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CAHDI (99) 15

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

**17th meeting**  
**Vienna, 8 and 9 March 1999**

**MEETING REPORT**

Secretariat Memorandum  
prepared by the Directorate of Legal Affairs

## **A. INTRODUCTION**

### **1. Opening of the meeting**

1. Following the kind invitation of the Austrian authorities the *ad hoc* Committee of Legal Advisers on Public International Law (CAHDI) held its 17<sup>th</sup> meeting in the Hofburg, in Vienna on 8 and 9 March 1999. The meeting was chaired by Ambassador R. Hilger (Germany), Chairman of the CAHDI. 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. Communication by the Secretariat**

3. Mr Alexey Kozhemyakov, Head of the Division of Public and International Law, apologised for the absence of the Director of Legal Affairs, Mr Guy De Vel, who had planned to attend the meeting of the Committee on behalf of the Secretary General of the Council of Europe, and addressed the Committee.

4. On behalf of the Secretary General, he thanked the Austrian authorities, and in particular Ambassador Cede, for their efforts in organising this meeting and the one that had preceded it on reservations to international treaties.

5. He expressed particular satisfaction at the strengthening and consolidation of the basic role of the CAHDI within the intergovernmental structure of the Council of Europe, as evidenced by a very full agenda which had led the Committee to add half a day to its meeting.

6. He outlined the most important developments concerning the Council of Europe since the 16th meeting of the Committee, held in Paris on 17 and 18 September 1998.

7. The Committee of Wise Persons had prepared a report for the Committee of Ministers on the future of the Council of Europe. The coming months would therefore be of vital importance for the future of the Organisation. On the basis of the proposals made by the Committee of Wise Persons, an unprecedented effort was going to be made to adapt the Organisation to its new tasks and its enlarged composition, taking account of its role, place and specific position in the architecture of Europe and at the same time improving its decision-making processes. This would have significant implications for the very structure of the General Secretariat. In this context, there was reason for satisfaction at the importance attached by the Committee of Wise Persons to activities concerned with the field of legal co-operation, included under the heading "Consolidating the rule of law".

8. Regarding applications for accession to the Council of Europe, he recalled that six countries had lodged their applications with the Council of Europe: Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Georgia and Monaco. The Parliamentary Assembly had given a favourable opinion on the application by Georgia and was shortly to give its decision on the admission of Bosnia and Herzegovina.

9. Four countries currently enjoyed special guest status with the Parliamentary Assembly: Armenia, Azerbaijan, Bosnia and Herzegovina, and Georgia. This status was at present suspended for Belarus. In addition, Canada and Israel had observer status with the Assembly.

10. Four countries had observer status with the Council of Europe: Canada, the United States of America, Japan and the Holy See. The United States of Mexico had also requested this status and the Committee of Ministers would be invited to decide on this in the next few months.



11. The monitoring of the honouring of obligations and commitments by member States after their accession to the Council of Europe was continuing at both Committee of Ministers and Parliamentary Assembly level. This monitoring at present concerned State security forces and their respect of human rights in carrying out the tasks entrusted to them.

12. In addition, the Parliamentary Assembly had recently addressed recommendations to Ukraine and Turkey concerning the honouring of the obligations incumbent upon them in the legal instruments of the Council of Europe.

13. Regarding developments concerning the European Treaty Series since the last meeting of the CAHDI, details of which appeared in document CAHDI (99) 1, he drew attention to certain major developments. Several treaties had entered into force, the required number of ratifications having been reached, viz.:

- The Additional Protocol to the European Outline Convention on transfrontier Co-operation between territorial communities or authorities. Following ratification by Germany and Latvia, in September and December 1998 respectively, 6 ratifications had been made, thus exceeding the 4 ratifications necessary for the entry into force of this instrument (ETS 159).
- The European agreement relating to persons participating in proceedings of the European Court of Human Rights. This agreement had entered into force, the 6 most recent ratifications having brought the total number of ratifications up to 12, thus exceeding the required threshold of 10 ratifications (ETS 161).
- The Sixth additional protocol to the general agreement on privileges and immunities of the Council of Europe (ETS 162).
- The Convention on the Recognition of Qualifications concerning Higher Education in the European Region (ETS 165).

14. He also referred to important developments in the different fields of activity of the Council of Europe.

15. In the field of the protection of animals and the environment, the Convention on the Conservation of European Wildlife and Natural Habitats (1979) (ETS 104) had been ratified by Albania, Ukraine and "The former Yugoslav Republic of Macedonia" in January; Slovenia for its part had signed this convention in October 1998. In addition, the Protocol of Amendment to the European Convention for the Protection of Vertebrate Animals used for Experimental and other Scientific Purposes (1998) (ETS 170) had been signed by Norway and the United Kingdom, in December and September 1998 respectively.

16. Regarding transfrontier co-operation, the European Outline Convention on transfrontier Co-operation between territorial communities or authorities (1980) (ETS 106) had been ratified by Latvia in December 1998 and signed by Slovakia in September 1998. In addition, Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Interterritorial Co-operation (1998) (ETS 169) had been signed by Slovenia and Ukraine in October and November 1998 respectively.

17. In the field of human rights, Protocol 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty (1983) (ETS 114) had been signed by Lithuania and the United Kingdom in January 1998. This protocol had been ratified by Belgium and Greece, in December and September 1998 respectively. In addition, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987) (ETS 126) had been ratified by Lithuania in September 1998, and Protocols n°1 and n°2 of this Convention (respectively ETS 151 and 152) had been ratified by Lithuania in November 1998. The European Convention on the exercise of Children's Rights (1996) (ETS 160) had been signed by



Cyprus in January 1999. Lastly, the Additional Protocol to the Convention on the Transfer of Sentenced Persons (1997) (ETS 167) had been signed by Slovenia in November 1998.

18. Regarding the protection of national minorities, the Framework Convention for the Protection of National Minorities (1995) (ETS 157) had been ratified by Switzerland in October 1998. The European Charter for Regional or Minority Languages (1992) (ETS 148) had been ratified by Germany in September 1998.

19. In the field of bioethics, 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 Cyprus on 30 September 1998 and ratified by Greece and Slovenia in October and November respectively, bringing the number of signatures up to 24 and ratifications to 4. Its Additional Protocol on the Prohibition of Cloning Human Beings (1998) (ETS 168) had been ratified by Greece, Slovakia and Slovenia, in December, October, and November respectively, and had been signed in September 1998 by Cyprus; this brought the number of signatures up to 24 and the number of ratifications to 3.

20. In the field of drugs, doping and organised crime, he mentioned that the Ant-Doping Convention (1989) (ETS 135) had been ratified by Romania in December 1998. The European Convention on the Control of the Acquisition and Possession of Firearms by Individuals (1978) (ETS 101) had been signed by Moldova in November 1998 and ratified by Romania in December 1998. The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990) (ETS 141) had been signed by Malta and Poland in November 1998, and had been ratified by Germany, Latvia and Portugal, in September, December and October 1998 respectively. The Agreement on Illicit Traffic by Sea, implementing Article 17 of the United Nations Convention against Illicit Traffic in Narcotic drugs and Psychotropic Substances (1995) (ETS 156) had been ratified by Germany in December 1998.

