

Strasbourg, 28 November 2000

CAHDI (2000) 20

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

20th meeting, Strasbourg, 12-13 September 2000

List of items discussed and decisions taken

1. The *Ad Hoc* Committee of Legal Advisers on Public International Law (CAHDI) held its 20th meeting in Strasbourg, on 12 and 13 September 2000. The meeting was chaired by Ambassador Dr 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 Director General of Legal Affairs, Mr De Vel, about recent developments concerning the Council of Europe. Moreover, the CAHDI was informed of the decisions taken by the Committee of Ministers concerning the Committee.
3. The CAHDI held a fruitful exchange of views with Mr Krüger, Deputy Secretary General of the Council of Europe, and one of the representatives of the Organisation in the "Convention", regarding developments on the preparation of a Charter of Fundamental Rights in the European Union. The CAHDI agreed that there should be no competing human rights systems between the EU and the Council of Europe. Moreover, it decided to keep this item on its agenda and to serve as a clearing house for the distribution of information relating thereto.
4. The CAHDI examined a draft analytical report on "Expression of consent by States to be bound by a treaty" prepared by the British Institute of International and Comparative Law on the basis of the replies by 37 member States and 5 observer States. Delegations and observer States which have not yet sent their reply and those who wish to make comments to the document are kindly invited to submit their contributions shortly.
5. Following the Committee of Ministers' request (cf. Decision No. CM/751/26042000, 707th meeting – Strasbourg, 26 April 2000), the CAHDI considered the Parliamentary Assembly Recommendation 1458 (2000) *towards a uniform interpretation of Council of Europe conventions: creation of a general judicial authority* as well as the report of the Parliamentary Assembly relating thereto. The CAHDI was informed by the Czech delegation about the underlying reasons for the proposal by the Czech Republic for the setting up of a General Judicial Authority of the Council of Europe which was at the basis of the Parliamentary Assembly recommendation. The CAHDI concluded that it was not possible to deliver a single

opinion representing the position of the Committee as a whole and adopted by subsequent written procedure the opinion in Appendix III.

6. In the context of its 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 DI-E-RIT, Ambassador Magnuson (Sweden) informed members of the CAHDI about the third meeting of the DI-E-RIT. The CAHDI adopted the report relating thereto.

Also in the context of this activity at the DI-E-RIT's request, the CAHDI held a fruitful exchange of views with Professor Pellet, member of the International Law Commission (ILC) of the United Nations and Special Rapporteur on reservations to international treaties about developments concerning the implementation of this activity by the ILC and in particular Professor Pellet's fifth report on reservations to international treaties.

In the context of its operation as *European Observatory of Reservations to International Treaties*, the CAHDI considered a list of outstanding declarations and reservations to international treaties.

7. The CAHDI held a fruitful exchange of views with Mr Kohona, Chief of the Treaty Section of the United Nations regarding the practice of the United Nations Secretary General on the depositary of multilateral treaties.

8. The CAHDI held an exchange of views on developments concerning the International Criminal Court and was informed about the organisation by the Council of Europe of a consultation meeting on the implications of the ratification of the Rome Statute of the International Criminal Court on the internal legal order of the member States of the Council of Europe (Strasbourg, 16-17 May 2000).

9. The CAHDI held an exchange of views on the work of the Sixth Commission of the General Assembly of United Nations and of the ILC. In this context, the CAHDI examined a non-edited version of the Report of the 52nd Session of the ILC (Geneva, 1 May to 9 June and 10 July to 18 August 2000), obtained as a result of Council of Europe and United Nations inter-secretariat contacts at the CAHDI's request, and a report of the 52nd session of the ILC, prepared by Professor Simma, member of the ILC, for the attention of the members of the CAHDI.

10. The CAHDI was informed about developments concerning the implementation of international instruments protecting the victims of armed conflicts as well as the implementation and the functioning of the Tribunals established by UN Security Council Resolutions 927 (1993) and 955 (1994).

11. The CAHDI held an exchange of views on developments concerning protection of sub aquatic cultural heritage and work under way within the framework of UNESCO.

