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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW
(CAHDI)

22nd meeting
Strasbourg, 11-12 September 2001

MEETING REPORT

Secretariat memorandum
prepared by the Directorate General of Legal Affairs

A. INTRODUCTION

1. Opening of the meeting

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 22nd meeting in Strasbourg on 11 and 12 September 2001. The meeting was chaired by Ambassador Tomka (Slovak Republic), Chairman of the CAHDI. The list of participants is set out in Appendix I.

2. Adoption of the agenda

2. The agenda, as set out in Appendix II, was unanimously adopted. The committee also approved the draft report of the previous meeting (document CAHDI (2001) 4 prov.).

3. Communication by the Secretariat

3. Mr Guy De Vel, Director General of Legal Affairs, addressed the Committee. The text of his communication is reproduced in Appendix III.

B. ONGOING ACTIVITIES OF THE CAHDI

4. Decisions by the Committee of Ministers concerning the CAHDI

4. The Secretariat informed the CAHDI that at their 762nd meeting, Strasbourg, 5 September 2001, the Committee of Ministers at Deputies level considered Recommendation 1523 (2001) of the Parliamentary Assembly on domestic slavery¹ and decided to bring it to

¹ *Parliamentary Assembly of the Council of Europe - Recommendation 1523 (2001)*¹ - Domestic slavery (Text adopted by the Assembly on 26 June 2001 (18th Sitting)).

1. *In the last few years a new form of slavery has appeared in Europe, namely domestic slavery. It has been established that over 4 million women are sold each year in the world.*

2. *In this connection the Assembly recalls and reaffirms Article 4, paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which prohibits slavery and servitude, and also the definition of slavery derived from the opinions and judgments of the European Commission of Human Rights and the European Court of Human Rights.*

3. *The Assembly also recalls Article 3 of the ECHR, which provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment, and Article 6, which proclaims the right of access to a court in civil and criminal matters, including cases where the employer enjoys immunity from jurisdiction.*

4. *The Assembly also refers to the European Convention on Mutual Assistance in Criminal Matters (1959) (ETS No. 30), the European Convention on Extradition (1957) (ETS No. 24) and the European Agreement on "au pair" Placement (1969) (ETS No. 68).*

5. *It notes that the victims' passports are systematically confiscated, leaving them in a situation of total vulnerability with regard to their employers, and sometimes in a situation bordering on imprisonment, where they are subjected to physical and/or sexual violence.*

6. *Most of the victims of this new form of slavery are in an illegal situation, having been recruited by agencies and having borrowed money to pay for their journey.*

7. *The physical and emotional isolation in which the victims find themselves, coupled with fear of the outside world, causes psychological problems which persist after their release and leave them completely disoriented.*

8. *The Assembly also deplores the fact that a considerable number of victims work in embassies or in the homes of international civil servants who, under the Vienna Convention on Diplomatic Relations of 1961, enjoy immunity from jurisdiction and enforcement and are covered by the principle of inviolability of persons and property.*

9. *It regrets that none of the Council of Europe member states expressly make domestic slavery an offence in their criminal codes.*

10. *It accordingly recommends that the Committee of Ministers ask the governments of member states to:*

- i. make slavery and trafficking in human beings, and also forced marriage, offences in their criminal codes;*
- ii. strengthen border controls and harmonise policies for police co-operation, especially with respect to minors;*
- iii. ensure that police officers are adequately trained to deal with victims of slavery and increase the number of women officers;*
- iv. amend the Vienna Convention in order to waive diplomatic immunity for all offences committed in private life;*

the attention of their Governments and assigned ad hoc terms of reference to the Steering Committee for Equality between Women and Men (CDEG), the European Committee on Crime Problems (CDPC), and the CAHDI. The Secretariat further noted that the ad hoc terms of reference given to the above-mentioned Committees were due to expire on 30 March 2002 and that as far as the CAHDI was concerned, they referred in particular to the issue of immunity from jurisdiction.

5. The Chairman invited delegations to provide preliminary comments in order to give guidance to the Secretariat in view of the preparation of a draft opinion of the Committee for consideration at the next meeting of the CAHDI.

6. The delegate of the United Kingdom noted that domestic slavery was a very serious matter that host countries should deal with appropriately. However, on policy ground it was not realistic nor desirable to amend the Vienna Convention (cf. paragraph 10.iv) and concluded that host countries should deal with it properly.

7. The delegate of France supported this position and recalled that immunities are not aimed at exempting diplomats from the obligations which result from applicable domestic law, particularly in the private relations field. Moreover, he noted that the Vienna Convention does not exclude that host countries can exert some degree of control over diplomats in post in their country. Thus, in France since 1999, following an instruction of the Ministry for Foreign Affairs, the protocol department, in the context of granting the residence permit, meets with domestic employees of diplomats in order to ascertain whether they are properly treated. This is an example of how host countries can deal with abuses in a way which is fully compatible with the Vienna Convention. Finally, the Vienna Convention does not forbid exchanges of information between Ministries of Foreign Affairs on abuses most serious in the field of immunities and privileges, particularly regarding private employees in order to avoid that a diplomat infringing in one host country does in another. He concluded noting that the CAHDI is called upon to focus on immunity of jurisdiction and that, in that light, paragraph 10.iv of the Recommendation goes too far in view of the subject matter of the Recommendation since not even domestic slavery situations should warrant waiving diplomatic immunity.

8. The delegates of Sweden, Finland and Norway observed that the fact that there are no specific criminal offences on domestic slavery does not exclude the application of other provisions of the criminal code to these acts. Indeed, in most member States of the Council of Europe such actions are criminalized already, e.g. offences relating to sexual abuse or restrictions of movement. Like prior delegations, they concluded that it is not a question of amending the Vienna Convention but focusing and making use of possibilities that the Vienna Convention and international co-operation mechanisms offer.

v. sign and ratify the Convention against Transnational Organised Crime and its additional protocols (December 2000);

vi. protect the rights of victims of domestic slavery by:

a. generalising the issuing of temporary and renewable residence permits on humanitarian grounds;

b. taking steps to provide them with protection and with social, administrative and legal assistance;

c. taking steps for their rehabilitation and their reintegration, including the creation of centres to assist, among others, victims of domestic slavery;

d. developing specific programmes for their protection;

e. increasing victims' time limits for bringing proceedings for offences of slavery;

f. establishing compensation funds for the victims of slavery;

vii. give accurate information about the risks of working abroad to domestic workers and others when permits are requested, for instance at embassies;

viii. avoid all gender discrimination in the issuing of work permits to domestic workers.

11. The Assembly also recommends that the Committee of Ministers ask the relevant expert committee(s) to draw up a domestic workers' charter of rights.

9. The delegate of Norway further referred to forced marriage and noted that this was not an issue so much in relation to diplomatic immunities but rather related to immigration. Therefore, his authorities are negotiating bilaterally, e.g. with Pakistan, and realise that this is a very sensitive issue. In this connection, the delegate of the United Kingdom noted that his Foreign Ministry has an active programme to talk to communities about this problem and tries to rescue victims in other countries where the United Kingdom has consulates. He suggested that the CAHDI could deal with this issue in the future.