21. The European Social Charter (1996) (ETS 163) had been signed by Albania, Bulgaria, Iceland and Moldova, by the first two in September and the second two in November 1998.

22. Lastly, three new treaties had been opened for signature: Protocol amending the European Convention on Transfrontier Television Convention (1998) (ETS 171), the Convention on the Protection of the Environment through Criminal Law (1998) (ETS 172) which had been signed by 7 States on 4 November 1998 : Denmark, Finland, France, Germany, Greece, Iceland and Sweden, and the Criminal Law Convention on Corruption (1999) (ETS 173) which had been signed by 21 States on 27 January 1999 : Albania, Bulgaria, Cyprus, Denmark, Finland, Germany, Georgia, Greece, Iceland, Italy, Latvia, Lithuania, Luxembourg, Norway, Poland, Romania, Russia, Slovakia, Sweden, Ukraine, United Kingdom.

23. Regarding this last treaty, it was important make reference to the "Partial and Enlarged Agreement Establishing the "Group Of States Against Corruption – GRECO", (an agreement open to member States and non-members on an equal footing) aimed at combating corruption in all its forms. The entry into force of this agreement required the accession of 14 member States. To date 11 States had agreed to accede and it was desirable that the GRECO should enter into force as soon as possible.

24. The Council of Europe had recently concluded an important co-operation agreement with the European Commission in the field of combating corruption. This agreement concerned the financing of the OCTOPUS II Programme, the first version of which had been successfully implemented.

25. In this context, Mr Kozhemyakov also mentioned the co-operation programmes for the consolidation of democracy and security (ADACS) which constituted a vital pillar of the Organisation's action.



26. The presence at this meeting of the CAHDI of Mr Blix, Professor Greenwood, and Mr Pinto, United Nations rapporteurs for the Centenary of the First Hague Peace Conference, was further evidence of the growing synergy between the activities of the Committee and those of the United Nations. Furthermore, the activity on reservations to international treaties had led to concrete results which made it possible to contribute in a practical and effective way to the work under way in the United Nations, as the Committee had wished.

27. In accordance with the CAHDI's instructions, the report on the Council of Europe Pilot Project on State practice relating to State succession and issues of recognition, prepared under the aegis of the CAHDI by prestigious institutes, was being prepared for printing and should shortly be published, thus fittingly completing the Council of Europe's contribution to the United Nations Decade of Public International Law.

28. The CAHDI would thus pursue its excellent work, taking advantage of its privileged position as the only forum where the legal advisers of the Ministers of Foreign Affairs of the Member States of the Council of Europe and a considerable number of friendly States and organisations that were observers to the Committee could exchange and, where appropriate, co-ordinate their views in the field of public international law, thus contributing to its application and development.

29. At this connection, Mr Kozhemyakov welcomed in particular the presence at the meeting of Ambassador González Félix, Legal Adviser to the Ministry of Foreign Affairs of the United States of Mexico, following that of Ambassador Rodríguez Arriaga at the 16th meeting of the Committee in September last year, which augured well for future co-operation and mutual interest.

30. Similarly, the recently formulated request by Ambassador of Israel, Mr Gabay, concerning observer status with the CAHDI, was further evidence of the growing importance of the CAHDI.

31. Mr Kozhemyakov concluded his intervention by stressing the interest that the Secretary General took in the CAHDI's work and the full and unreserved willingness of the Secretariat to assist the Committee in the implementation its activities.

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

### **4. Decisions of the Committee of Ministers concerning the CAHDI**

32. The Secretariat informed the Committee of the decisions concerning the CAHDI taken by the Committee of Ministers at its 649th meeting of the Deputies (Strasbourg, 17 November 1998) and in particular the follow-up to the CAHDI Opinion adopted at its 16th 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 for the 50th anniversary of the Universal Declaration of Human Rights.

33. In addition, the CAHDI was informed of the adoption by the Committee of Ministers, at the same meeting, of the amended specific terms of reference of the CAHDI for the period 1999-2000 and the specific terms of reference of the Group of Experts on reservations to international treaties (DI-E-RIT) for 1999<sup>1</sup>.

34. Lastly, the CAHDI was informed of the issue by the Committee of Ministers at its 661st meeting of the Deputies (Strasbourg 24-26 February 1999), on the proposal of the Rapporteur Group on Legal Co-operation (GR-J), of specific terms of reference instructing it to give an

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<sup>1</sup> The Group of Experts on reservations to international treaties (DI-S-RIT) will continue the activity until Group of Specialists on reservations to international treaties (DI-E-RIT) takes over. The change of title is necessary to reflect the present composition of the Group, i.e. experts designated by the governments of member States, the term specialist being reserved to experts designated by the General Secretariat.



opinion on Recommendation 1382 (1998) of the Parliamentary Assembly on drawing up a European Code of Conduct on Arms Sales.

35. In the time available, the CAHDI held an exchange of views on Recommendation 1382 (1998) of the Parliamentary Assembly in the light of the discussions within the Committee of Ministers Rapporteur Group on Legal Co-operation (GR-J) and a substantial number of documents<sup>2</sup>.

36. Paragraph 12 of Recommendation 1382 (1998) of the Parliamentary Assembly includes a number of specific proposals, viz.:

- i. *establish a mechanism of communication with the European Union, with a view to informing it as to the respect for human rights in the country of final destination within the Council of Europe area, in accordance with criterion two of the EU code;*
- ii. *elaborate, in co-operation with the European Union and other competent bodies, a list of equipment which might be used for internal repression, torture and other forms of human rights violation, and, in case of uncertainty, criteria which determine whether a specific type of equipment might be used for such purposes in a particular case;*
- iii. *carry out a survey of the legislation and administrative practices regulating conventional arms exports in Council of Europe member states with a view to their harmonisation, preferably by means of a Council of Europe convention;*
- iv. *examine, in close co-operation with the European Union, possible mechanisms for the application, at pan-European level, of the principles and operative provisions contained in the EU Code of Conduct on Arms Transfers preferably in the form of a European-wide code of conduct;*
- v. *call on Council of Europe member, observer and applicant states: a) to elaborate a truly accountable system which would allow national parliaments, or committees thereof, to monitor proposed arms exports; b) to respect and, if they have not yet done so, sign the existing international*

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<sup>2</sup> Reference documents:

- Recommendation 1382 (1998) of the Parliamentary Assembly on drawing up a European Code of Conduct on Arms Sales
- Report of the Political Affairs Committee of the Parliamentary Assembly on drawing up a European Code of Conduct on Arms Sales (including in Annexe pp. 10-17 : 2097th Council meeting – general Affairs of the European Union, 25 May 1998) (document 8188)
- Points for consideration concerning Recommendation 1382 (1998) on drawing up a European Code of Conduct on Arms Sales (GR-J (98) 28)
- Synopsis of the meeting of the Rapporteur Group on Legal Co-operation of 7 December 1998 (GR-J (99)1)
- United Nations Convention on prohibitions and restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects (GR-J (99) 2)
- United Nations Convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction (Ottawa Convention) (GR-J (99) 3)
- Resolution of the European Communities on a Code of Conduct on Arms Exports (GR-J (99) 4)
- The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (GR-J (99), English only)
- Summary of the documents referred to Recommendation 1382 (1998) on drawing up a European Code of Conduct on Arms (GR-J (99) 6)
- Synopsis of the meeting of the Rapporteur Group on Legal Co-operation of 11 February 1999 (GR-J (99) 7)
- United Nations reference documents (CAHDI (99) 12 Add, English only)



*agreements regulating the production, transfer and use of conventional arms, and in particular the Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, as well as the United Nations Convention on Prohibitions and Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to be Excessively Injurious or to have indiscriminate effects; c) to respect the criteria contained in the EU Code, pending the adoption of a European-wide code of conduct.*

37. The Chairman pointed out that the CAHDI was required to give an opinion only on the legal issues of the Parliamentary Assembly recommendation as it was not competent for the political issues. In addition he wondered how the organs of the Council of Europe could assess the seriousness of human rights violations.

38. The representative of the European Commission (CE) referred to the Code of Conduct adopted in the EU. He pointed out that this Code was a response to a growing demand both inside and outside the EU for greater transparency in the field of arms exports and stressed that the EU wished to extend the application of this Code, particularly at pan-European level. In addition, he referred to the strengthening of co-operation between the Council of Europe and the EU on the basis of a mechanism yet to be decided. In this connection he pointed out that there was already an institutional framework for co-operation between the two organisations thanks to the special observer status enjoyed by the EU for all Council of Europe activities. The CE would nevertheless examine with interest the possible introduction of an *ad hoc* mechanism, once the practical details had been defined. To this end the CE was continuing informal contacts with the Council of Europe authorities.

39. The CAHDI agreed that the question raised by the Parliamentary Assembly was of great importance and several delegations stated that they shared the objectives pursued by the EU Code of Conduct.

40. The members of the CAHDI stated that the Committee did not have sufficient time to examine the question in depth and give a complete opinion on the proposals formulated by the Parliamentary Assembly, and the deadline given to the CAHDI (1 April 1999) in fact prevented it from discussing this subject at a future meeting of the Committee. In addition, they stressed the important political components of the Parliamentary Assembly Recommendation.

41. The CAHDI then addressed certain points that it considered to be problems of law connected with the request addressed to it by the Committee of Ministers.

42. Several delegations pointed out that on the whole it would not be desirable for the Council of Europe to deal with the question of arms sales because the only point of attachment of this activity to the Council of Europe was the European Convention on the Control of the Acquisition and Possession of Firearms by Individuals, n° 101 in the *European Treaty Series*, and that the field of application of this Convention was very much more restricted than the activity which was proposed by the Parliamentary Assembly. In addition, it was necessary to apply the principle of comparative advantage to the different international organisations, which led to the conclusion that the Council of Europe did not have the required expertise in this field.

43. The delegations of Switzerland and Ireland agreed on the fact that to a certain extent the Council of Europe was in fact competent in the field; in addition the EU Code of Conduct implied an evaluation of the respect of human rights, which was one of the Council of Europe's fields of expertise.

44. The delegation of Turkey pointed out that the general objective pursued by the Parliamentary Assembly proposals, i.e. harmonisation in this field, was not realistic. Furthermore, the pan-European application of the EU Code of Conduct was not justified in so far as the member States of the Council of Europe were not all members of the EU. It therefore



proposed that reference should be made to the instruments prepared in the context of other international organisations, such as the OSCE.

45. Concerning the proposal contained in paragraph 12.i, certain delegations questioned the usefulness of setting up a specific mechanism in so far as the documents which emanated from the competent organs of control of the respect of human rights (cf. European Convention on human rights) were generally public, so that the EU could simply take note of them. The question really arose in connection with restricted documents.

46. Regarding the proposal contained in paragraph 12.ii, some delegations pointed out that this proposal bore witness to the difficulty of implementing the Assembly's proposals in so far as it was not clear what the Council of Europe could do in this field.

47. Regarding the proposals contained in paragraph 12.iii, the German Delegate expressed reservations about the usefulness of implementing these proposals. There were several conventions in this field which had been prepared by highly specialised institutions. It was therefore not desirable to add a new convention.

48. In addition, regarding the carrying out of a survey, the Swedish Delegation pointed out that such a survey had already been carried out in the context of the OSCE and stressed that it was essential to avoid the overlapping of activities.

49. At this connection, the United Kingdom Delegate pointed out that there were other ways than conventions for achieving a certain degree of harmonisation, the EU Code being one such example. In addition, he recalled that the report of the Committee of Wise Persons<sup>3</sup> had called for greater co-operation with the EU, but the fact remained that his Government was in favour of the objective pursued.

50. The Danish Delegate expressed his scepticism regarding the role of the Council of Europe in this field, stressing that it was a global project. He pointed out that when the Parliamentary Assembly had proposed a similar initiative concerning anti-personnel mines, the Committee of Ministers had replied that other organisations had been working on this issue for a long time. As before, the activity now being proposed by the Parliamentary Assembly should be implemented in the context of the United Nations.

51. The Chairman pointed out that the proposals contained in paragraphs 12.iv and v were of an eminently political nature and that the CAHDI was not able to give an opinion on them.

52. After a number of different views had been expressed, the discussion concluded with agreement on the main points of the text of the opinion. The Secretariat was instructed to prepare a draft opinion on the basis of these points and to send it to the delegations to be approved by written procedure. Following this procedure, the CAHDI adopted the opinion which appears in Appendix III<sup>4</sup>.

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<sup>3</sup> *Building Greater Europe without dividing lines*. Final report of the Council of Europe Committee of Wise Persons. Strasbourg, 1998.

<sup>4</sup> In accordance with the CAHDI's instructions, the Secretariat faxed to the members of the Committee on 22/03/99 the *list of points discussed and decisions taken by the CAHDI at its 17th meeting (Vienna, 8 and 9 March 1999)* including in Appendix III a draft opinion on Recommendation 1382 (1998) of the Parliamentary Assembly on drawing up a European Code of Conduct on Arms Sales. No delegation having opposed the draft, the text was considered approved by written procedure.



**5. The law and practice relating to reservations to treaties and interpretative declarations concerning international treaties:**

**a. 1st meeting of the Group of Experts on reservations to international treaties (DI-E-RIT), Vienna, 5 March 1999<sup>5</sup>**

53. Ambassador Cede (Austria), Chairman of the Group of Experts on reservations to international treaties (DI-E-RIT) informed the CAHDI about the first meeting of the Group which had been held in Vienna on 5 March 1999<sup>6</sup>.

