



Vienna, 09/03/99

CAHDI (99) 14

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

**17<sup>th</sup> meeting, Vienna, 8-9 March 1999**

**List of items discussed and decisions taken**

**A. INTRODUCTION**

1. Following the kind invitation by the Austrian authorities, the *Ad Hoc* Committee of Legal Advisers on Public International Law (CAHDI) held its 17th meeting on 8 and 9 March 1999 in the *Hofburg*, Vienna. The meeting was chaired by Ambassador HILGER (Germany), 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 Head of the Division of Public and International Law about developments concerning the Council of Europe including, in particular, recent changes relating to the European Treaty Series.

3. The CAHDI was further informed about decisions taken by the Committee of Ministers concerning the Committee, including:

a) follow-up given to the CAHDI opinions adopted at its 16<sup>th</sup> meeting on the proposals presented by the Russian Federation concerning the CAHDI and on paragraph IV of the preliminary draft Declaration of the Council of Europe on the occasion of the 50th anniversary of the Universal Declaration of Human Rights (649<sup>th</sup> meeting of the Deputies, Strasbourg, 17 November 1998),

b) adoption of amended specific terms of reference for the CAHDI for the period 1999-2000 and specific terms of reference for the Group of experts on reservations to international treaties (DI-E-RIT) for 1999 (the DI-E-RIT took over the activity of the Group of Specialists on Reservations to International Treaties (DI-S-RIT)) (649<sup>th</sup> meeting of the Deputies, Strasbourg, 17 November 1998),

c) at the proposal of the Group of Rapporteurs on Legal Co-operation (GR-J), *ad hoc* terms of reference were assigned to the CAHDI by the Committee of Ministers, instructing it to give an opinion on Parliamentary Assembly Recommendation 1382 (1998) on Drawing up of a European Code of Conduct on arms sales (661<sup>st</sup> meeting of the Deputies, Strasbourg, 24-26 February 1999).

In this connection, the CAHDI held an exchange of views in the light of the discussion held at the Rapporteurs' Group on Legal Co-operation (GR-J) of the Committee of Ministers. Members of the CAHDI stressed that they had had limited time in which to consider this item. In addition, members of the CAHDI pointed out at significant political components of the Parliamentary Assembly's Recommendation. The CAHDI considered some of the issues, which it understood to be legal issues connected with the request. After expressing a range of differing views, at the outcome of the discussion it agreed on basic elements of the text of an opinion. A draft was prepared by the Secretariat and circulated by written procedure (see Appendix III).

## B. ONGOING ACTIVITIES OF THE CAHDI

4. The CAHDI was informed about the follow-up to the 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 Max Planck Institute For Comparative Public Law and International Law (Germany), the T.M.C. Asser Institute (Netherlands) and the Erik Castrén Institute of International Law and Human Rights (Finland). At its 16<sup>th</sup> meeting (Paris, 17-18 September 1998) the CAHDI had agreed to the publication of the report and stressed that the views expressed therein were those of the authors and did 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. The CAHDI further had agreed that this report should constitute the remaining part of the Council of Europe's contribution to the United Nations Decade of International Law (see 13 below). 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 treaties carried out with the assistance of the Group of Experts on Reservations to International Treaties (DI-E-RIT). The Chairman of the Group, Ambassador CEDE (Austria) informed members of the CAHDI about the first meeting of the Group held in Vienna, 5 March 1999. At the Group's proposal, the CAHDI approved a draft recommendation of the Committee of Ministers on responses to inadmissible reservations to international treaties including in appendix, model-responses to reservations and decided to transmit it to the Committee of Ministers for adoption (Appendix IV). Further to that, the CAHDI was informed about outstanding reservations and declarations to international treaties brought to its attention by the Group.