10. The delegate of Ukraine welcomed the Parliamentary Assembly's decision to take up such an important issue. However, he noted that paragraph 9 of the PA recommendation was in contradiction with paragraph 1 because it is a new phenomenon so it was premature to say that the PA regretted that member States have not yet been able to react. Like prior delegations he expressed doubts about the suitability of amending the Vienna Convention which is a key element for the stability of diplomatic relations and noted that in any event, given the universal character of the text, the Council of Europe could not amend it.

11. The delegate of Austria referred to paragraph 10.iv of the PA recommendation and noted that it went far beyond the objective set by the PA in its recommendation because it would reduce immunity to functional immunity since it talks about "in private sphere" and that would be too far-reaching.

12. The delegate of Spain noted that there is no single definition of domestic slavery and observed a contradiction between paragraphs 2 and 9 of the recommendation because even if domestic slavery is not typified as such, by the fact of being party to the European Convention on Human Rights, member States of the Council of Europe would be liable.

13. The delegate of the United Kingdom further referred to paragraph 3 and noted that the statement about ECHR is questionable because it suggests that diplomatic and State Immunity are incompatible with the ECHR. Moreover, he suggested that the proposal to introduce new offences should be left for the CDPC.

14. The delegate of Switzerland noted that there was some confusion in the text of the PA since it was entitled *on domestic slavery* while in substance (see for instance paragraph 8) it was dealing mostly with trafficking of human beings. He stressed that it was essential to draw a distinction between bad treatment and trafficking. In addition, he noted that it was odd to consider that diplomatic immunity is the key obstacle for dealing with this problem. Finally he noted that the last sentence of paragraph 3 where reference was made to employers enjoying immunity from jurisdiction was not accurate and that regarding paragraph 10 it was important to draw a distinction between State and diplomatic immunity and between civil and criminal liability.

15. The delegate of Greece noted that the recommendation is not systematic and expressed reservations about paragraph 10.iv and 11, in particular.

16. The delegate of Croatia noted that paragraph 8 of the Vienna Convention does not grant any immunity to international civil servants although they do enjoy some degree of immunity by virtue of other texts.

17. The delegate of Germany noted that different legal notions and concepts are brought together in the text of the Parliamentary Assembly and that it is appropriate for the CAHDI to set the record straight. He stressed that the CAHDI's opinion should be clear that such a serious matter can not be dealt with appropriately in such a confusing manner.

18. The Chairman concluded the preliminary consideration of this matter, noting a number of inaccuracies in the text of the Parliamentary Assembly. He stressed that the Vienna Convention already contains means to tackle abuse of this kind and observed that paragraph 11 of the text was not within the remit of the CAHDI. He called upon the Secretariat to inform the CAHDI at its next meeting whether other Committees in the Council of Europe are dealing with separate aspects of the Parliamentary Assembly

Recommendation, namely that of forced marriages and asked the Secretariat to prepare a preliminary draft opinion of the CAHDI for consideration at the next CAHDI meeting on the basis of the positions expressed by delegations. He further called upon the Secretariat to circulate the text to delegations before the end of the year for comment by end of January 2002 and asked delegations to provide alternative formulations where necessary.

5. The law and practice relating to reservations and interpretative declarations concerning international treaties : European Observatory of Reservations to international Treaties

19. 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, drawing on the document drafted by the Secretariat (see document CAHDI (2001) 6 and addendum).

20. The Secretariat pointed out that in accordance with the Committee's request, it had included in Part II (on reservations and declarations concerning Council of Europe conventions of document CAHDI (2001) 6 and its addendum) notes on the reservations system provided for by the conventions concerned.

21. The CAHDI first of all considered the outstanding declarations and reservations relating to treaties concluded outside the Council of Europe (Part I of document CAHDI (2001) 6).

22. With regard to Saudi Arabia's reservation of 7 September 2000 to the Convention on the Elimination of All Forms of Discrimination Against Women (New York, 18 December 1979)², the delegations of the United Kingdom, France, Austria, the Netherlands, Germany, Finland and Spain informed the Committee that they had objected to this reservation given its general character which made it impossible for other parties to determine the extent of the commitment by the reserving country. The delegate of Spain further noted that the objection to this reservation had been formulated following the model clause provided for in the Council of Europe's Recommendation No. R(1999)13 of the Committee of Ministers.

23. With regard to the Democratic People's Republic of Korea's reservation and declaration of 27 February 2001 concerning the Convention on the Elimination of All Forms of Discrimination Against Women (New York, 18 December 1979)³, the delegate of Austria informed the CAHDI that his government will be objecting to it, stating that their objection would not preclude the entry into force of the Convention.

24. Similarly the delegates of Spain and the Netherlands indicated that they would be objecting to it.

25. The delegates of Sweden, France and the United Kingdom indicated that they would also be objecting to it and focus in particular on the reservation concerning article 2.f.

26. The delegates of Portugal and Ireland indicated that they would be objecting to it, focusing on the reservation to articles 2.f and 9.2

27. The delegates of the United Kingdom and Ireland noted that the reservation concerning article 29.1 was permitted by the Convention.

² Reservation:

In case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention.

The Kingdom does not consider itself bound by paragraph 2 of article 9 of the Convention and paragraph 1 of article 29 of the Convention.

³ Reservation and declaration:

The Government of the Democratic People's Republic of Korea does not consider itself bound by the provisions of paragraph (f) of article 2, paragraph 2 of article 9 and paragraph 1 of article 29 of [the Convention].

28. With regard to the Kiribati's declaration of 7 September 2000 concerning the Kyoto Protocol to the United Nations Framework Convention on Climate Change (Kyoto, 11 December 1997)⁴, the delegates of the Netherlands and Norway expressed some doubts and noted that the declaration could be interpreted as a reservation. The representative of the European Commission noted that a number of similar statements had been made by other island States and that they do not consider that they warrant an objection.

29. With regard to Botswana's reservation of 8 September 2000 to the International Covenant on Civil and Political Rights (New York, 16 December 1966)⁵ the delegates of the United Kingdom, the Netherlands, Ireland, Germany and France expressed some doubts about it in so far as it referred to provisions of domestic legislation which the other countries are not required to know, that could amount to the possibility for domestic courts to interpret the provisions of the Covenant more narrowly than international instances and that could be changed.

30. The delegate of the Netherlands suggested that the proper approach to this kind of reservation would be to make a formal objection to the reservation to the extent that national law or interpretation would deviate from treaty, and that his government will make such an objection.

31. The delegate of Ireland noted that there is a constitutional guarantee in Ireland of freedom from torture and from inhuman or degrading treatment. Nevertheless Ireland accepts that the authoritative interpretation of the equivalent guarantee under the covenant is a matter for the Human Rights Committee, not for the Irish Supreme Court.

32. Several delegations referred to a general problem with this type of reservation which introduced an element of uncertainty and the fear that admitting such reservation would foster the formulation of similar reservations in the future.

33. The delegate of Norway referred to the first paragraph in the reservation and noted that the prohibition against torture and inhuman or degrading treatments has a broader basis than Article 7 of the Covenant. He concluded that the reservation has no object and would have no impact and for that reason is unacceptable and therefore his government will object to it.