54. Seventeen member States had participated, and also the representatives of three observer countries. In addition, Professor Zemanek and Professor Hafner, the latter being a member of the United Nations International Law Commission (ILC), participated as special guests.

55. The Group examined and approved a Preliminary Draft Recommendation of the Committee of Ministers on Reactions to Inadmissible Reservations to International Treaties, including an Appendix containing model response clauses to reservations. The Group then decided to transmit the preliminary draft to the CAHDI for approval and transmission to the Committee of Ministers with a view to its adoption<sup>7</sup>.

56. The Chairman of the Group thanked the Delegate of Sweden in particular, Ambassador Magnuson, for his contribution to the preparation of this text.

57. In addition, the Group had examined a list of reservations and interpretative declarations open to objection which were the subject of document CAHDI (99) 6. The Group agreed on the fact that some of the reservations and interpretative declarations which appeared in it gave rise to doubts as to their admissibility and had decided to obtain additional information. To this end, it had invited the German delegation to make the necessary approaches to the countries concerned and to report back to the Group at its next meeting.

58. In this context, the Group had held a fruitful exchange of views with the Canadian observer on the subject of a reservation liable to objection made by Canada to the Convention on the evaluation of the impact on the environment in a transfrontier context (Espoo Convention), of 25 February 1991. This exchange provoked a very interesting discussion on the consent of federal States to being bound by treaties.

59. In addition, the Group took note of the ongoing work of the ILC concerning reservations to international treaties. The Group had held an exchange of views with Professor Hafner who had attended the meeting in a personal capacity.

60. Lastly, the Netherlands delegation had submitted to the Group a document on "Key issues regarding reservations at the various stages of the process of concluding treaties (negotiation, signature and ratification) and post-ratification stage". Unfortunately the Group had not had enough time to examine this document, but would do so at its next meeting (see item 15 below).

61. The Group had concluded its meeting by emphasising the usefulness of the activity of the CAHDI in the field of reservations to international treaties, and in particular its acting as European observatory of reservations to international treaties.

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<sup>5</sup> See the DI-S-RIT working documents 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,

<sup>6</sup> *Idem* note 1.

<sup>7</sup> Document CADHI (99) 3.



**b. Preliminary draft Recommendation of the Committee of Ministers on Responses to Inadmissible reservations to international treaties**

62. The Chairman of the DI-E-RIT referred to the Appendix to the preliminary draft Recommendation, pointing out that it was very flexible and that States could use it as they wished. He noted that the Group had agreed on the usefulness of this Appendix in so far as it reflected the present practice of certain member States. The model response clauses in parts 1 and 2, concerning respectively non-specific or general reservations and specific reservations were similar. In addition, the responses typically started with an initial statement to which additional statements and a concluding statement were added.

63. The DI-E-RIT held a theoretical discussion on the status of inadmissible reservations on which two positions emerged. The first considered that an inadmissible reservation was null and void and hence treated as if it had never existed. In practice however such a reservation was often considered to be a reservation *stricto sensu* and objections were therefore formulated to it. The second position was represented by the doctrine of opposability according to which the qualification of the reservation considered admissible or inadmissible was inappropriate, the important thing being the possibility of making objection. This doctrine corresponded to State practice in a European regional context.

64. The Chairman of the Group thanked the members of the Group for their contribution and for the concrete results they had permitted the Group to produce.

65. The Chairman of the CAHDI acknowledged that a reservation contrary to the aim and goals of a convention was null and void and therefore did not need to be the subject of objection on the part of the other States Parties to this convention. However, State practice showed a very different picture. He noted the importance of the "Strasbourg approach" which had been examined by the DI-E-RIT Group, but admitted that this approach could not be adopted or applied universally. He concluded by pointing out that in the context of the European Union, dialogue with the States which made reservations giving rise to doubts as to their admissibility was encouraged. Similarly, he noted the general agreement on the fact that the Vienna Convention on the Law of Treaties should continue to constitute the base of the treaties regime including reservations, while at the same time admitting that it was not sufficiently precise.

66. The CAHDI began the examination of the preliminary draft prepared by the DI-E-RIT Group and the Swedish Delegate explained that it was an *à la carte menu*, the aim of which was to serve as guide to States in their practice.

67. The Chairman of the CAHDI pointed out that in the context of human rights, the utilisation of model clause d) was rare in practice and undesirable. However, the Norwegian Delegate stated that this clause was sometimes used by certain countries and in particular the Scandinavian countries. It should therefore be retained in so far as it reflected the present practice of certain States and even if not recommended it remained a possible option.

68. On proposal of the Group, the CAHDI adopted the draft of recommendation of the Committee of Ministers on Responses to Inadmissible Reservations to International Treaties including in Appendix the model responses to the reservations and instructed the Secretariat to transmit it to the Committee of Ministers for adoption (Appendix IV).

69. The Italian Delegate proposed the introduction of an information procedure to circulate between member States of the Council of Europe their reactions to reservations to international treaties.

70. The Austrian Delegate pointed out that this proposal could be implemented in the context of the DI-E-RIT.



**c. European observatory of reservations to international treaties**

71. See item 5.a. above concerning the examination of reservations to international treaties by the DI-E-RIT Group and the report of the 1st meeting of this Group (Vienna, 5 March 1999)<sup>8</sup>.

72. The reservations and declarations formulated by Bangladesh on 5 October 1998 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 10 December 1984, the International Covenant on economic, social and cultural rights of 16 December 1966, the Convention on the Political Rights of Women of 31 March 1953 and the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages of 10 December 1962 were the subject of particular study by the DI-E-RIT Group and were drawn to the attention of the CAHDI. Because of the doubts as to the admissibility that these declarations and reservations, the German Delegation had been invited to obtain further information from this country.

**6. Consideration of conventions under the responsibility of the CAHDI: Examination of the European Convention for the Peaceful Settlement of Disputes (ETS 23)**

73. The CAHDI began the examination of the European Convention for the Peaceful settlement of disputes (N° 23 in the European Treaty Series) on the basis of the document prepared by the Secretariat<sup>9</sup>.

74. The Chairman stated that the European Convention for the Peaceful settlement of the disputes had entered into force on 30 April 1958 and 13 member States were at present bound by it (Austria, Belgium, Denmark, Germany, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Sweden, Switzerland and the United Kingdom). In addition, it had been signed by 5 other member States (France, Greece, Iceland, Ireland and Turkey). The last ratification of the Convention was on 18 February 1980 (Liechtenstein) and the last signature dated back to 1958 (Turkey).

75. The existence of the Convention and the threat by one Party to a dispute to have recourse to it no doubt facilitated friendly settlements. The Convention thus fairly frequently had a dissuasive effect (*fleet in being*). For this reason, given the present group of Contracting Parties and taking account of the extent of their acceptance, the Convention had helped to improve the possibilities for the legal settlement of disputes between member States of the Council of Europe.