6. The CAHDI held an exchange of views on the practical importance of the European Convention on Peaceful Settlement of Disputes (ETS 23). The CAHDI noted that this Convention has been ratified by 13 member States and signed by 5. The last Council of Europe member State to sign and ratify was Liechtenstein in 1980. Since then no other member State has signed it despite the very significant enlargement of the Organisation. The CAHDI agreed to consider at its next meeting the European Convention on the abolition of legalisation of documents executed by diplomatic agents or consular officers (ETS 63).

7. The CAHDI agreed to carry out an activity on "Expression of consent by States to be bound by a treaty" with a view to updating a 1987 report on this subject. To that extent, the Committee approved the questionnaire (appendix V) and asked the Secretariat to send it to all delegations and observer States in the CAHDI for reply before 31 December 1999.

8. Further to that, the CAHDI welcomed the setting up, within the Secretariat of the Council of Europe, of a documentation centre on public international law including documentation on the Pilot Project of the Council of Europe on State practice relating to State succession and issues of recognition, the functioning of the CAHDI as a European Observatory of reservations to international treaties, the expression of consent by European States to be bound by a treaty and other activities within the field of competence of the CAHDI. Moreover, the CAHDI welcomed the setting up of a web page relating to the Committee and its activities.

## C. GENERAL ISSUES OF PUBLIC INTERNATIONAL LAW

9. The CAHDI considered implementation of international instruments protecting the victims of armed conflicts. It was informed by the delegate of Switzerland about the follow up to United Nations General Assembly Resolution ES/10/6 adopted on 9 February 1999,

concerning the organisation of an international Conference to be held in Geneva 15 July 1999 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 to the occupied Palestinian territories including Jerusalem.

10. The CAHDI took note of recent developments concerning the adoption of the Rome Statute of the International Criminal Court (ICC).

11. 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) namely of the adoption by the Parliament of Romania of Law 159/1998 relating to co-operation with the International Tribunal for the Prosecution of Persons responsible for serious violations of international humanitarian law committed in the territory of the Former Yugoslavia since 1991.

12. The CAHDI held an exchange of views on the forthcoming Conference at The Hague on a draft second Protocol to The Hague 1954 Convention on protection of cultural property in the event of armed conflict.

13. 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 International Law. In this context, members of the CAHDI held an exchange of views with the authors of the special reports prepared on the occasion of the Centennial of the First International Peace Conference on "The Development of International Law Relating to Disarmament And Arms Control Since the First Hague Peace Conference in 1899" by Mr Blix, "Peaceful Settlement of Disputes: Prospects for the Twenty-First Century" by Mr Greenwood, and on "International Humanitarian Law and the Laws of War" by Mr Pinto.

#### D. OTHER

14. The CAHDI considered a proposal relating to the setting of a Bureau in accordance with the provisions of article 8, Appendix II of Resolution (76) 3 of the Committee of Ministers and decided to revert to this question at its next meeting.

15. The CAHDI was informed about the request by Israel to be admitted as observer to the Committee. In accordance with the procedure relating to the admission of observers to intergovernmental committees of the Council of Europe and pending a possible decision of the Committee of Ministers concerning Israel's request, the CAHDI welcomed the request and agreed to admit it for the whole duration of the Committee.

16. In accordance with the intergovernmental programme of activities and budget of the Council of Europe, the CAHDI decided to hold its 18th meeting in Strasbourg, 7-8 September 1999 and adopted the preliminary-draft agenda that appears in appendix VI. In addition, the CAHDI decided to hold the 2nd meeting of the Group of Experts on Reservations to International Treaties (DI-E-RIT) respectively in Strasbourg, 6 September 1999.