34. Further to that, the delegate of Germany further noted that they had looked into the Botswana Constitution and Article 14 is incompatible with Article 12 of the Covenant.

35. The delegate of Slovakia informed the CAHDI that on 1 July 2001 the Slovak Constitution (Article 7, paragraph 5) had been amended in order to give priority to international treaties ratified by Parliament over national legislation and as a result domestic courts were called upon to interpret and apply international treaties in the light of their own system established in that treaty. In the case of contradiction between a treaty which has not been ratified and the Constitution, the Constitutional Court would be called upon to decide

⁴ Declaration:

The Government of the Republic of Kiribati declares its understanding that accession to the Kyoto Protocol shall in no way constitute a renunciation of any rights under international law concerning State responsibility for the adverse effects of the climate change and that no provision in the Protocol can be interpreted as derogating from principles of general international law.

⁵ Reservations made upon signature and confirmed upon ratification:

The Government of the Republic of Botswana considers itself bound by:

a) Article 7 of the Covenant to the extent that "torture, cruel, inhuman or degrading treatment" means torture inhuman or degrading punishment or other treatment prohibited by Section 7 of the Constitution of the Republic of Botswana.

b) Article 12 paragraph 3 of the Covenant to the extent that the provisions are compatible with Section 14 of the Constitution of the Republic of Botswana relating to the imposition of restrictions reasonably required in certain exceptional instances.

whether there would be a contradiction and in the affirmative either the Constitution should be amended or ratification should not be possible.

36. The observer of Mexico informed the CAHDI that his government had also formulated a reservation to this covenant and were in the process of withdrawing it.

37. With regard to Costa Rica's reservation of 17 October 2001 to the Convention on the Safety of United Nations and Associated Personnel (New York, 9 December 1994)⁶, the Chairman noted that in fact it may not constitute a real reservation because it actually amounted to enlarged protection of the UN and associated personnel.

38. With regard to Algeria's reservation of 7 November to the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents (New York, 14 December 1973)⁷ the delegate of Finland noted that the reservation was allowed by the treaty.

39. With regard to Pakistan's reservation or declaration of 12 September 2000 to the Convention on the Physical Protection of Nuclear Material (Vienna, 26 October 1979)⁸, the observer of the United States expressed some concern regarding the first paragraph because it undermines the Convention and is contrary to its object and purpose. Therefore, they have raised the matter with the authorities of Pakistan and hope they will withdraw it. If that is not the case they will formally object to it. In addition, they asked the Secretariat of the IIAE about the deadline for objection to the reservation and have been informed that it is 20 October 2001. Similarly, the delegate of Belgium informed the CAHDI that her country, acting as chair of the EU, has entered into a dialogue with reserving States and was informed of Pakistan's intention to stand by it. The matter was then examined at the recent COJUR meeting and the member States of the EU are currently working on a common objection since this is a treaty with mixed competence Euratom - EU member States.

40. The delegate of Norway informed the CAHDI that the reservation is currently under assessment by competent domestic authorities and that this consideration illustrates difficulties raised by the reservation.

41. With regard to Belize's declaration of 30 November 2000 to the Convention on Consular Relation (Vienna, 24 April 1963)⁹ the delegate of Finland noted that this

⁶ Reservation:

The Government of the Republic enters a reservation to article 2, paragraph 2, of the Convention, to the effect that limiting the scope of application of the Convention is contrary to the pacifist thinking of our country and, accordingly, that, in the event of conflicts with the application of the Convention, Costa Rica will, where necessary, give precedence to humanitarian law.

⁷ Reservation:

The Government of the People's Democratic Republic of Algeria does not consider itself bound by the provisions of article 13, paragraph 1, of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.

The Government of the People's Democratic Republic of Algeria states that in each individual case, a dispute may be submitted to arbitration or referred to the International Court of Justice only with the consent of all parties to the dispute.

⁸ 1. *The Government of the Islamic Republic of Pakistan does not consider itself bound by paragraph 2 of Article 2, as it regards the question of domestic use, storage and transport of nuclear material beyond the scope of the said Convention.*

2. *The Government of the Islamic Republic of Pakistan does not consider itself bound by either of the dispute settlement procedures provided for in paragraph 2 of Article 17 of the said Convention.*

⁹ Declaration:

The Government of Belize will interpret the exemption accorded to members of a consular post by paragraph 3 of Article 44 from liability to give evidence concerning matters connected with the exercise of their functions as relating only to acts in respect of which consular officers and consular employees enjoy immunity from the jurisdiction of the judicial or administrative authorities of the receiving State in accordance with the provisions of Article 43 of the Convention. The Government of Belize further declares that it will interpret Chapter II of the

declaration amounted to a reservation because it extended the liability of a consular officer to give evidence. Moreover, the delegate of Portugal noted that they defended a different interpretation of chapter II of the Convention from that made by Belize so they have some doubts.

42. With regard to Nicaragua's declaration of 14 December 2000 to the Convention against Transnational Organized Crime (Palermo, 15 November 2000)¹⁰, the delegate of Finland noted that the declaration had been made upon signature and that therefore it is too early to take a position pending its confirmation on ratification.

43. With regard to the Republic of Moldova's reservation or declaration of 19 September 2000 to the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and other Devices as Amended on 3 May 1996 (Protocol II As Amended on 3 May 1996) annexed to the Convention on Prohibitions Or Restrictions on the Use of certain Conventional Weapons which may be deemed to be excessively injurious or to have indiscriminate effects (Geneva, 3 May 1996)¹¹, the delegate of Moldova noted that the notification was erroneously made and should be considered void. He further informed the CAHDI that the Protocol was ratified on 13 July and will enter into force on 16 January 2002.

44. With regard to China's reservation or declaration of 27 March 2001 to the International Covenant on Economic, Social and Cultural Rights (New York, 16 December 1966)¹², the Chairman noted that on 20 April 2001, the UN Secretary-General received from the Government of China a communication¹³. The delegates of Sweden, Portugal, Norway and

Convention as applying to all career consular employees, including those employed at a consular post headed by an honorary consular officer.

¹⁰ Declaration:

On signing the present Convention and in accordance with article 34 thereof, the State of the Republic of Nicaragua declares that such measures as may be necessary to harmonize the Convention with its domestic law, will be the outcome of the processes of revision of criminal legislation which the State of the Republic of Nicaragua is currently pursuing or which it may pursue in the future. Moreover, the State of the Republic of Nicaragua reserves the right, at the moment of depositing its instrument of ratification of the present Convention, to invoke, in accordance with the general principles of international law, article 19 of the Vienna Convention on the Law of Treaties of 23 May 1969.

¹¹ Consent to be bound (reissued):

"This communication, depositary notification C.N.864.2000.TREATIES-10 of 19 September 2000 relating to the consent to be bound by the Republic of Moldova to the Protocol, is hereby withdrawn.

Therefore, this communication should be considered null and void.

¹² Statement made upon signature and confirmed upon ratification:

The signature that the Taiwan authorities affixed, by usurping the name of "China", to the [said Covenant] on 5 October 1967, is illegal and null and void.