12. The CAHDI examined the request by the *Ligue Internationale contre le Racisme et l'Antisémitisme (LICRA)* for observer status with the CAHDI. The CAHDI thanked LICRA for its interest in the work of the Committee but concluded that in view of LICRA's statutory aim and activities the CAHDI would not be the most suitable committee for LICRA to attend as observer and suggested that other committees for which LICRA had requested observer status would be more fitting.

13. The CAHDI adopted draft specific terms of reference for 2001-2002 as they appear in Appendix IV and decided to request their approval by the Committee of Ministers.

14. The CAHDI elected Ambassador Tomka (Slovak Republic) and Ambassador Michel (Suisse) respectively as Chair and Vice-Chair for one year.
15. The CAHDI decided to hold its next meeting in Strasbourg, from 6 to 7 March 2001 and adopted the preliminary draft agenda in Appendix V.

APPENDIX I

LIST OF PARTICIPANTS

ALBANIA/ALBANIE: Mrs Ledia HYSI, Director of the Legal and Consular Department, Ministry of Foreign Affairs, TIRANA

ANDORRA/ANDORRE: Mme Iolanda SOLA, Assessora juridical, Ministère des Relations extérieures- ANDORRA LA VELLA

AUSTRIA/AUTRICHE: Mr Hans WINKLER, Ambassador, Legal Adviser, Ministry for Foreign Affairs - WIEN

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

BULGARIA/BULGARIE: Mrs Katia TODOROVA, Director, International Law Directorate, Ministry of Foreign Affairs - SOFIA

CROATIA/CROATIE: Ms Andreja METELKO-ZGOMBIĆ, Head of the international law Department, Ministry of Foreign Affairs - ZAGREB

CYPRUS/CHYPRE: Mrs Evie GEORGIOU-ANTONIOU, Counsel of the Republic - NICOSIA

CZECH REPUBLIC/REPUBLIQUE TCHEQUE: Mr Jaroslav HORAK, Legal Director, Ministry of Foreign Affairs, - PRAGUE

Mr Jiří MALENOVSKÝ, Judge of the Constitutional Court - 660 83 BRNO

Monsieur l'Ambassadeur Jiri MUCHA, Représentant Permanent de la République Tchèque auprès du Conseil de l'Europe

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

ESTONIA/ESTONIE: Mrs Marina KALJURAND, Director General of the Legal Department, Ministry of Foreign Affairs -TALLINN

FINLAND/FINLANDE: Mr Esko KIURU, Ambassador, Deputy Director General, Legal Department, Ministry for Foreign Affairs - HELSINKI

Mrs Marja LEHTO, Counsellor Director, Unit for Public International Law, Ministry for Foreign Affairs - HELSINKI

FRANCE: Mme Frédérique COULEE, Direction des Affaires Juridiques, sous-direction du droit international public, Ministère des Affaires étrangères - PARIS

Monsieur Jean-Luc FLORENT, Direction des Affaires Juridiques, Ministère des Affaires étrangères - PARIS

GEORGIE: Mr Gela BEZHUASHVILI, Ambassador, Director of International Law Department, Ministry of Foreign Affairs - TBILISI

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

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

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

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

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

ICELAND/ISLANDE: Mr Tomas H. HEIDAR, Legal Adviser, Ministry for Foreign Affairs - REYKJAVIK

ITALY/ITALIE: M. Umberto COLESANTI, Ministre plénipotentiaire, Chef adjoint du Contentieux diplomatique, Ministère des Affaires étrangères

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

LATVIA/LETTONIE: Mrs Evija DUMPE, Head of International Law Division, Ministry of Foreign Affairs - RIGA

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

LITHUANIA/LITUANIE: Mr Sigute JAKŠTONYTĖ, Minister Counsellor, Deputy Director of Legal and International Treaties Department, Ministry of Foreign Affairs - VILNIUS

LUXEMBOURG: M. Paul STEINMETZ, Directeur du Service Juridique, Ministère des Affaires étrangères - LUXEMBOURG

MALTA/MALTE: Dr Lawrence QUINTANO, Senior Counsel, Office of the Attorney General - VALLETTA

MOLDOVA: Mr Vitalie SLONOVSKI, Directeur, Département de droit international et des Traités, Ministère des Affaires étrangères - CHISINAU