76. However, a certain number of disputes that had arisen or were likely to arise remained outside the field of application of the Convention, mainly due to the fact that over half of the Council of Europe member States were not Parties to the Convention.

77. The Slovakian Delegate informed the CAHDI that his country was examining the Convention with interest with a view to early accession to it.

78. The Netherlands Delegate pointed out that certain States which, in principle, were to accede to the Convention had not done so in practice and he wondered about the reasons for this state of affairs.

79. The Chairman concluded that through this Convention a substantial number of disputes could be settled by the International Court of Justice without any particular problem. He invited the Member States of the Council of Europe to consider the possibility of acceding to it.

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<sup>8</sup> Document DI-E-RIT (99) 6.

<sup>9</sup> See document CAHDI (99) 5. For an overview of the legal texts coming under the responsibility of the CAHDI see document CAHDI (99) 4.



80. The CAHDI concluded this item of the agenda by emphasising the interest of continuing this exercise and decided to examine the European Convention on Consular Functions and its Protocols relating to the Protection of Refugees and to Consular Functions in respect of Civil Aircraft (ETS 61, a and b) and the European Convention on the Abolition of Legalisation of Documents executed by Diplomatic Agents or Consular Officers (ETS 63) at its next meeting on the basis of the documents that the Secretariat was invited to prepare.

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

### **7. Depositories of treaties**

81. The Portuguese Delegate referred to document CAHDI (96) 18 submitted in 1996 concerning the multilateral treaties for which Portugal was the depository and informed the CAHDI that information concerning these treaties could be obtained on the Portuguese Ministry of Foreign Affairs internet site<sup>10</sup>.

### **8. Implementation of international instruments protecting the victims of armed conflicts**

82. The Swiss Delegation drew the attention of the members of the CAHDI to current developments concerning the implementation of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, of 12 August 1949.

83. The United Nations General Assembly, in its tenth emergency special session, adopted on 9 February 1999 Resolution ES-10/6 in paragraph 6 of which it again recommended that the High Contracting Parties (HCPs) to the Fourth Geneva Convention ("the Convention") convene a conference on measures to enforce this convention in the Occupied Palestinian Territories, including Jerusalem, on 15<sup>th</sup> July 1999, at the United Nations' offices in Geneva". In paragraph 7 of the resolution, the General Assembly "invites the Government of Switzerland, in its capacity as the depository of the Geneva Convention, to undertake whatever preparations are necessary prior to the Conference."

84. As the Depository of the Geneva Conventions, Switzerland, had pointed out on several occasions, in particular on 9 February last before the United Nations General Assembly, that the convening of such a conference gave rise to many questions that the Geneva Conventions and their additional Protocols did not solve, and that only the States Parties - and not the Depository - could decide. This was why the Depository had on several occasions invited the States Parties to let it know their point of view on this matter, in particular at the meeting of experts on the Fourth Geneva Convention, which was held in Geneva from 27 to 29 October 1998.

85. In order to obtain the necessary clarifications as to the practical details of such a conference, the Swiss Government, as Depository, was preparing to consult the High Contracting Parties in order to put a number of questions to them, including the following:

- Who may take the initiative to convene such a conference and how many States Parties should express their assent for it to be able to be convened?
- What importance should be attributed to the position of the principal parties concerned by such a conference?
- How should the decisions concerning the procedural details of such a conference be taken into account in the preparation phase?
- As to the form, what should be the outcome of such a conference?

<sup>10</sup> <http://www.min-nestrageiros.pt/politica/multilateral/itreaty.html>



## **9. Developments concerning the International Criminal Court (ICC)<sup>11</sup>**

86. The Chairman informed the CAHDI that Senegal had ratified the Statute of the ICC.

87. The Hungarian Delegate informed the Committee that his country had signed the Statute in January and that the process of ratification was in the final stages.

88. The Italian Delegate announced that the Italian Senate had approved the Statute and that the Chamber of Deputies would do so during the month of March. It was planned that ratification would also take place in March and that the deposit would be made in April. In addition, he stated that certain delegations had sought to modify the Statute of the ICC on the occasion of the discussions on its rules. This was not possible for formal and political reasons and also constituted a regrettable development.

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

89. The Romanian Delegate informed the CAHDI that Romania had adopted a law on 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 (TY)<sup>12</sup>. This text had been transmitted to the Government of the Netherlands.

90. The French Delegate informed the CAHDI that France had signed an agreement on the reception of witnesses with the TY.

91. The Austrian Delegate informed the CAHDI that his country had also concluded an agreement with the TY with a view to the emplacement of witnesses.

92. The Swedish Delegate informed the CAHDI that his country had concluded a agreement for the execution of the TY's decisions.

93. The Norwegian Delegate drew attention to a news item from the *New York Times* published in the *Herald Tribune* of 20 February 1999 on case No. ICTR-96-4-T before the International Criminal Court for Rwanda concerning Mr Jean-Paul Akayesu who complained about not having been able to choose his lawyer, in this case a lawyer of Canadian nationality. This concerned the problem of national quotas. This was an issue of great importance and should be closely monitored in order to avoid any prejudice to the important function fulfilled by the tribunals established by Resolutions 827 (1993) and 955 (1994) of the United Nations Security Council<sup>13</sup>.

## **11. Protection of the cultural heritage in times of war**

94. The Chairman stated that this item would be dealt with in detail at a diplomatic conference to be held for the revision of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. This Conference would be held in the Hague from 15 to the 26 March and its aim was to prepare a Second Protocol to the Convention of 1954.

<sup>11</sup> For information on the International Criminal Court see the internet site [www.un.org/icc/](http://www.un.org/icc/)

<sup>12</sup> Law 159/1998 approved by the Chamber of Deputies and the Senate on 30 September 1997 and 29 June 1998 respectively. It was promulgated by Decree n° 285 of 27 July 1998 and appeared in the Official Gazette (*Monitorul Oficial*), I, n° 283 of 31 July 1998.

<sup>13</sup> See the Directive on the assignment of defence council adopted by the International Criminal Tribunal for Rwanda at its 5th plenary session in Arusha, Tanzania, from 1 to 8 June 1998. When this report was prepared, the International Criminal Tribunal for Rwanda had handed down its judgement in this case. The full text of the judgement can be consulted on the internet at: <http://www.icttr.org/english/judgements/akayesu.html>.



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

95. The Chairman announced that certain posts on the ILC had fallen vacant, in particular those of Mr Ferrari Bravo, elected judge to the European Court of Human Rights and Mr Mikulka, appointed Secretary of the ILC.

96. At this connection the Italian Delegate informed the Committee of the candidature of Mr Giorgio Gaja to succeed Mr Ferrari Bravo<sup>14</sup>.

97. The Romanian Delegate suggested the inclusion of the report of the United Nations Sixth Committee in the agenda for the next meeting of the CAHDI.