Statement made upon ratification:

In accordance with the Decision made by the Standing Committee of the Ninth National People's Congress of the People's Republic of China at its Twentieth Session, the President of the People's Republic of China hereby ratifies The International Covenant on Economic, Social and Cultural Rights, which was signed by Mr. Qin Huasun on behalf of the People's Republic of China on 27 October 1997, and declares the following:

1. The application of Article 8.1 (a) of the Covenant to the People's Republic of China shall be consistent with the relevant provisions of the Constitution of the People's Republic of China, Trade Union Law of the People's Republic of China and Labour Law of the People's Republic of China;

2. In accordance with the official notes addressed to the Secretary-General of the United Nations by the Permanent Representative of the People's Republic of China to the United Nations on 20 June 1997 and 2 December 1999 respectively, the International Covenant on Economic, Social and Cultural Rights shall be applicable to the Hong Kong Special Administrative Region of the People's Republic of China and the Macao Special Administrative Region of the People's Republic of China and shall, pursuant to the provisions of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and the Basic Law of the Macao Special Administrative Region of the People's Republic of China, be implemented through the respective laws of the two special administrative regions.

¹³ *1. Article 6 of the Covenant does not preclude the formulation of regulations by the HKSAR for employment restrictions, based on place of birth or residence qualifications, for the purpose of safeguarding the employment opportunities of local workers in the HKSAR*

Germany noted that they are likely to object to it in so far as it refers to paragraph 8.1.a of the Convention which enshrines the right of association. The delegate of Germany further noted that they would welcome similar objections from other CAHDI members.

45. The CAHDI undertook consideration of reservations and declarations to Council of Europe treaties (Part II of document CAHDI (2001) 9 and addendum).

46. With regard to Denmark's reservation or declaration of 8 September 2000 to the European Charter for Regional or Minority Languages (ETS No. 148), (5 November 1992)¹⁴, the delegate of Sweden asked for the position of the Treaty Office of the Council of Europe. The Secretariat noted that the European Charter provided a flexible mechanism since States had the possibility to choose languages and for each of them the rules which would apply. Yet it required a declaration on the part of States. In its declaration Denmark completely excluded two minorities from the scope of the Convention and declared that it would not report about them in any form despite the fact that these reports are a key factor for the effectiveness of the Convention. Finally, it was noted that the Advisory Committee under the Framework Convention on National Minorities had raised doubts about an equivalent Declaration.

47. The delegate of Denmark noted that his country is under an obligation under the home rule to consult the Feroe and Greenland islands before entering into treaty obligations.

2. "National federations or confederations" in Article 8.1(B) of the Covenant shall be interpreted, in this case, as "Federations or confederations in the HKSAR", and this Article does not imply the right of trade union federations or confederations to form or join political organizations or bodies outside the HKSAR.

¹⁴ The Danish Realm comprises Denmark, the Faroe Islands and Greenland.

Section 11 of Act No. 137 of 23 March 1948 on Home Rule of the Faroe Islands states that "Faroese is recognized as the principal language, but Danish is to be learnt well and carefully, and Danish may be used as well as Faroese in public affairs." By virtue of the said Act the Faroese language enjoys a high degree of protection and the provisions of the Charter will therefore not be applicable to the Faroese language, cf. Article 4 (2) of the Charter. For this reason, the Danish Government does not intend to submit periodical reports according to Article 15 of the Charter as far as the Faroese language is concerned.

Denmark's ratification of the Charter does not in any way prejudice the outcome of the negotiations on the future constitutional status of the Faroe Islands.

Section 9 of Act No. 577 of 29 November 1978 on Greenland Home Rule states that:

"(1) Greenlandic shall be the principal language, Danish must be thoroughly taught.

(2) Either language may be used for official purposes."

By virtue of the said Act the Greenlandic language enjoys a high degree of protection and the provisions of the Charter will therefore not be applicable to the Greenlandic language, cf. Article 4(2) of the Charter. For this reason, the Danish Government does not intend to submit periodical reports according to Article 15 of the Charter as far as the Greenlandic language is concerned.

In accordance with Article 2, paragraph 2, and Article 3, paragraph 1, of the European Charter for Regional or Minority Languages, Denmark declares that it will apply the following provisions of Part III of the Charter to the German minority language in Southern Jutland:

Article 8, paragraph 1 a iii; b iv, c iii/iv, d iii; e ii, f ii, g; h; i; paragraph 2;

Article 9, paragraph 1 b iii; c iii; paragraph 2 a/b/c;

Article 10, paragraph 1 a v; paragraph 4 c; paragraph 5;

Article 11, paragraph 1 b i/ii, c i/ii; d, e i, f ii; g, paragraph 2;

Article 12, paragraph 1 a; b; d; e; f; g; paragraph 2; paragraph 3 ;

Article 13, paragraph 1 a; c; d; paragraph 2 c;

Article 14, a; b.

The Danish Government considers that Article 9, paragraphs 1 b iii, and 1 c iii, does not preclude that national procedural law may contain rules which require that documents produced in a foreign language before courts as a general rule be accompanied by a translation.

Upon instruction the Representation hereby transmits certified translations into English of the Greenland Home Rule Act of 29 November 1978 and the Home Rule Act of the Faroe Islands of 23 March 1948, on the basis of which mandatory consultations were held as part of the ratification process. Attention is drawn to sections 9 and 11 respectively and to the corresponding lists of matters brought under Home Rule.

Yet that does not mean that those minority languages should be treated as a national language. He concluded noting that actually Danish would be a minority language in those territories.

48. The delegate of Finland noted that a similar situation exists in his country where the Swedish minority enjoys a special situation in a certain part of the country and the Finnish authorities do not report on the situation of Swedish where it is exclusively spoken but where it is a bilateral language.

49. The delegate of the United Kingdom proposed that in the future, declarations requested by certain European conventions such as the European Social Charter, the Framework Convention on National Minorities or the European Charter for Regional or Minority Languages be excluded unless the Secretariat considers that they pose a particular problem that should be considered by the CAHDI.

50. The CAHDI agreed with this proposal and the Chairman instructed the Secretariat to continue preparing the documents for consideration by the European Observatory of Reservations to International Treaties as until now and where possible to include also relevant provisions for treaties concluded outside the Council of Europe.

51. With regard to Azerbaijan's reservation of 25 January 2001 to the Convention on the Transfer of Sentenced Persons (ETS No. 112) (21 March 1983)¹⁵, the delegates of Austria, Germany, the United Kingdom and Norway expressed some doubts because the Convention does not envisage a situation where providing information would be incompatible with national law and with this reservation, Azerbaijan establishes some kind of supremacy of domestic law which may be incompatible. Therefore, they urged Azerbaijan to reconsider the matter.

52. In this connection, the delegate of Azerbaijan noted that the Constitution recognised the supremacy of international law and that the declaration aims at stating that the procedures for providing the information were defined by national law.

53. The delegates of the United Kingdom and Norway welcomed the explanations given by the delegate of Azerbaijan but noted that it remained that the reservation referred to domestic legislation which brought in an element of uncertainty. Therefore, they asked the delegation of Azerbaijan to provide relevant legislation, to consider possible amendment of domestic legislation to make it compatible with the Convention and to consider the possibility of reformulating the current declaration to make it more acceptable would be welcomed.