NETHERLANDS/PAYS-BAS: Dr Liesbeth LIJNZAAD, Deputy Head, International Law Department, Ministry of Foreign Affairs - THE HAGUE

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

POLAND/POLOGNE: Prof. Anna WYROZUMSKA, Director of the Legal and Consular Department, Ministry of Foreign Affairs - WARSAW

PORTUGAL: Mrs Margarida REI, Director of the Legal Department, Ministry of Foreign Affairs - LISBOA

ROMANIA/ROUMANIE: M. Anghel CONSTANTIN, Directeur adjoint des Affaires Juridiques et des Traités, Ministère des Affaires Etrangères - BUCAREST

RUSSIAN FEDERATION/FEDERATION DE RUSSIE: Mr Ilya ROGACHEV, Head of Section of the Legal Department, Ministry of Foreign Affairs - MOSCOW

SAN MARINO/SAINT MARIN: -

SLOVAK REPUBLIC/REPUBLIQUE SLOVAQUE: Mr Peter TOMKA, Ambassador, Permanent Representative to the UN, Permanent Mission of Slovakia to the United Nations, NEW YORK (Vice-Chairman/Vice-Président)

SLOVENIA/SLOVENIE: Mr Andrej GRASELLI, Head of the International and Law Department, Ministry for Foreign Affairs - LJUBLJANA

SPAIN/ESPAGNE: Mr Aurelio PEREZ GIRALDA, Ambassador, Director del Departamento de Derecho Internacional, Ministerio de Asuntos Exteriores - MADRID

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

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

SWITZERLAND/SUISSE: M. l'Ambassadeur Nicolas MICHEL, Jurisconsulte, Directeur de la Direction du Droit international public, Département fédéral des affaires étrangères - BERNE

M. Jürg LINDENMANN, Suppléant du Jurisconsulte, Direction du Droit international public, Département fédéral des Affaires étrangères - BERNE

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

TURKEY/TURQUIE: Mme Nehir ÜNEL, Conseiller Juridique, Ministère des Affaires étrangères - ANKARA

UKRAINE: Mr Markiyan KULYK, Legal and Treaty Department, Ministry for Foreign Affairs - KIEV

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

SPECIAL GUESTS/INVITES SPECIAUX

Professeur Alain PELLET, Rapporteur spécial des Nations Unies sur les réserves aux traités internationaux, membre de la Commission de Droit International, 16 avenue Alphonse de Neuville

Mr Palitha T.B. KOHANA, Chief of the Treaty Section, Office of Legal Affairs, United Nations, NEW YORK - U.S.A

EUROPEAN COMMUNITY /COMMUNAUTE EUROPEENNE

EUROPEAN COMMISSION/COMMISSION EUROPEENNE: Mr Esa PAASIVIRTA, Member of the Legal Service, Legal Service, European Commission

OBSERVERS/ OBSERVATEURS

CANADA: Mr Michael R. LEIR, Legal Adviser, Department of Foreign Affairs and International Trade - OTTAWA

Mr Alain TELLIER, Conseiller, Mission Permanente du Canada auprès de l'Office des Nations Unies à Genève

HOLY SEE/SAINT-SIEGE: Mme Odile GANGHOFER, Docteur en droit, Mission Permanente du Saint-Siège - STRASBOURG

JAPAN/JAPON: M. Yoshihide ASAKURA, Consul, Consulat Général du Japon - STRASBOURG

M. Pierre DREYFUS, Assistant, Consulat Général du Japon - STRASBOURG

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

MEXICO/MEXIQUE: Ambassador Miguel Angel GONZÁLEZ FELIX, Chief Legal Adviser, Ministry of Foreign Affairs (SRE),- MEXICO

AUSTRALIA/AUSTRALIE: -

ISRAEL: Mr Alan BAKER, Ambassador, Legal Adviser, Ministry of Foreign Affairs, JERUSALEM

NEW ZELAND/NOUVELLE ZELANDE: -

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

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

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT/ORGANISATION DE COOPERATION ET DE DEVELOPPEMENT ECONOMIQUES: Mr David H. SMALL, Director of Legal Affairs, OECD - PARIS

ARMENIA/ARMENIE: Apologised/Excusé

AZERBAIJAN/AZERBAIDJAN: Mr Rashad ASLANOV, Referent of the Treaty Legal Department, Ministry of Foreign Affairs - BAKU