98. The Chairman said that this item would be dealt with in detail at the next meeting of the CAHDI (see item 15 below).

**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**

99. The Netherlands Delegate informed the Committee of the preparations for the celebration of the Centennial of the first International Peace Conference. A conference which would be opened by the Queen of the Netherlands and the Secretary General of the United Nations would be held in the Hague on 18 and 19 May.

100. The Delegate of the Russian Federation informed the CAHDI that the commemorative meeting in the Hague would be followed by another meeting in Saint Petersburg from 22 to 25 June, which would be opened by the Minister of Foreign Affairs in the presence of the Prime Minister who would make a speech. This meeting would concentrate on issues concerned with the respect of international obligations rather than the settlement of disputes or filling the loopholes in the international legal order.

**a. Discussion of special reports and exchange of views with the rapporteurs: MM Blix, Greenwood and Pinto<sup>15</sup>**

101. The Chairman thanked the United Nations special rapporteurs MM Blix, Greenwood and Pinto for having accepted the invitation to participate in the meeting of the CAHDI in order to present their reports and have an exchange of views with the members of the Committee.

Report on international humanitarian law and the laws of war prepared by Professor Greenwood<sup>16</sup>

102. Professor Greenwood explained that his report was a drafted in preparation for the Diplomatic Conference for the Establishment of the ICC. Its aim was to take stock of the present situation and consider the paths that the international community might take from here.

103. As for the first objective, it had to be admitted that the international Community had a good body of international law even though there were gaps in certain fields, such as in the matter of conflicts within States. It was therefore not necessary to draw up new treaties or create new rules, but rather a matter of improving compliance and conformity with the existing

<sup>14</sup> When this report was prepared, M. Gaja (Italy) and M. Tomka (Slovakia) had been elected to succeed M. Ferrari Bravo (Italy) and M. Mikulka (Czech Republic) respectively. The latter was also appointed Secretary of the ILC.

<sup>15</sup> The reports mentioned below exist in English only. The titles given in the French text are therefore unofficial. They are available for free consultation on the internet at: [www.minbuza.nl](http://www.minbuza.nl). For progress concerning these reports see document UN A/C.6/53/10 of 12 November 1998 (original in English) with appended to it the 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*.

<sup>16</sup> See document CAHDI (98) 22.



law. The ICC was one way of achieving this. He referred to the present proceedings against General Augusto Pinochet, the outcome of which was of great importance for the future of international law in this field.

104. He nevertheless pointed out in connection with the second objective of his report that it was not enough to concentrate solely on respect of the existing rules because this was a secondary tool and could be used only after the event. Education and training were therefore of vital importance. Thus for example the principle of proportionality was very widely accepted, but legal action on the basis of this principle was almost impossible. The preparation of a humanitarian leaflet was one way of drawing attention to fields where legislative development was particularly necessary because the substantive law was not satisfactory in its present state, in particular:

- the law on internal conflicts, which was very weak; for this reason customary law had developed very substantially to fill the gaps;
- military operations with the intervention of United Nations troops, where the intervention of these troops necessarily implied the authorisation of the use of force by the United Nations Security Council, for example UNPROFOR;
- the law of naval warfare where the approach taken by the International Institute of Humanitarian Law was very appropriate.

105. He nevertheless concluded that legislative development was less important than the respect of the existing rules.

106. The CAHDI thanked Professor Greenwood for his presentation and agreed with him on the need to concentrate on the issues of prevention and the respect of existing obligations, pointing out that a good many of the present problems could be resolved in the context of existing structures.

107. The Swedish Delegate raised a problem of fact in this field - the persons who made war considered they had nothing to lose. The question then arose of knowing what to do with people who were "demonised" in this way.

108. The Norwegian Delegate referred to the legal ambiguity of the obligations in the field of humanitarian law incumbent on United Nations troops. This ambiguity was not necessarily a bad thing. This was the case with UNIFIL force in South Lebanon. The application of the Third Geneva Convention here would have resulted in the failure of this mission. He therefore concluded that certain gaps should be filled on an *ad hoc* basis rather than through adopting new conventions.

109. The Delegate of the Russian Federation agreed with this conclusion while stressing that the behaviour of the United Nations troops must be exemplary from the standpoint of the respect of humanitarian law.

110. In this connection the Italian Delegate stressed the importance of the ICC as a prevention institution that could even encourage national courts to function on the universal level, which had hitherto not functioned properly.

111. The United Kingdom Delegate stated that the field of United Nations operations in fact needed the adoption of new legal rules.

112. In this connection, the Bulgarian Delegate pointed out that the Convention on the protection of United Nations forces had never been adopted despite the CAHDI's interest in it. The Committee might therefore renew its support for this project.

113. The Chairman stated that the Statute of the ICC contained a section on this issue.

114. The Finnish Delegate referred to paragraphs 140 and 141 of Professor Greenwood's report concerning the application of humanitarian law to internal conflicts (*Substantive Law Applicable to internal Armed Conflicts*) and pointed out that there was a gap in this field. Efforts



had been made to fill this gap, such as Turkey's initiatives with a view to defining minimal standards not susceptible to derogation. The main problem nevertheless remained that of how to oblige the State to comply with humanitarian law in the case of a conflict within its borders. The creation of a *reporting system* would help promote training in the field of humanitarian law.

115. Professor Greenwood agreed on the importance of the ICC while pointing out that its existence did not exclude the pursuit of other channels for improving the situation. Regarding United Nations operations, he agreed on the fact that a certain ambiguity in the law could be beneficial, but he stressed the importance of having clear standards with which the United Nations should comply. The relationship between humanitarian law and the laws of war, and the sharp division between these two realities called for particular attention because certain States might consider that they were able to disregard human rights. Lastly, regarding "diabolical" individuals who no longer had anything to lose, they were indeed one of the biggest challenges confronting humanitarian law. To solve this problem it was necessary to promote the respect of the principles and rules of existing humanitarian law.

Report on the development of international law relating to disarmament and the control of armament since the first Hague Peace Conference of 1899, prepared by Mr Blix<sup>17</sup>

116. Mr Blix presented his report and stated that so far he had received comments from the United Kingdom and the Latin American Group of Lawyers. His report raised the question of whether the States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) were bound to comply with the system of safeguards (cf. *Safeguards treaties*). The report concentrated on verification and the respect of the commitments stemming from the disarmament agreements. Several lessons could be drawn from experience here:

- in the field of verification and inspection, the countries subject to verification had sovereign control over the territory subject to verification and hence had the power at any moment during the verification to prevent inspectors from doing their job, as shown by the example of Iraq. In this case, resorting to force did not produce satisfactory results and only occupation would permit the verification to be successfully completed.
- 100% verification was not possible: for example small objects and computer programmes could escape inspection.
- There were different positions regarding the extent of verification necessary for the inspection to be deemed complete (*full find and complete*).
- Technical tools were being developed to facilitate verification. Thus for example, environmental samples could be tested to check for the use of unauthorised nuclear power, remote sensing instruments could constantly transmit valuable information in real time information to the verification authorities. The International Atomic Energy Agency used these methods to check that nuclear material had not been diverted from its authorised use.
- Compliance remained vital.

