16 September 1998)* DI-S-RIT (98) 9/CAHDI (98) 23
 - a. **1st meeting of the Group of experts on Reservations to International Treaties (DI-E-RIT), Vienna, 5 March 1999**
 - b. ***Preliminary-Draft Recommendation of the Committee of Ministers on Reactions to Inadmissible Reservations to International Treaties*** CAHDI (99) 3
 - c. **European Observatory of Reservations to International Treaties**
 - *List of outstanding reservations to international treaties* DI-E-RIT (99) 4/CAHDI (99) 6
6. **Consideration of conventions under the responsibility of the CAHDI:** CAHDI (99) 4
Examination of the European Convention on Peaceful Settlement of disputes (ETS 23) CAHDI (99) 5

C. GENERAL ISSUES OF INTERNATIONAL PUBLIC LAW

7. Depositories of treaties
8. Implementation of international instruments protecting the victims of armed conflicts

¹⁶ Items which are likely to be the subject of significant discussion appear **in bold**.

9. Developments concerning the International Criminal Court
10. Implementation and functioning of the Tribunals established by UN Security Council Resolutions 827 (1993) and 955 (1994)
11. Protection of Cultural Heritage in times of War
12. The work of the General Assembly of the United Nations and the Sixth Committee, and the International Law Commission (ILC)

- *Report of the 50th Session of the International Law Commission*

CAHDI (99) Inf. 1

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

a. Discussion of Special reports

b. Follow-up to the report on the Pilot Project of the Council of Europe on State practice regarding State succession and issues of recognition

CAHDI (98) 13 rev

D. OTHER

14. **Appointment of the Bureau of the CAHDI**
15. Date, place and agenda of the 18th meeting of the CAHDI
16. Other business

CAHDI (99) 7

APPENDIX VIII
ABRIDGED REPORT OF THE 16th MEETING OF THE CAHDI

1. The *Ad Hoc* Committee of Legal Advisers on Public International Law (CAHDI) held its 16th meeting on 17 and 18 September 1998 in Paris. The meeting was chaired by Ambassador G. SZENASI (Hungary), Chairman of the CAHDI. The list of participants appears in Appendix I and the agenda appears in Appendix II.

2. The CAHDI was informed by the Director of Legal Affairs, Mr G. DE VEL about recent developments concerning the Council of Europe. Moreover, the CAHDI was informed of the decisions taken by the Committee of Ministers concerning the Committee. The CAHDI pursued consideration of the proposals presented by the Russian Federation concerning it, particularly as regards the amendment of its terms of reference. After a fruitful discussion, the CAHDI adopted a final opinion on these proposals (Appendix III) and draft-terms of reference for the period 1999-2000 (Appendix IV).

3. At the request of the rapporteurs' Group on Human Rights (GR-H) of the Committee of Ministers, the CAHDI considered the preliminary draft Declaration on the occasion of the 50th anniversary of the Universal Declaration of Human Rights, and in particular its paragraph IV. At the close of discussions, the CAHDI adopted the opinion which appears in Appendix V. (This opinion has been considered by the GR-H at its meeting 2 October 1998).

4. The CAHDI considered a Preliminary-Draft Report on the Pilot Project of the Council of Europe on State practice relating to State succession and issues of recognition prepared by the Max Planck Institute (Germany), the Asser Institute (Netherlands) and the Castrén Institute (Finland). The CAHDI decided to invite delegations to provide the Secretariat with any comments relating thereto before 30 October 1998. The Secretariat was asked to bring all comments from delegations to the attention of the consultant-experts, to prepare a revised version of the report and to circulate it for approval by written procedure. The CAHDI agreed to the publication of the report unless any delegation would request that the report be examined at the next meeting of the CAHDI. The CAHDI stressed that the views expressed in the analytical chapters and conclusions of the report are those of the authors, and do not necessarily reflect the position of individual States or of the CAHDI as a whole, with regard to the interpretation of the situations and events referred thereto.

Further, the CAHDI agreed that this report should constitute the remaining part of the Council of Europe's contribution to the United Nations Decade of Public International Law. (Following a decision by the Committee of Ministers at the CAHDI's request, Recommendations No. R (97) 10 on debts of diplomatic missions, permanent missions and diplomatic missions with "double accreditation", as well as those of their members, and No. R (97) 11 on the amended model plan for the classification of documents concerning State practice in the field of public international law, have already been forwarded to the Secretary General of the United Nations by the Secretary General of the Council of Europe as part of the Organisation's contribution).