**APPENDIX I**  
**LIST OF PARTICIPANTS**

**ALBANIA /ALBANIE**: Mrs Ledjia HYSI, Acting Director of the Legal and Consular Department, Ministry of Foreign Affairs

**ANDORRA /ANDORRE**: Mme Maria UBACH, Représentant Permanent adjoint d'Andorre auprès du Conseil de l'Europe – Palais de l'Europe

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

Mr Georg STILLFRIED, Attaché, Ministry for Foreign Affairs

**BELGIUM/BELGIQUE**: Mme A.M. SNYERS, Conseiller Général, Direction Générale des Affaires Juridiques, Ministère des Affaires Etrangères

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

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

**CYPRUS /CHYPRE**: Mme Georghia EROKORITOU, Attorney of the Republic of Cyprus,

**CZECH REPUBLIC /REPUBLIQUE TCHEQUE**: Ambassador, Mr. Jiří MALENOVSKÝ, Director General of the Legal and Consular Section, Ministry of Foreign Affairs

**DENMARK/DANEMARK**: Mr Hans KLINGENBERG, Ambassador, Head of the Legal Service, Ministry of Foreign Affairs

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

Mr Esko KIURU, Deputy Director General for Legal Affairs, Ministry of Foreign Affairs

Mr Kari HAKAPÄÄ, Professor, Ministry of Foreign Affairs

**FRANCE**: Monsieur Jean-Luc FLORENT, Sous-directeur du droit international public général, Direction des Affaires Juridiques, Ministère des Affaires étrangères

Monsieur Jean-Michel FAVRE, Direction des Affaires Juridiques, Ministère des Affaires étrangères

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

Dr Ernst MARTENS, Deputy Head of the Treaty Division, Federal Foreign Office

Mrs Bianka NOTTELMANN, German Embassy

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

**HUNGARY/HONGRIE**: Mr György SZÉNÁSI, Ambassador, Head of International Law Department, Ministry of Foreign Affairs

Ms Gabrielle HORVÁTH, Deuxième Secrétaire, Département du droit international, Ministère des Affaires étrangères

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

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

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

**LATVIA/LETTONIE**: Mrs Kristina MALINOVSKA, Acting Director of Legal Department, Ministry of Foreign Affairs

**LIECHTENSTEIN**: M. Daniel OSPELT, Vice-Directeur de l'Office pour les Affaires étrangères

**LUXEMBOURG**: - M. Paul STEINMETZ, Directeur des Affaires Juridiques, Ministère des Affaires étrangères

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

**MOLDOVA**: Mr Eugen CARPOV, Chef du département général du droit international et des Traités, Ministère des Affaires étrangères

**NETHERLANDS/PAYS-BAS**: Dr Johan G. LAMMERS, Legal Adviser, Head of the International Law Department, Ministry of Foreign Affairs

Mrs Özlem CANEL, Legal Officer United Nations, Department Legal and Social Affairs, Ministry of Foreign Affairs

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

Mrs Monica FURNES, Executive Officer, Department of Legal Affairs, Royal Ministry of Foreign Affairs

**POLAND/POLOGNE**: Dr Jerzy KRANZ, Directeur du Département juridique et consulaire, Ministère des Affaires étrangères

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

**ROMANIA/ROUMANIE**: M. Cristian DIACONESCU, Directeur Général des Affaires Juridiques, Consulaires et des Droits de l'Homme, Ministère des Affaires Etrangères

M. Tudor MIRCEA, Ambassadeur, Directeur des Affaires Juridiques et des Traités, Ministère des Affaires Etrangères

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

**SLOVAKIA/SLOVAQUIE**: M. Peter TOMKA, Ambassador, Director General for Legal and Consular Affairs, Ministry of Foreign Affairs **Vice-Chairman/Vice-Président**

**SLOVENIA/SLOVENIE**: Mr Andrej GRASSELLI, Head of the International and Law Department, Ministry for Foreign Affairs

**SPAIN/ESPAGNE**: Mr Aurelio PEREZ GIRALDA, Ambassador, Chief Legal Adviser, Ministerio de Asuntos Exteriores

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

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

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

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

**TURKEY/ TURQUIE**: Mrs Tuğba SARAYÖNLÜ, Legal Adviser to the Foreign Ministry, Legal Section

**UKRAINE**: Mr Markiyan Z. KULYK, Deputy Director of Legal and Treaty Department, Ministry for Foreign Affairs

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

### **SPECIAL GUESTS/INVITES SPECIAUX**

Mr Hans BLIX, Runebergsgatan 1, 11429 STOCKHOLM - Sweden

Professor C.J. GREENWOOD, College Holt, Huntington Road, Cambridge CB3 0LH – United Kingdom