117. The clear conclusion was therefore that the Fissile Material Production Cut-off Treaty (*Cut off treaty*), which had received universal support, would make it possible to stop the production of plutonium and uranium for military purposes. Together with the trilateral effort with particular emphasis on international verification this constituted a vital step towards nuclear disarmament.

118. The CAHDI thanked Mr Blix for his presentation, which was followed by an exchange of views.

119. The Greek Delegate pointed out that the Statute of the ICC made the use of certain types of arms a war crime, while the use of other types of arms producing traumatic effects was

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<sup>17</sup> See document CAHDI (98) 21.



not considered a war crime. This might lead to the conclusion that the use of certain arms was more legal than the use of others with equally harmful effects, which was undesirable.

120. The Italian Delegate pointed out that in this field the formation of customary legal rules was vital and referred to the opinion of the International Court of Justice on the use of nuclear weapons and the Ottawa Convention on anti-personnel mines. In the first case the question arose of what constituted customary law and what did not, while in the second there was not universal application.

Report on the Peaceful settlement of disputes prepared by Mr Orrego Vicuña and Mr Pinto<sup>18</sup>

121. Mr Pinto presented the report prepared together with Mr Orrego Vicuña and stressed the central role of the International Court of Justice (ICJ). 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 Co-operation in Europe, OSCE) because of the mistrust of certain States, in particular certain republics of the former Soviet Union vis-à-vis 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.

122. The report introduced the question of the unity and fragmentation of the international law system in so far as the proliferation of tribunals and attempts to individualise certain fields of the international law ran counter to the necessary coherence and importance of international law.

123. Mr Pinto pointed out that certain changes in the Statute of the ICJ which were proposed in the report were not feasible, but on the other hand other proposals appearing in it were innovative because this had been provided for in the terms of reference received.

124. He referred for example to the possibility of increasing the number of judges to the ICJ. The ICJ was not intended to represent the different countries but rather the different peoples, civilisations and legal systems. In practice however, the General Assembly appointed judges to the ICJ on the basis of the geographical representation.

125. Mr Pinto concluded his presentation by making several proposals: instruct the ILC to examine the questions of the application and respect of international law, set up an International Law School in the Hague and prepare a course on international public law in co-operation with the ILC.

126. The CAHDI thanked Mr Pinto for his presentation and agreed on the fact that this report was the most innovative of the three special reports in so far as it followed an open approach, but this made it more vulnerable to criticism.

127. The Finnish Delegate stated that the resources of the ICJ were too limited and much less than those for example of the Tribunals created by Resolutions 827 (1993) and 955 (1994) of the United Nations Security Council. It was therefore appropriate to give more support to the work of the ICJ. He also proposed promoting the advisory role of the ICJ and instituting the permanent conciliation committee as a subsidiary organ of the United Nations General Assembly.

128. The Spanish Delegate agreed on the fact that the role of the ICJ should be strengthened and observed that the present relative stability had led to a preference for alternative methods of resolving conflicts, which did not permit the strengthening the role of the ICJ.

129. The United Kingdom Delegate insisted on the fact the ICJ should be given more resources. He nevertheless expressed certain reservations as to the possible role of the ICJ as

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<sup>18</sup> See document CAHDI (98) 15.



constitutional court due to the nature of the ICJ, and with respect to the screening process. He also noted that there was no recourse to the formal conciliation mechanisms, so that it was desirable to allocate further resources to the ICJ rather than to set up new structures.

130. The Czech Delegate stated that regionalisation was the driving force of international law today and considered that the proliferation of international tribunals was not necessarily a bad thing.

131. The Norwegian Delegate referred to the multiplication of mechanisms for resolving disputes. The ICJ could certainly not be the only medium for settling disputes. Thus for example the World Trade Organisation *panels* played a role that the ICJ was not capable of fulfilling. There were thus arguments in favour of this proliferation. However, caution was called for because there was a tendency to set up new mechanisms for settling conflicts every time new treaties were concluded. This ran counter to the unity of international law in its application and interpretation. Furthermore, recourse to existing mechanisms and procedures saved resources and avoided the complications associated with the multiplication of procedures.

132. The Italian Delegate said that while the requirement of decentralisation was legitimate, the proliferation should be balanced as regards international legal order, with a strengthening of the organs responsible for interpretation. Regarding criminal justice, Italy had supported the exclusivity of the ICC in order to avoid divergent interpretations. This risk was also present for the peaceful settlement of disputes. It was also necessary to consider extending the compulsory competence of the ICJ. Lastly, he made specific proposals concerning the ICJ: the formation of chambers of judges and the introduction of advocates general, proposals which had proved their worth in the European Court of Justice.

133. The French Delegate stressed that it was essential to ensure the maximum of coherence in the functioning of the different international tribunals and courts as well as in the interpretation of international law.

**a. Follow-up to the Report on the Pilot Project on State practice relating to State succession and issues of recognition**

134. The CAHDI was informed of the follow-up to the report on the \*Council of Europe Pilot Project on State practice relating to State succession and issues of recognition. The report was 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 (Prof. Martti Koskeniemi and Jan Klabbers)<sup>19</sup>. It was planned that the report would be published by *Kluwer Law International* before the next meeting of the CAHDI (see point 15 below)<sup>20</sup>.

135. The Chairman drew attention to the introduction of the report where it was clearly stated that the views expressed in it were those of their authors alone and did not necessarily reflect the position of particular States or of the CAHDI as a whole as to the interpretation of the situations and events to which reference was made.

136. In addition, he suggested that once the report had been published, a small ceremony should be organised at the next meeting of the CAHDI with the presence of the authors, so that the report could be presented to the Secretary General of the Council of Europe.

137. The CAHDI agreed to this proposal.

138. The delegations of Slovakia and the United Kingdom particularly thanked the Secretariat for its efforts in the implementation of this activity.

<sup>19</sup> See document CAHDI (98) 13.

<sup>20</sup> At its 16th meeting (Paris, 17 and 18 September 1998) the CAHDI had approved the report and its publication. In addition, the CAHDI agreed that it would constitute a complementary contribution of the Council of Europe to the United Nations Decade of International Law (see document CAHDI (98) 24 rev. paragraph 49).



## **D. OTHER**

### **14. Election of the Bureau of the CAHDI**

139. The CAHDI considered a proposal aimed at setting up a Bureau, pursuant to article 8, Appendix II of Resolution (76) 3 of the Committee of Ministers.