54. The Chairman asked the delegation of Azerbaijan to provide relevant domestic legislation to the Secretariat in English or French and asked the Secretariat to circulate this to national delegations.

55. With regards to Belgium's declaration of 31 July 2001 to the Framework Convention for the Protection of National Minorities (ETS No. 157) (1 February 1995)¹⁶, the delegate of Belgium noted that the signature by the Federal Minister commits the federal authority and the federated entities and stressed that this declaration that this declaration was indispensable since the notion of minority may allow the ratification of the Convention.

¹⁵ *Reservation contained in the instrument of ratification:*

"The Republic of Azerbaijan hereby declares that the application of the procedures provided in Article 4, paragraph 5, of the Convention will be realised where it is compatible with the national law.

¹⁶ *"The Kingdom of Belgium declares that the Framework Convention applies without prejudice to the constitutional provisions, guarantees or principles, and without prejudice to the legislative rules which currently govern the use of languages. The Kingdom of Belgium declares that the notion of national minority will be defined by the inter-ministerial conference of foreign policy."*

56. With regard to Norway's declaration of 7 May 2001 to the European Social Charter (Revised) (ETS No. 163) (3 MAY 1996)¹⁷ the delegate of the United Kingdom asked about the reasons for the exclusion provided for in the declaration.

57. The delegate of Norway explained that this declaration is a continuation of policy/decisions under the old European Social Charter. It is due to the fact that people living in Svalbard have their domicile in the Norwegian mainland while their economic address is either in Russia or Ukraine and are thus covered by the commitments undertaken by these States.

58. With regard to Georgia's declaration of 15 June 2001 to Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 177) (4 November 2000)¹⁸, the delegate of the Netherlands wondered whether the situation that the Georgian authorities are faced with should be addressed by means of a reservation.

59. The delegate of the United Kingdom noted that the statement by Georgia is not a reservation but a declaration and stated that in the present situation this kind of declaration would be normal. However, he called upon the CAHDI not to take a position on this matter since it could come before the European Court of Human Rights and the CAHDI's consideration of the issue should in no manner prejudice that by the Court.

60. The Chairman concluded consideration of outstanding reservations and declarations to international treaties by the CAHDI recalling that in the future, declarations requested by certain European conventions such as the European Social Charter, the Framework Convention on National Minorities or the European Charter for Regional or Minority Languages will be excluded unless the Secretariat would consider that they pose a particular problem and instructed the Secretariat to continue preparing the documents for consideration by the European Observatory of Reservations to International Treaties as they had until now and, where possible, to include also relevant provisions for treaties concluded outside the Council of Europe.

6. Expression of consent by States to be bound by a treaty: Presentation to the Secretary General of the Council of Europe of the report prepared under the aegis of the CAHDI

61. The Chairman welcomed the Secretary General of the Council of Europe, Mr Walter Schwimmer, and the Director of the British Institute of International and Comparative Law, Mr Mads Andenas, who, together with the members of the Committee, paid tribute to the memory of the victims of the terrorist attacks committed in the United States of America.

62. The Secretary General further stressed the commitment of the Council of Europe to fighting the scourge of terrorism building on existing instruments and in complementarity with other initiatives.

63. Mr Andenas welcomed the opportunity given to the British Institute to co-operate with the Council of Europe on this project, the end result of which should be praised for it represented important work which is not only theoretical but also had important practical implications.

¹⁷ "The Kingdom of Norway declares that it considers itself bound by Articles 1, 4-6, 9-17, 20-25, 30 and 31, as well as, moreover, by the provisions of Article 2, paragraphs 1-6, Article 3, paragraphs 2-3, Article 7, paragraphs 1-3, 5-8 and 10, Article 8, paragraphs 1 and 3, Article 19, paragraphs 1-7 and 9-12 and Article 27, paragraphs 1c and 2, of the Charter.

In conformity with Part VI, Article L, of the revised European Social Charter, the Norwegian Government declares that the metropolitan territory of Norway to which the provisions of the revised European Social Charter shall apply, shall be the territory of the Kingdom of Norway with the exception of Svalbard (Spitzbergen) and Jan Mayen. The revised European Social Charter shall not apply to the Norwegian dependencies."

¹⁸ "Georgia declines its responsibility for the violations of the provisions of the Protocol on the territories of Abkhazia and Tskhinvali region until the full jurisdiction of Georgia is restored over these territories."

64. The Chairman presented the Secretary General with the book *Treaty-Making, Expression of consent by States to be bound by a treaty* prepared under the aegis of the CAHDI.

65. The Secretary General thanked the Committee for the book and recalled that, exactly two years ago, at the 18th meeting of the CAHDI he had been kindly complimented with the publication *State practice regarding State succession and Issues of recognition* which he had subsequently forwarded to the Secretary General of the United Nations as part of the Council of Europe's contribution to the UN Decade of International Law. He observed that that meeting in September 1999 was the first intergovernmental Committee meeting he had attended as Secretary General of this Organisation and it had allowed him to become acquainted with the important work carried out by the CAHDI.

66. He highlighted the significant accomplishments of the CAHDI since then, particularly in the field of reservations to international treaties and in relation to the International Criminal Court and noted that the new publication prepared under the aegis of the CAHDI reflected yet another area of major importance for the stability of international society and congratulate the Committee on it.

67. He concluded by stressing the key role of the CAHDI in the intergovernmental structure of the Council of Europe as the only forum where the legal advisers of the member States, and a significant number of observer States and international organisations, can exchange and possibly co-ordinate their views on issues of public international law and encouraged the Committee to pursue its excellent work.

7. State practice regarding jurisdictional immunities: proposals for the implementation of the activity

68. The Chairman recalled that at the previous meeting of the CAHDI, the Committee had agreed to undertake a new activity on *State practice regarding jurisdictional immunities* and that, at the request of the Committee, he had invited the Secretariat to make proposals for the implementation of the activity. He referred to the relevant documents prepared by the Secretariat as a result thereof, namely, documents CAHDI (2001) 5 and addendum.

69. The Secretariat presented the proposals and noted that the activity would focus particularly, although not exclusively, on judicial practice in the member States of the Council of Europe and would aim at collecting the most relevant judicial decisions involving foreign States and their property. Overall, this activity would be modelled on the Pilot Project of the Council of Europe on State Practice regarding State Succession and Issues of Recognition which the CAHDI had implemented in the mid-1990s and which had resulted in a publication, including an analytical study, although possible follow-up to the materials gathered would be decided by the CAHDI only at a later stage.

70. The Secretariat further proposed a series of guidelines for the collection of State practice regarding State Immunities as contained in document CAHDI (2001) 5.

71. The delegates of the United Kingdom, Germany, Sweden, Norway and Greece and the observer of Canada supported the proposals made by the Secretariat and welcomed the new activity as a useful and far-reaching endeavour which would allow CAHDI to define on the basis of more precise data about the situation in this field, something which is particularly important since there are many misunderstandings about immunity. They stressed that the collection of State practice should not cover old practice but recent and relevant practice. The delegate of the United Kingdom referred to practice dating from 1972 as a general indication.