Professor Christopher PINTO, Iran-US Claims Tribunal, 2585 JH THE HAGUE – The Netherlands

### **EUROPEAN COMMUNITY /COMMUNAUTE EUROPEENNE**

**EUROPEAN COMMISSION/ COMMISSION EUROPEENNE**: Mr Alessandro IANNIELLO, Directorate General IA, Common Foreign and Security Policy and External Service

### **OBSERVERS/ OBSERVATEURS**

**CANADA**: M. Gilbert LAURIN, Conseiller des Affaires Politiques, Ambassade du Canada, ROME

**JAPAN/JAPON**: Ms Makiko MORI, Official, Legal Affairs Division, Ministry of Foreign Affairs

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

**HOLY SEE/SAINT-SIEGE**: Monsieur le Professeur Peter FISCHER, Direktor am Institut für Europarecht - WIEN

Monsieur le Professeur Heribert Franz KÖCK - WIEN

**UNITED STATES OF MEXICO/ ETATS UNIS DU MEXIQUE**: Mr Miguel Angel GONZÁLEZ FELIX, Ambassador, Chief Legal Adviser, Ministry of Foreign Affairs

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

### **SECRETARIAT**

#### **Directorate of Legal Affairs/Direction 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 A. 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

M. Christophe PARISOT, Intern/Stagiaire, Public and International Law Division/Division du droit public et international

#### **Austrian Ministry for Foreign Affairs/Ministère autrichien des Affaires étrangères**

Mrs Beate SEIDL

Mrs Isabella WIMMER

#### **Interpreters/Interprètes**

Mme Milena KINGHAMOVA

M. Vladimir OLEXA

## **APPENDIX II**

### **AGENDA**

#### **A. INTRODUCTION**

1. Opening of the meeting by the Chairman, Ambassador Hilger  
 - Report of the 16<sup>th</sup> meeting of the CAHDI  
 (Paris, 17-18 September 1998) CAHDI (98) 24
2. Adoption of the agenda CAHDI (99) OJ 1 rev 2
3. Communication by the Secretariat  
 - Statement by the Head of the Division for Public and International Law  
 - 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* No code  
 Recommendation 1382 (1998) of the Parliamentary Assembly  
 on drawing up a European Code of Conduct on Arms sales CAHDI (99) 12  
Recommendation 1382 (1998) Doc. 8188 GR-J (98) 28 GR-J (99) 1  
GR-J (99) 2 GR-J (99) 3 GR-J (99) 4 GR-J (99) 5 (anglais seulement)  
GR-J (99) 6 GR-J (99) 7 CAHDI (99) 12 Add
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 2<sup>nd</sup> 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  
 - Draft report of the 2<sup>nd</sup> meeting of the Group of Specialists on Reservations  
 to International Treaties DI-S-RIT (98) 10
  - 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 Responses to Inadmissible Reservations  
 to International Treaties CAHDI (99) 3
  - c. European Observatory of Reservations to International Treaties  
 - *List of outstanding reservations and declarations  
 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. Depositaries of treaties
8. Implementation of international instruments protecting the victims of armed conflicts
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 50<sup>th</sup> 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 **CAHDI (99) Inf. 2**
- a. Discussion of Special reports and exchange of views with the rapporteurs: Mr Blix, Prof. Greenwood and Prof. Pinto **CAHDI (99) 9 CAHDI (99) 10 CAHDI (99) 11**
- 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 **CAHDI (99) 7**
15. Date, place and agenda of the 18th meeting of the CAHDI
16. Other business  
 - Secretariat proposal for a new activity for 1999 and 2000:  
 Updating of the 1987 Council of Europe's report on  
 "Expression of consent by States to be bound by a treaty" **CAHDI (99) 8**