BOSNIA- HERZEGOVINA/BOSNIE-HERZEGOVINE: Mrs Jasmina HANDZIĆ, Department for the International Legal Affairs, Ministry of Foreign Affairs, SARAJEVO

SECRETARIAT GENERAL

M. H.C. KRUGER, Secrétaire Général adjoint du Conseil de l'Europe

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

M. Alexey KOZHEMYAKOV, Head of the Department of Public Law/Chef du Service du droit public

Mr Rafael A. BENITEZ, **Secretary of the CAHDI/Secrétaire du CAHDI**, Department of Public Law/Service du Droit public

M: Jörg POLAKIEWICZ, Deputy Head of Legal Advice Department and Treaty Office/Adjoint au Chef du Service du Conseil Juridique et Bureau des Traités

Mme Francine NAAS, Assistant/Assistante, Department of Public Law/Service du Droit public

APPENDIX II

AGENDA

A. INTRODUCTION

1. Opening of the meeting by the Chairman, Ambassador Dr. Hilger
- *Draft meeting report of the 19th meeting (Berlin, 13-14 March 2000)*

2. Adoption of the agenda

3. Communication by the Director general of Legal Affairs, Mr. De Vel

B. ONGOING ACTIVITIES OF THE CAHDI

4. Decisions by the Committee of Ministers concerning the CAHDI
- *Resolution (2000) 2 of the Committee of Ministers on "Council of Europe's information strategy"*

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

- *Draft meeting report of the 3rd DI-E-RIT meeting (Berlin, 10 March 2000)*

a. Exchange of views with Professor A. Pellet, Special Rapporteur of the United Nations and member of the International Law Commission

b. European Observatory of Reservations to international Treaties

6. Expression of consent by States to be bound by a treaty

7. Proposal for the setting up of a General Judicial Authority of the Council of Europe

8. Discussion on possible new activities

- *Report of the European Commission for Democracy through law on Federated and Regional Entities and international Treaties*

- *Colloquy of the French Society for International Law "International Law and the time factor"*

9. Adoption of the draft specific terms of reference of the CAHDI for 2001-2002 and possibly of any subordinated group

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

10. The work of the Sixth Commission of the General Assembly of United Nations and of the International Law Commission (ILC)

- *Report of the 52nd session of the International Law Commission*

- *The work of the International Law Commission at its 52nd Session*

11. The role of depositary : Exchange of views with Mr. Palitha Kohona, Chief of the Treaty Section of the United Nations regarding the practice of the United Nations Secretary General on the deposit of multilateral treaties

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

13. Developments concerning the International Criminal Court : Conclusions of the consultation meeting on the implications of the ratification of the Rome Statute of the International Criminal Court on the internal legal order of the member States of the Council of Europe

14. Implementation and functioning of the Tribunals established by UN Security Council Resolutions 827 (1993) and 955 (1994)
15. Law of the Sea : Protection of Sub aquatic Cultural Heritage
16. Developments concerning the preparation of a Charter of Fundamental Rights in the European Union: Exchange of views with Mr. H.C. Krüger, Deputy Secretary General of the Council of Europe

D. OTHER

17. Request by the *Ligue Internationale contre le Racisme et l'Antisémitisme (LICRA)* for observer status with the CAHDI
18. Election of the Chair and the Vice-Chair of the CAHDI
19. Date, place and agenda of the 21st meeting of the CAHDI
20. Other business
21. Closing

APPENDIX III

OPINION OF THE CAHDI ON THE PARLIAMENTARY ASSEMBLY RECOMMENDATION 1458 (2000) TOWARDS A UNIFORM INTERPRETATION OF COUNCIL OF EUROPE CONVENTIONS: CREATION OF A GENERAL JUDICIAL AUTHORITY

The *Ad Hoc* Committee of Legal Advisers on Public International Law (CAHDI) held its 20th meeting in Strasbourg, 12-13 September 2000. The agenda included an item entitled "Proposal for the setting up of a General Judicial Authority of the Council of Europe". The CAHDI decided to consider this proposal submitted by the Czech Republic to the Committee of Ministers at its own initiative.