72. The delegate of Norway further noted that international relations would benefit from unification of law in this field and stressed that it was desirable to reach agreement in this field. Finally, he noted that an article on this matter would be published shortly in the Nordic Journal of International Law.

73. The Chair concluded that the proposals submitted by the Secretariat for the implementation of the activity were approved by the CAHDI and stressed that State practice to be collected should be recent and relevant. He noted however, that the concept of “recent” practice was not a uniform one and should be determined by changes in domestic legislation, although generally speaking State practice to be collected should not date further back than the 1970s. He further concluded that the CAHDI had agreed on the following deadlines for carrying out the activity:

- 15 December 2001 Appointment of national co-ordinators
- 31 July 2002 Completion of preliminary phase of collection of data on State practice
- September 2002 (24th CAHDI meeting) Preliminary consideration by the CAHDI
-
- 31 December 2002 Completion of collection of data on State practice
- March 2003 (25th CAHDI meeting) Decision on the follow up to the activity by the CAHDI

8. Immunities of Heads of State and government and of certain categories of top civil servants - preliminary consideration

74. The Chairman referred to documents CAHDI (2001) 7 and CAHDI (2001) Inf. 7 submitted respectively by the delegations of Switzerland and Belgium – acting as President of the European Union – and thanked both delegations for these documents.

75. The delegate of Switzerland recalled that at the spring meeting of the CAHDI the Swiss delegation was kindly invited to prepare a think-paper regarding the immunities of Heads of State and government and certain categories of top civil servants in the light of States' obligations to prosecute those responsible for international crimes with a view to having a preliminary discussion during the present meeting of the CAHDI, and that the Swiss delegation would willingly accept to prepare such a document.

76. He noted that the paper required a number of observations. First of all, in recent months, developments have proved the usefulness of having a certain co-ordination among States on recent developments regarding the immunities of Heads of State and other officials. He noted that the progress achieved in the fight against impunity should be welcomed and supported. However, appropriate responses to the consequences of these developments should be devised, particularly since another key interest, i.e. the stability and the foreseeability of relations between States, should also be protected.

77. He further noted that the paper was not intended to present the Swiss position and therefore did not necessarily reflect Swiss practice but was only intended to outline the problems and to foster discussion by providing a framework for it.

78. Moreover, the paper was not intended to point out all the outstanding issues, but rather to concentrate on key substantial issues, leaving aside other issues which are important from an operational point of view, namely those concerning the competent authorities and the procedures, including the procedures for waiving immunity, requests by foreign visitors for a guarantee of immunity.

79. The Swiss delegation took due note of the fact that the COJUR has also undertaken an activity in this area and welcomed the initiative by the Belgian delegation, which currently holds the Presidency of the European Union, to provide the CAHDI with a very useful information document prepared in the context of the COJUR work.

80. Finally, regarding the follow-up to the paper, the Swiss delegation expressed its willingness to take up any suggestions that delegations may have.

81. Members of the CAHDI welcomed the paper submitted by the delegation of Switzerland as an excellent basis for discussion and agreed on pursuing consideration of this issue on an informal basis.

82. The delegate of Belgium referred to work under way in the COJUR and to the pending case before the International Court of Justice *Congo vs. Belgium* concerning the arrest order against the Ministry for Foreign Affairs of Congo and noted that interim measures had been refused to Congo and that hearings would be held in the third week of October 2001 and that the International Court of Justice was expected to reach a decision by the end of the year.

83. The delegates of Spain and France called upon members of the CAHDI to be prudent in carrying out consideration of this matter since it is ultimately an issue for judges.

84. The delegate of Spain further noted that the paper should reflect State practice and Spanish practice was reflected in paragraph 15. He called upon the Swiss delegation to review paragraphs 3 and 13.

85. The delegate of Hungary referred to the immunity enjoyed by persons who are not diplomats, namely the Heads of State and members of Parliament.

86. The observer of Israel referred to two important issues. First, he noted that the immunities of heads of State and diplomats do not pose particular problems because they are covered by international law and because the Rome Statute and the resolutions establishing the other international criminal tribunals are clear in their connection. However, Senior Government officials pose a real problem because international law gives no clear indication with regard to their situation, although they get some protection under the consideration of "special missions". Second, he referred to the problems posed by the abuse for political purposes of the bona fide universal principle of criminal jurisdiction.

87. The delegate of Germany agreed with the view expressed in the Swiss paper in paragraph 18 concerning the immunity of parliamentarians and noted that there is some confusion and that it should be stressed that the immunities given to heads of State are given for a different reason from those justifying the immunities of parliamentarians.

88. In addition, he stressed that the notion of universal jurisdiction does not take away from the obligation to respect the law on immunities.

89. The delegate of the United Kingdom supported this position and called upon the Swiss delegation to further develop this topic.

90. In addition, the delegate of the United Kingdom referred to 3 levels of immunity, namely: *full immunity* provided for by Articles 29-31 of the Vienna Convention on diplomatic relations (VC) which establish the inviolability of diplomats and their complete immunity from criminal jurisdiction; *official immunity*, provided by Article 39 VC which former diplomats enjoy for their official acts; and *transit immunity* provided by Article 40 VC, which establishes that diplomats in transit enjoy inviolability and immunity as required for their transit. He stressed that paragraphs 27 and 28 of the Swiss paper raised a key issue, i.e. the immunity of representatives on special missions, and noted that possible exceptions to this immunity would be provided by treaty or Chapter VII of the Resolution of the UN Security Council, and in this connection referred to those resulting respectively from the Rome Statute and the UN Security Council Resolutions establishing the International Criminal Tribunals.

91. The Chairman concluded consideration of this item, noting that the CAHDI had agreed to pursue consideration of the matter on the basis of a revised paper to be prepared by the Swiss delegation. Delegations were invited to provide written comments on the paper

directly to the Swiss delegation by 15 December 2001. He further concluded that the matter requires quick action since several countries are already confronted with this problem.

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

9. The work of the Sixth Commission of the General Assembly of the United Nations and of the International Law Commission (ILC): Exchange of views with Professor James Crawford, Special Rapporteur of the United Nations on State Responsibility on the ILC activity on State Responsibility

92. The Chairman referred to the relevant documents; namely a version of the Report of the 53rd session of the ILC and a summary of that session prepared by Professor Bruno Simma, member of the ILC. He asked the German delegation to convey the thanks of the CAHDI to Professor Simma for the preparation of this summary which is most useful for the delegations.

93. The Chairman asked the delegations to consider first of all the activity of the ILC on State responsibility. In this context, he welcomed Professor James Crawford, who was a special guest at the meeting and thanked him for accepting the invitation of the CAHDI.

94. He noted that Professor Crawford has been a member of the ILC since 1992 and a Special rapporteur on State responsibility since 1992. He noted that this subject has been on the agenda of the ILC since the setting up of the ILC and that the current work dates back to 1972.

95. The Chairman of the CAHDI who is also member of the ILC, noted that it looks like the ILC has achieved virtual consensus on the text which did not exist before. Further to that, it has managed to distinguish between primary and secondary obligations and has made the texts clearer through multiple simplification. He further observed that the difference between parts II and III only existed in implicit form and now is clearly set out. Finally, he recalled that the ILC has recommended a two-stage approach to implementation in order to allow governments to become acquainted with the new structure.