**APPENDIX III****OPINION OF THE CAHDI ON PARLIAMENTARY ASSEMBLY RECOMMENDATION 1382 (1998) ON DRAWING UP A EUROPEAN CODE OF CONDUCT ON ARMS SALES**

The *Ad Hoc* Committee of Legal Advisers on Public International Law (CAHDI) held its 17th meeting in Vienna on 8-9 March 1999. The agenda included an item on "Decisions of the Committee of Ministers concerning the CAHDI". In the framework of this item, pursuant to the Committee of Ministers' decision at their 661<sup>st</sup> meeting, Strasbourg, 24-26 February 1999, members of the CAHDI were invited to give an opinion on Parliamentary Assembly Recommendation 1382 (1998) on Drawing up of a European Code of Conduct on arms sales in the light of the exchange of views held by the Group of Rapporteurs on Legal Co-operation (GR-J).

The CAHDI held an exchange of views to the extent possible within the time available, and concentrated, in accordance with its terms of reference and its role in the Council of Europe intergovernmental structure, on what it understood to be the international public law issues connected with the Parliamentary Assembly Recommendation.

Although the sale of arms and their widespread availability may have human rights implications, the CAHDI considers that it is up to the Committee of Ministers to establish this link and to consider whether it requires action by the Council of Europe.

Further to that, the CAHDI wishes to stress that a Convention is not the only means in achieving harmonisation of legislation and administrative practices regulating conventional arms exports. That aim can also be achieved through alternative means including unilateral application by States of the existing instruments such as the European Union Code of Conduct on Arms Exports.

Moreover, the CAHDI notes that the proposal relating to the establishing of a mechanism of communication with the European Union requires further specification before advice can be given.

Finally, the CAHDI wishes to stress that it is essential to avoid duplication and to make the best use of comparative advantages of the various international organisations working in this area. In this connection, the OSCE has already carried out a survey on legislation in this field. In addition, significant work is carried out at the level of the United Nations as reflected, e.g. by resolutions of the General Assembly: 53/77 E on Small Arms and 53/77 T on Illicit Traffic in Small Arms, adopted at its 53<sup>rd</sup> meeting on 4 December 1998. Work in the UN in this field is carried out with the assistance of a Group of Governmental Experts on Small Arms, comprising representatives of 23 Member States (9 of which are European and 8 members of the Council of Europe).

**APPENDIX IV****DRAFT RECOMMENDATION OF THE COMMITTEE OF MINISTERS ON RESPONSES TO  
INADMISSIBLE RESERVATIONS TO INTERNATIONAL TREATIES****COUNCIL OF EUROPE****COMMITTEE OF MINISTERS**

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RECOMMENDATION No. R (XX) XX

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON  
RESPONSES TO INADMISSIBLE RESERVATIONS TO INTERNATIONAL TREATIES

*(Adopted by the Committee of Ministers on ...  
at the XXXth meeting of the Ministers' Deputies)*

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

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

Supporting the work of the *Ad Hoc* Committee of Legal Advisers (CAHDI) in the field of reservations to international treaties and welcoming in particular its operation as a European observatory of reservations to international treaties;

Bearing in mind the ongoing work of the International Law Commission in the field of reservations to international treaties;

Having regard to the rules of international law relating to reservations to international treaties including the Vienna Convention on the Law of Treaties of 23 May 1969;

Noting, however, that when the Vienna Convention on the Law of Treaties was adopted, subsequent developments were not envisaged, in particular the formulation of reservations of a general character and the increasing role of the monitoring bodies provided for by certain treaties;

Recalling that States, when adopting international treaties, may prohibit, restrict or allow the formulation of reservations;

Concerned by the increasing number of inadmissible reservations to international treaties, especially reservations of a general character;

Aware that inadmissible reservations hinder the effectiveness of international conventions, particularly those concerning human rights, whether at regional or at universal level, and that, therefore, a common approach on the part of the member States as regards such reservations may be a means to improve that situation;

Recommends that, when confronted with reservations to international treaties which give rise to doubts as to their admissibility, the governments of member States take into consideration in their law and practice the model response clauses annexed to this recommendation.