5. The CAHDI was informed about the implementation of the activity on the law and practice relating to reservations to international multilateral treaties currently carried out by the Group of Specialists on Reservations to International Treaties (DI-S-RIT). The Chairman of the Group, Ambassador CEDE (Austria) informed members of the CAHDI about the second meeting of the Group held in Paris, 14 to 16 September 1998. For the second time the Group held an exchange of views with Mr Pellet, Special Rapporteur of the United Nations International Law Commission (ILC) on the subject of reservations, about his third report on reservations and the guidelines currently under preparation in the ILC. The Group held an exchange of views with Mr IMBERT, Director of Human Rights of the Council of Europe on the issue of reservations to human rights treaties. Further, the Group was informed by Mr JACQUE, Director of the Legal

Service of the Secretariat General of the Council of European Union about co-ordination of objections to reservations to international treaties by member States of the European Union.

The Group adopted model-objection clauses to reservations considered inadmissible and considered a paper on key issues regarding reservations at the various stages of the process of concluding treaties and post-ratification stage. The Group decided to propose to the CAHDI the preparation of a draft Recommendation of the Committee of Ministers to member States on the basis of both texts. Moreover, the Group agreed to propose that the CAHDI undertakes the observation of reservations to international treaties. To this extent, the CAHDI agreed and adopted specific terms of reference for the setting up of a Group of experts responsible for assisting it in carrying out the observation procedure in the form of a European observatory of reservations to international treaties (Appendix VI). The CAHDI decided that this item shall be regularly included in the agenda for its meetings.

6. The CAHDI held a thorough exchange of views on the practical importance of the European Convention on State Immunity (ETS 74) and its Protocol (ETS 74A). The CAHDI noted that the Convention on State Immunity and the Protocol thereto have been ratified respectively by 8 and 6 member States and concluded that they have not been ratified by a sufficient number of States to conclude that the Convention is widely applied in Council of Europe member States. The last Council of Europe member State to ratify it -on 15 May 1990- was the Federal Republic of Germany. Since then no other member State has signed it despite the very significant enlargement of the Organisation. The European Tribunal in matters of State Immunity for its part has not yet been called upon to settle any disputes under the European Convention on State Immunity and the Additional Protocol thereto. The Tribunal may therefore be said to exist only potentially.

Some delegations from States' parties informed the CAHDI about their national situation regarding the application of this instrument. In some countries, such as Switzerland, the application of the Convention has resulted in divergent case-law from the Federal Court while in others, such as the United Kingdom, a number of applications have been lodged before the European Commission of Human Rights as regards the compatibility of the application of this convention with the European Convention by the national authorities with the European Convention of Human Rights.

7. In the context of the item concerning the implementation of international instruments protecting the victims of armed conflicts, the CAHDI was informed by the delegate of Switzerland about the upcoming meeting of the States parties to the Geneva Convention, to be held in Geneva 27-29 October 1998 with the aim of discussing general problems concerning the application of the IVth Geneva Convention concerning the protection of civil staff in times of war.

8. The CAHDI took note of recent developments concerning the adoption of the Statute of the International Criminal Court (ICC) in Rome, July 1998.

9. The CAHDI took note of developments concerning the implementation and the functioning of the Tribunals established by UN Security Council Resolutions 927 (1993) and 955 (1994).

10. The CAHDI held an exchange of views on the activities and working methods of the Sixth Committee of the General Assembly of the United Nations and the International Law Commission (ILC). In this connection, the CAHDI welcome the consolidation of the links between the CAHDI and the ILC signified by Mr PELLET's participation in the meetings of the DI-S-RIT. In this context, the CAHDI examined a non-edited version of the Report of the 50th session of the ILC (20 April - 12 June and 27 July - 14 August 1998), obtained as a result of inter-secretariat contacts at the CAHDI's request and a Report on the 50th session of the ILC, prepared by Mr. SIMMA, member of the ILC, for the attention of the members of the CAHDI.

11. The CAHDI was informed about the state of preparations for the Centennial of the First International Peace Conference and the closing of the United Nations Decade of Public

International Law. The Committee held an exchange of views on the preliminary report on Peaceful Settlement of International Disputes and took note of the preliminary report on the Development of International Law relating to Disarmament and Arms Control, and the preliminary report on International Humanitarian Law and Laws of War. These reports can be obtained at www.minbuza.nl/English.

12. In accordance with the provisions of article 17, Appendix II of Resolution (76) 3 of the Committee of Ministers, the CAHDI elected Ambassador HILGER (Germany) and Ambassador TOMKA (Slovakia) respectively Chair and Vice-Chair for one year.

13. In accordance with the Council of Europe's draft budget, subject to the Committee of Ministers' approval, following Ambassador CEDE's invitation, the CAHDI decided to hold its 17th meeting in Vienna, 8 and 9 March 1999 and adopted the preliminary-draft agenda that appears in appendix VI. In addition, the CAHDI decided to hold the 1st meeting of the Group of Experts on Reservations to International Treaties (DI-E-RIT) in Vienna, 5 March 1999, right before the meeting of the CAHDI in order to allow the participation of as many members of the CAHDI as possible in the meeting of the DI-E-RIT.