In the framework of this item and pursuant to the Committee of Ministers' decision No. CM/751/26042000 (707th meeting – Strasbourg, 26 April 2000), the CAHDI was also asked to give an opinion on the Council of Europe's Parliamentary Assembly Recommendation 1458 (2000) *Towards A Uniform Interpretation of Council of Europe Conventions: Creation of a General Judicial Authority*.

In its recommendation, the Parliamentary Assembly of the Council of Europe supports the Czech proposal for the setting up of a "general judicial authority" of the Council of Europe and recommends that the Committee of Ministers set up such an authority, which would provide the mechanism for the uniform interpretation of Council of Europe treaties starting with those still to be concluded and with a selected number of the existing conventions.

The Parliamentary Assembly recommends that such an authority should have the following competencies: to give binding opinions on the interpretation and application of Council of Europe conventions at the request of one or several member states or at the request of the Committee of Ministers or of the Parliamentary Assembly, to give non-binding opinions at the request of one or several member states or of one of the two organs of the Council of Europe, and to make preliminary rulings, at the request of a national court, on lines similar to those of Article 177 of the Rome Treaty of 1956 establishing the European Economic Community.

The CAHDI was advised by the Czech delegation about the underlying reasons for the proposal which are both legal and political and try to respond to a real need, i.e.: to ensure the uniform interpretation of Council of Europe international instruments, in view of the fact that very few of them provide for a control mechanism. In this perspective, the Czech delegation understood that there were two basic options in order to implement the recommendation: to empower a newly created authority or to extend the competencies of an existing body such as the European Court of Human Rights and supported the second one.

The CAHDI held an exchange of views on the Parliamentary Assembly recommendation 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 public international law issues connected with the Parliamentary Assembly Recommendation.

From the onset, the CAHDI considered that the implementation of the Parliamentary Assembly Recommendation would change the very way in the which the Council of Europe has operated until now.

The CAHDI, having conducted a debate on this issue, concluded that it would not be possible to deliver a single opinion on behalf of the Committee as a whole. Instead it decided to provide a summary of arguments for and against the implementation of the Parliamentary Assembly Recommendation which were submitted by delegations.

Arguments in favour

Since the 1960s three recommendations of the Parliamentary Assembly, as well as the report of the Wise Persons Committee have supported the search for a means of ensuring the uniform interpretation of Council of Europe international instruments, in view of the fact that very few of them provide for a control mechanism solution to such a situation. Parliamentary Assembly Recommendation 1458 (2000) now provides the political support on the part of parliamentarians to move forward in that direction.

Article 3 of the Statute of the Council of Europe provides that "Every member of the Council of Europe must accept the principles of the rule of law". The rule of law implies the existence of a jurisdiction to guarantee uniform interpretation of law.

In as far as Council of Europe conventions are concerned, the setting up of such a general judicial authority as suggested by the Parliamentary Assembly, would guarantee a uniform interpretation.

The European Court of Human Rights could ensure these functions given its prestige and authority and the fact that it regularly applies public international law. Moreover, this solution would have low cost and a limited impact on the Court's workload.

Finally, the implementation of Parliamentary Assembly Recommendation 1458 (2000) would contribute in increasing the visibility of the Organisation as a whole.

Arguments against

Council of Europe conventions are very diverse regarding their substance and autonomous regarding their contracting parties and supervisory mechanisms. Therefore, they hardly represent a uniform and coherent body of international law. Some conventions make provision for committees which consider questions arising from the application of these texts, including interpretation. Although they may not be judicial in nature, they have operated well and have brought in the flexibility which is inherent to the system of international law.. Other conventions expressly do not provide for such control or interpretation mechanism and form part of the general system of international law. States may have become parties to these conventions precisely because of this character which should be preserved. Where the establishment of a mechanism for judicial interpretation of a particular convention was required, it was always possible to conclude an appropriate protocol to the convention in question.

The creation of a new general judicial authority would require significant resources.

In addition, it would contribute further to the proliferation of international judicial authorities and to the fragmentation of international law which would be highly undesirable. It is not justified in as far as the Council of Europe already has a Convention for the Peaceful Settlement of Disputes to which States may become parties. In addition, the International Court of Justice could solve disputes arising from the application or interpretation of Council of Europe conventions.