## Appendix to Recommendation No. R (XX) XX

**MODEL RESPONSE CLAUSES TO RESERVATIONS****1. Model response to non-specific reservations**Initial statement

The Government of (State X) has examined the reservations made by the Government of (State Y) at the time of the ratification/accession of the (relevant Convention).

The Government of (State X) notes that the said reservations include reservations of a general kind in respect of provisions in the Convention which may be contrary to the (constitution/domestic legislation/traditions) of (State Y).

The Government of (State X) is of the view that these general reservations raise doubts as to the commitment of (State Y) to the object and purpose of the (relevant Convention) and would recall that according to (relevant provision of the relevant Convention/article 19(c) of the Vienna Convention on the Law of the Treaties), a reservation incompatible with the object and purpose of the Convention shall not be permitted.

Additional statements - examples

- It is in the common interest of States that treaties to which they have chosen to become Parties are respected, as to their object and purpose, by all Parties and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

- General reservations of the kind made by the Government of (State Y), which do not clearly specify the provisions of the (relevant Convention) to which they apply and the extent of the derogation therefrom, undermine the basis of international treaty law.

Concluding statement – alternatives as examples

a) The Government of (State X) therefore objects to the aforesaid general reservations made by the Government of (State Y) to the (relevant Convention). (State X remains silent as to whether the relevant Convention enters into force or not in relation to State Y).

b) The Government of (State X) therefore objects to the aforesaid general reservations made by the Government of (State Y) to the (relevant Convention). This objection does not preclude the entry into force of the Convention between (State Y) and (State X).

c) The Government of (State X) therefore objects to the aforesaid general reservations made by the Government of (State Y) to the (relevant Convention). This objection does not preclude the entry into force in its entirety of the Convention between (State Y) and (State X).

d) The Government of (State X) therefore objects to the aforesaid general reservations made by the Government of (State Y) to the (relevant Convention). This objection does not preclude the entry into force in its entirety of the (relevant Convention) between (State Y) and (State X). The Convention thus becomes operative between (State X) and (State Y) without (State Y) benefiting from these reservations.

e) The Government of (State X) therefore objects to the aforesaid general reservations made by the Government of (State Y) to the (relevant Convention). This objection precludes the entry into force of the Convention between (State Y) and (State X).

f) Given the general character of these reservations a final assessment as to their admissibility under international law cannot be made without further clarification. According to international law a reservation is inadmissible to the extent that its application negatively affects the

compliance by a State with its obligations under the Convention which are essential for the fulfilment of its object and purpose. Therefore (State X) cannot consider the reservations made by the Government of (State Y) as admissible unless the Government of (State Y), by providing additional information or through subsequent practice, ensures that these reservations are compatible with the provisions essential for the implementation of the object and purpose of the Convention. This does not preclude the entry into force of the Convention between (State Y) and (State X).

## **2. Model response to specific reservations**

### Initial statements

The Government of (State X) has examined the reservations made by the Government of (State Y) at the time of its ratification /accession to the (relevant Convention) in respect of Articles (x y z).

The Government of (State X) is of the view that the reservations in respect of Articles (x y z) raise doubts as to the commitment of (State Y) to the object and purpose of the (relevant Convention) and would like to recall that, according to (Article (xx) of the (relevant Convention/article 19(c) of the Vienna Convention on the Law of the Treaties), a reservation incompatible with the object and purpose of the present Convention shall not be permitted.