96. The Chairman asked delegations to comment, first in a general way and subsequently in a more detailed manner in relation to each of the parts which would be introduced by Professor Crawford.

97. The United Kingdom delegate thanked Professor Crawford for his presence and his work and stated that the United Kingdom delegation had a very favourable impression of his work overall. He asked the Special rapporteur to explain codification and progressive development in the new draft Articles prepared by the ILC.

98. Professor Crawford replied that the commentaries to the draft articles sometimes state explicitly whether the respective articles constitute progressive development. He noted that there was a basis in international law for a significant part of the draft articles while in other cases, existing rules have been further developed, e.g. Part II, chapter 3, article 41 paragraph 2 is customary law yet the rest of the chapter is progressive development.

99. The Italian delegate welcomed simplification of the language and recalled the importance of difference between int. crimes and delicts which was not retained by ILC and the importance of *jus cogens* in this respect.

100. The delegates of Greece and France stated that their delegations had a positive view of the draft and noted that for the first time there is a complete text in this area which is both codification and progressive development, therefore, they take it as a whole although they are not in complete agreement with some of its provisions, e.g. Article. 53 on counter measures which is one of the main flows of the draft as they introduce a criminal aspect in a system of State responsibility which has nothing to do with criminal law. Therefore, they concluded that this issue may deserve a specific activity of the ILC.

101. In this connection, the delegate of the United Kingdom noted that counter-measures were already in the draft and it was difficult to get rid of them. He noted that improvements had been made taking into account comments by governments. Like the other delegations, he concluded that the text is in a way a package deal and noted that the ILC had accepted it as such.

102. The CAHDI then undertook specific consideration of the Various parts of the text.

103. Regarding Part I, Professor Crawford observed that it had been simplified and the number of chapters reduced without changing its fundamental thrust except for the original Article. 19.

104. The delegates of Switzerland and the United Kingdom expressed reservations respectively about Articles 18 and 25.

105. Regarding Article 18, Professor Crawford noted that it aimed at giving 3rd (injured) States the possibility of making claims. Regarding Article 25, he noted that it had not been opposed by governments and the Chairman of the CAHDI further noted that in drafting it, the ILC had relied on a recent case decided by the ICJ.

106. Regarding Part II, Professor Crawford noted that the ILC had taken the view that the whole of the rules relating to the use of force were primary obligations and that Article 25 could not be invoked to justify the use of force. He further noted that the restructuring of the text was more evident in this part which was now clearer as it dealt only with responsible States while other parties including injured States are dealt with in Part III. Finally, he noted that the most important changes in this part concern Chapter II.

107. The delegate of the United Kingdom stressed the usefulness of the commentary provided by the ILC in the light of the increasing complexity of the draft Articles. He therefore noted that the commentary should be published together with the draft.

108. The representative of the European Commission noted that the European Community will be affected by this text since it is increasingly active at an international level.

109. Regarding Part IV, the delegate of the United Kingdom referred to Article. 57, wondered whether it was agreeable in its current drafting and supported of his delegation for a balanced recommendation because which would serve the same purpose and would avoid the risk of being blocked, likely to happen if a diplomatic Conference for drafting a Convention would be attempted.

110. Professor Crawford replied that the analogy in this Article between international organisation and States was only limited and agreed that the ILC should carefully study the issue of international organisations.

111. In this connection, the representative of the European Commission stressed again that the main bulk of the text is applicable to the European Community and that the difficulty arises from the differences between international organisations some of which act in a more technical way while others do it in a more political one.

112. Regarding the future way of proceeding with the draft, Professor Crawford stressed that the General Assembly and the member States of the UN should be given enough time to study the text. In this connection, he noted that half of the ILC members were in favour of an international convention, while less than half of the ILC members preferred a Recommendation. He further noted that the States' attitude in relation to settling disputes would have a significant bearing on having an international convention, particularly regarding counter-measures. He concluded, stressing that it is a mistake to think that a dispute settlement system could only be limited to secondary rules because such a system necessarily means also involving primary rules.

113. The observer of Israel, the delegate of Germany and the representative of the European Commission supported the second position, i.e. the adoption of a

recommendation by the ILC followed by the adoption of a resolution by the General Assembly, out of sheer caution and in order to maintain the integrity of the text and in order to give the international legal community the possibility of properly assimilating the text after which States could resume possible negotiation of a convention.

114. The Chairman concluded consideration of this matter and thanked Professor Crawford for his participation. He then referred to other issues dealt with by the ILC at its last session and referred to other ongoing activities of the ILC including: International Liability for injurious consequences arising out of acts not prohibited by international law (prevention of transboundary damage from hazardous activities), Reservations to treaties, Diplomatic protection and Unilateral acts of States. He noted that next year the ILC will have to consider including new topics.

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

115. The delegate of Switzerland referred to the 4th Geneva Convention on the protection of civil populations in time of war and, in particular, to the question of the emblem. He recalled that a meeting of States party to the 4th Convention had taken place in Geneva on 15 July 1999 following several resolutions of the UN General Assembly in an urgent sitting.

116. He noted that UN GA Resolution ES-10/6 of 24 February 1999 fixed the date for the meeting and invited the depositaries to undertake preparatory work.

117. The meeting on 15 July 1999 was very short and was suspended after the declaration by the Chairman, which was considered to reflect the common understanding of participating States.

118. Further to that he referred to UN GA Resolution ES-10/7, which met urgently on 20 October 2000 following the rise in violence since last autumn, and in particular to its paragraphs 3¹⁹ and 10²⁰.

119. He noted that Switzerland, acting as depositary, has undertaken consultation in order to obtain the opinion of States parties regarding the evolution of the humanitarian situation in the field, in the light of the Declaration adopted at the meeting on 15 July 1999.

120. The results of these consultations have been brought to the attention of the States parties. They were far from reflecting agreement. A limited number of States were against holding a follow-up meeting to the meeting of 15 July 1999. A greater number of other States were in favour of such follow-up, although a significant number of them considered that it would be premature to fix a date.

121. In the light of this confusing situation, the depositary pursued its consultation. The latest significant development in this connection was the meeting held the previous morning in Geneva by a Group of Friends of the depositary of the 4th Geneva Convention. This Group brings together representatives of 25 States and other institutions directly concerned. It was an informal consultation meeting.

122. On this occasion, the depositary provided participants with two documents: one regarding the modalities for the follow-up of the meeting of 15 July 1999, the other regarding

¹⁹ UN GA Resolution ES-10/7, paragraph 3 :

Noting the convening on 15 July 1999 for the first time of the conference of High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including Jerusalem, at the United Nations Office at Geneva, and welcoming also the statement adopted by the participating High Contracting Parties.

²⁰ UN GA Resolution ES-10/7, paragraph 10 :

Invites the depositary of the Fourth Geneva Convention to consult on the development of the humanitarian situation in the field, in accordance with the statement adopted on 15 July 1999 by the above-mentioned Conference of High Contracting Parties to the Convention, with the aim of ensuring respect for the Convention in all circumstances in accordance with common article 1 of the four Conventions.

the possible elements for a final document. These two documents have not, strictly speaking, been submitted by the Swiss delegation. They simply reflect the results of the informal consultations and represent a summary of the possible areas of agreement on the outstanding issues.