The allocation of new competences to an already existing body, such as the European Court of Human Rights, would also raise legal and practical problems. The Court forms part of a legal system which has its own justification. Pursuant to its new role, the Court would be compelled to give opinions on a variety of issues, some of which lying far beyond its traditional field of expertise. As far as the workload is concerned, it is far from certain that the allocation of new competencies to the Court would not entail an excessive increase in the Court's workload at the cost of efficiency in performing its primary tasks. Moreover, if it only entailed a minor increase in work, the question would arise about the usefulness of the new role altogether.

Moreover, it should be noted that the European Community is party to some Council of Europe conventions. The setting up of a general judicial authority could conflict with the competencies of the Court of Justice of the European Communities in this respect.

Finally, it should be noted that paragraph 9, i) of the Parliamentary Assembly Recommendation provides that a general judicial authority should have the competence to give binding opinions on the interpretation and application of Council of Europe conventions at the request of one or several member states. However, it is not indicated whether this or these member States have to be party to the convention in question and this raises a delicate question.

Conclusions

The CAHDI concluded that at present time, the reluctance on the part of a significant number of States is too high for the Parliamentary Assembly Recommendation to be pursued in whatever form. The CAHDI, therefore suggests reverting to consideration of this issue in the future when appropriate conditions are met.

Moreover, the CAHDI, inspired by the Czech proposal and the Parliamentary Assembly Recommendation, suggests that the question of interpretation be considered for future conventions to be concluded in the framework of the Council of Europe and that, where appropriate, suitable means for interpretation be provided for.

APPENDIX IV
DRAFT SPECIFIC TERMS OF REFERENCE

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

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

5. Membership of the Committee:
 - a. The Committee is composed of experts by member States, preferably chosen among the Legal Advisers to the Ministries of Foreign Affairs. Travel and subsistence expenses of one expert per member State (two for the State assuming the Chair of the Committee) are borne by the Council of Europe budget.
 - b. The European Community may send representatives, without the right to vote or to a refund of expenses, to meetings of the Committee.
 - c. The following States having observer status with the Council of Europe may send a representative without the right to vote or to a refund of expenses to meetings of the Committee: Canada, Holy See, Japan, United States of America and Mexico.
 - d. The following non-member States or organisations may send a representative, without the right to vote or to a refund of expenses (1), to meetings of the Committee:
 - * Armenia (1)
 - * Azerbaijan (1)
 - Australia
 - * Bosnia Herzegovina (2)
 - New Zealand
 - Israel (3)
 - The Hague Conference on Private International Law
 - NATO (4)
 - The Organisation for Economic Co-operation and Development
 - The United Nations and its specialised agencies (5).
6. Structures and working methods: The CAHDI may set up working parties and have recourse to consultant experts.

7. Duration: The present terms of reference expire on 31 December 2002.

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

(2) Subject to their request.

(3) Admitted as observer "for the whole duration of the Committee" by the CAHDI, 17th meeting, Vienna, 8-9 March 1999. The same is valid for subordinated committees. This decision was confirmed by the Committee of Ministers at its 670th meeting, Strasbourg, 18 May 1999. See CM/Del/Dec(99)670, item 10.2.

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

(5) For specific items, at the request of the Committee.

APPENDIX V**PRELIMINARY DRAFT AGENDA FOR THE 21ST MEETING OF THE CAHDI****A. INTRODUCTION**

1. Opening of the meeting by the Chairman, Ambassador Tomka
2. Adoption of the agenda
3. Communication by the Director general of Legal Affairs, Mr. De Vel

B. ONGOING ACTIVITIES OF THE CAHDI

4. Decisions by the Committee of Ministers concerning the CAHDI
5. The law and practice relating to reservations and interpretative declarations concerning international treaties : European Observatory of Reservations to international Treaties
6. Expression of consent by States to be bound by a treaty
7. Discussion on possible new activities

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

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. Law of the Sea : Protection of Sub aquatic Cultural Heritage
12. Developments concerning the preparation of a Charter of Fundamental Rights in the European Union

D. OTHER

13. Date, place and agenda of the 22nd meeting
14. Other business
15. Closing