### Additional statements - example

- It is the common interest of States that treaties to which they have chosen to become Parties are respected, as to their object and purpose, by all Parties and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

### Concluding statement – alternatives as examples

a) The Government of (State X) therefore objects to the aforesaid reservations made by the Government of (State Y) to the (relevant Convention). (State X remains silent as to whether the relevant Convention enters into force or not in relation to State Y).

b) The Government of (State X) therefore objects to the aforesaid reservations made by the Government of (State Y) to the (relevant Convention). This objection does not preclude the entry into force of the Convention between (State Y) and (State X).

c) The Government of (State X) therefore objects to the aforesaid reservations made by the Government of (State Y) to the (relevant Convention). This objection does not preclude the entry into force in its entirety of the Convention between (State Y) and (State X).

d) The Government of (State X) therefore objects to the aforesaid reservations made by the Government of (State Y) to the (relevant Convention). This objection does not preclude the entry into force in its entirety of the Convention between (State Y) and (State X). The Convention thus becomes operative between (State X) and (State Y) without (State Y) benefiting from these reservations.

e) The Government of (State X) therefore objects to the aforesaid reservations made by the Government of (State Y) to the (relevant Convention). This objection precludes the entry into force of the Convention between (State Y) and (State X).

## **APPENDIX V**

### **QUESTIONNAIRE ON THE MEANS BY WHICH STATES EXPRESS THEIR CONSENT TO BE BOUND BY A TREATY AND NATIONAL PROCEDURES RELATING THERETO**

1. Which authority, in your country, is vested with the treaty making power ?
2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given ?
3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval ?
  - a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis*) and 13 to 15.
  - b) If the answer is yes, please reply to questions 4 and following.
4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible ?
5. In what cases is signature subject to ratification required ?
6. In what cases and under what conditions is acceptance or approval possible ? Are they preceded by signature ?
7. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones ?) or professional or other interested groups ?
8. When ratification is necessary, please specify :
  - a) Which authority is competent to ratify ?
  - b) Must it have prior authorisation to ratify ? If so, who gives such authorisation and what form does it take ?
  - c) In cases when a prior authorisation is required, must it be applied for within a certain deadline ? Must the decision of the authorising authority be taken within a certain deadline ? If this deadline is passed without a decision, what is the consequence ?
  - d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline ? Could it refrain from ratifying indefinitely ?
9. In case of accession to a treaty, are there any other procedures not described above which are followed ?
10. Which authority decides whether :
  - a) reservations should be made ?
  - b) reservations should be withdrawn ?
  - c) objections should be presented to reservations made by other States ?
11. Do treaties to which your country is a Party become incorporated into your country's domestic law ?
12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary ?

13. What is the legal status of a treaty incorporated into the domestic law of your country ?
14. Does signature of a treaty by your country indicate a firm intention to ratify it ?
15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions ?

## **APPENDIX VI**

### **PRELIMINARY DRAFT-AGENDA FOR THE 18<sup>TH</sup> MEETING OF THE CAHDI**

**Strasbourg, 7-8 September**

#### **A. INTRODUCTION**

1. Opening of the meeting by the Chairman, Ambassador Hilger
2. Adoption of the agenda
3. Communication by the Secretariat

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

4. Decisions of the Committee of Ministers concerning the CAHDI
5. The law and practice relating to reservations and interpretative declarations concerning to international treaties:
  - a. 2nd meeting of the Group of experts on Reservations to International Treaties (DI-E-RIT) Strasbourg, 6 September 1999
  - b. Key issues regarding the formulation of Reservations to International Treaties
  - c. European Observatory of Reservations to International Treaties
6. Consideration of conventions under the responsibility of the CAHDI:  
Examination of the European Convention on the abolition of legalisation of documents executed by diplomatic agents or consular officers (ETS 63)

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

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

#### **D. OTHER**

14. Appointment of the Bureau of the CAHDI
15. Date, place and agenda of the 1<sup>st</sup> meeting of the CAHDI
16. Other business