140. The Secretariat proposed that the Bureau should be made up of the Chairman and Vice-Chairman of the CAHDI, the Chairman of the Group of Experts on reservations to international treaties and two other members. He also pointed out that the appointment of a Bureau did not have any financial implications in so far as it was not envisaged that it would meet outside the context of the meetings of the CAHDI, but rather immediately before the meeting or during the days of the meeting. The Bureau would thus be called upon to implement tasks entrusted to it by the CAHDI, notably at procedural level, and guide the Secretariat where necessary outside the meetings of the CAHDI. Lastly, he noted that all of the steering and *ad hoc* committees of the Council of Europe already had such Bureaux.

141. The delegations of France, Italy, Spain and Greece supported the setting up of a Bureau of 5 members.

142. In addition, the French Delegation proposed the inclusion in the Bureau of Mr Leanza (Italy).

143. The delegations of Hungary and the United Kingdom expressed some reservations as to the usefulness of a Bureau.

144. The Netherlands delegation had doubts about the size and composition of the Bureau.

145. The CAHDI therefore decided to return to this question at its next meeting, and instructed the Secretariat to prepare a memorandum on the subject.

### **15. Date, place and agenda of the 18th meeting of the CAHDI**

146. In accordance with the intergovernmental programme of activities and the budget of the Council of Europe, the CAHDI decided to hold its 18th meeting in Strasbourg on 7 and 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) in Strasbourg on 6 September 1999.

147. The Chairman also proposed inviting the President of the European Court of Human Rights, Mr Wildhaber, to the next meeting of the CAHDI to report on developments concerning this Court. The CAHDI agreed to this proposal and instructed the Secretariat to transmit the Committee's invitation to Mr Wildhaber<sup>21</sup>.

148. The CAHDI approved the preliminary draft agenda for the 18th meeting, which appears in Appendix VI.

### **16. Other business**

#### **a. Expression of consent by States to be bound by a treaty**

149. The CAHDI examined a Secretariat proposal for the implementation of a new activity concerning *The expression of consent by States to be bound by a treaty*.

150. In 1986 the Committee of Experts on Public International Law (CJ-DI) - predecessor of the CAHDI - under the aegis of the European Committee on Legal Co-operation (CDCJ) prepared a report the methods of expressing the consent of States to be bound by a treaty, and the relative national procedures. This report had been prepared on the basis of the replies to a questionnaire by the following member States: Austria, Belgium, Cyprus, Denmark,

<sup>21</sup> By the time this report was prepared, Mr Wildhaber had accepted the invitation extended by the Director of Legal Affairs on behalf of the Chairman of the CAHDI. Mr Wildhaber will make a communication to the CAHDI on 7 September 1999 which will be followed by an exchange of views with the members of the Committee. Then the members of the CAHDI will be invited to visit the new Human Rights Building.



France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey and the United Kingdom, together with the replies of Australia, Canada and the United States of America, observers to the meetings of the CJ-DI.

151. The report, published by the Council of Europe in 1987, turned out to be very useful to researchers and academics as well as governmental delegations, as an important source of information and of ideas for national practice.

152. Twelve years after its publication, national procedures may have changed considerably and, what is more, the number of Council of Europe member States has increased substantially. The Secretariat therefore proposes that this report should be updated in the context of the programme of activities of the CAHDI for 1999 and 2000.

If the Committee adopts this proposal, the members of the CAHDI are invited to examine the original questionnaire which served as the basis for the preparation of the report, modify it if necessary, and approve it. Once the questionnaire has been approved, the Secretariat will submit it to all the delegations of the CAHDI and to the States that are observers to the Committee.

153. The CAHDI decided to implement the activity on "The expression of consent of States to be bound by a treaty" in order to update a report prepared on this subject in 1987. To this end the Committee approved the questionnaire (Appendix V) and instructed the Secretariat to send it to all the delegations and States observers to the CAHDI for reply before 31 December 1999.

**b. Request for observer status to the CAHDI formulated by Israel**

154. The CAHDI was informed of Israel's request to be admitted as observer with the Committee formulated by Ambassador Gabay<sup>22</sup>.

155. In accordance with the procedure for the granting of observer status with intergovernmental committees and subject to the decision of the Committee of Ministers concerning Israel's request, the CAHDI unanimously welcomed this request and agreed to grant Israel observer status with the CAHDI (and its sub-committees – cf. DI-E-RIT) for the entire duration of the committee<sup>23</sup>.

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

157. The CAHDI approved an abridged report for the attention of the Committee of Ministers, which appears in Appendix VII of this report<sup>24</sup>.

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<sup>22</sup> See document CAHDI (99)

<sup>23</sup> No delegation of the Committee of Ministers having requested the inclusion of this question on the agenda of the Committee of Ministers, Israel has been granted observer status with the CAHDI (and its sub-committees) as from 1 April 1999. The Committee of Ministers confirmed this decision at its 670th meeting at level B, on 18 April 1999 (CM/Del/Dec(99)661/10.1).

<sup>24</sup> See note 4.



## APPENDIX I

### LIST OF PARTICIPANTS

**ALBANIA /ALBANIE:** Mrs Ledjia HYSI, Acting Director of the Legal and Consular Department, Blvd. "Zhan d'Ark", Ministry of Foreign Affairs

**ANDORRA /ANDORRE:** Mme Maria UBACH, Représentant Permanent adjoint d'Andorre auprès du Conseil 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 EROTKRITOU, Attorney of the Republic of Cyprus

**CZECH REPUBLIC /REPUBLIQUE TCHEQUE:** M. Jiří MALENOVSKÝ, Director 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, 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 - **Chairman/Président**

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

Mrs Bianka NOTTELMANN, German Embassy, WIEN



**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

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**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

**THE FORMER REPUBLIC YUGOSLAV OF MACEDONIA/L'EX-REPUBLIQUE YUGOSLAVE DE MACEDOINE:** Apologised/Excusé

**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 Han BLIX, STOCKHOLM - Sweden

Professor C.J. GREENWOOD, Cambridge – United Kingdom

Mr Christopher PINTO, 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

### **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, Stagiaire, Public and International Law Division/Division du droit public et international

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Mrs Beate SEIDL

Mrs Isabella WIMMER

#### **Interpreters/Interprètes**

Mme Milena KINGHAMOVA

M. Vladimir OLEXA



APPENDIX IIAGENDAA. 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 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* 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 Reactions 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, Mr Greenwood and Mr 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****DRAFT OPINION OF THE CAHDI ON PARLIAMENTARY ASSEMBLY  
RECOMMENDATION 1382 (1998) ON DRAWING UP OF 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
  4. Decisions of the Committee of Ministers concerning the CAHDI
- B. ONGOING ACTIVITIES OF THE CAHDI
  5. Decisions of the Committee of Ministers concerning the CAHDI
  6. 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. Designation of a Bureau
  16. Date, place and agenda of the 19<sup>th</sup> meeting of the CAHDI
  17. Other business



## APPENDIX VII

### ABRIDGED REPORT OF THE 17<sup>th</sup> MEETING OF THE CAHDI

Vienna, 8-9 March 1999-06-18

#### 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 16th 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 (649th 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)) (649th 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 (661st 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 16th 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.