123. Since these documents were submitted during the meeting, it had not been possible to discuss their content paragraph by paragraph. However both documents have generally received a positive response in order to forward them to the capitals as a basis for discussion at informal follow-up consultation meetings.

124. One of the participating institutions proposed that the Group of Friends meets again on 24 September 2001 and at a later date. This proposal has not met with any opposition. Therefore consultations may be pursued when participants have had the possibility of carefully considering the documents submitted to them. However it should be noted that this meeting was held on the morning of 11 September 2001, before the tragic events of the afternoon.

125. Since this consultation phase is still informal it should be noted that obviously all States parties will be duly informed of the results of this consultation in due course.

126. He further referred to the issue of the emblems and noted that it was a different issue, but that it is part of the overall context. As far as the Swiss delegation was informed, currently there was no support for the convening of a diplomatic Conference on the adoption of a Third Protocol to the Geneva Convention which would have any chance of success under the current circumstances. However, he stressed that Switzerland, as the depositary of the Geneva Conventions, was very attentive to all the occasions which would allow reaching a satisfactory solution to this problem. At this point, it can only acknowledge that the current circumstances are very difficult but, precisely due to this fact, it is not totally excluded that they may provide in due course the possibility of achieving substantial progress regarding the issue of the emblems.

127. The observer of Israel recognised that his delegation was in a difficult position because the discussions concern his country. However, he stressed that this was an example of an attempt to abuse the good will of the international community in order to push a political agenda and to grand stand in another international instance to the Middle-East process.

11. Developments concerning the International Criminal Court

128. The Chairman referred to the second multilateral consultation of Council of Europe member States on the International Criminal Court, to be held immediately after the CAHDI meeting in Strasbourg, and welcomed this initiative by the Council of Europe which builds on the first consultation meeting which proved useful.

129. The Chairman then invited delegations to inform the Committee about recent developments regarding the ratification process in their countries.

130. The delegate of Croatia informed the CAHDI that the ratification process had been completed and that her country was the first of the former Yugoslavia to have ratified the Rome Statute.

131. The delegate of Switzerland informed the CAHDI that the ratification process of the Rome Statute has been completed last June and noted that since a deadline of three months is required before depositing the instrument of ratification, this should take place in mid-October.

132. The delegate of the United Kingdom informed the CAHDI that the British Parliament passed an ICC act last May and that the Scottish Parliament was currently passing a similar one. In view of the above, it was expected that ratification could take place by September.

133. The delegate of Germany referred to the forthcoming meeting of the Preparatory Committee and noted that it had a very ambitious agenda. A first meeting would serve as a needs assessment and a first practical problem-solving exercise, the results of which should be considered at the second consultation meeting organised by the Council of Europe. Finally, he stressed the importance of the political support of the United States which was essential and expressed his hope that the United States would participate constructively as they had until now.

134. The delegate of Estonia informed the CAHDI that the internal legal procedures have reached the parliamentary committee and the ratification procedure was underway. Further to that she expressed her thanks to the Government of Sweden for organising a seminar last June.

135. The observer of Mexico informed the CAHDI that the Mexican Congress would be considering a constitutional reform in order to make ratification possible.

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

136. The delegate of Italy referred to the International Criminal Tribunal for Rwanda and stressed that the situation concerning this Tribunal was regrettable.

13. Law of the Sea: Protection of the Sub aquatic Cultural Heritage

137. The delegate of Norway informed the CAHDI that, despite their positive approach to the preparation of the Convention from the outset, its current drafting could undermine the existing consensus in this area by rendering protection of the underwater cultural heritage less efficient and the work of UNESCO itself less efficient. Therefore he stated that his government would vote against it and would have difficulties in co-operating in the light of it and expressed his hope that work could be pursued in order to achieve the necessary consensus.

138. The delegate of Italy noted that the current draft represents a compromise between the different positions but stressed that if it cannot be accepted they will review the text.

139. The observer of Japan supported the compromise that the current draft represents, particularly as regard the jurisdiction of coastal States' immunity of warships and vessels. Yet, he stressed that they are open to other compromise as required.

140. The delegate of the United Kingdom noted that the negotiations that took place in the context of UNESCO were not satisfactory and therefore they will vote against the draft and will not be able to become a party to it as it now stands. He stressed that adoption of the Convention should be deferred.

141. This was supported by the delegates of the Russian Federation and Greece and by the observers of Israel and the United States, who noted that the draft did not respond to the law of the sea.

D. OTHER

14. Election of the Chair and Vice-Chair

142. The Chairman referred to the relevant provisions regarding election of the Chair and Vice-Chair of the Committee contained in document CAHDI (2001) 8 and invited delegations to formulate proposals.

143. The delegates of the United Kingdom and the Netherlands proposed re-election of the current Chair and Vice-Chair for another year.

144. In accordance with Article 17 of Appendix 2 to Resolution (76) 3 of the Committee of Ministers, the CAHDI unanimously re-elected Ambassador Tomka (Slovak Republic) and

Ambassador Michela (Switzerland) respectively Chair and a Vice-Chair of the CAHDI for a second period of one year, expiring on 31 December 2002.

15. Date, place and agenda of the 23rd meeting of the CAHDI

145. The CAHDI agreed to hold its next meeting in Strasbourg, 4-5 March 2002, and to invite the President and/or the Secretary General of the Curatorium of the Academy of International Law of The Hague to this meeting.

16. Other business

146. None.

Appendix I

LIST OF PARTICIPANTS

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

ANDORRA/ANDORRE: Mrs Iolanda SOLA, Legal Adviser, Ministry of Foreign Affairs

ARMENIA/ARMENIE: Mme Satenik ABGARYAN, Ministère des Affaires Etrangères

AUSTRIA/AUTRICHE: Mr Helmut TICHY, Ministry for Foreign Affairs

AZERBAIJAN/AZERBAIDJAN: Mr Rashad ASLANOV, Attaché of the Treaty and Legal Department, Ministry of Foreign Affairs

BELGIUM/BELGIQUE: M. Jan DEVADDER, Directeur Général, Jurisconsulte, Ministère des Affaires Etrangères, du Commerce extérieur et de la Coopération internationale

Mme Anne-Marie SNYERS, Conseiller Général, Ministère des Affaires Etrangères, Direction Générale des Affaires Juridiques

BULGARIA/BULGARIE: Mrs Evelina ANANIEVA, Chief expert, International Law Directorate, Ministry of Foreign Affairs

CROATIA/CROATIE: Mr Andreja METELKO-ZGOMBIÆ, Head of the International Law Department, Ministry of Foreign Affairs

CYPRUS/CHYPRE: Mrs Evie GEORGIOU-ANTONIOU, Counsel of the Republic, Attorney General's Office

CZECH REPUBLIC/REPUBLIQUE TCHEQUE: Mr Miloslav PETRU, Legal Advisor, International Law Department, Ministry of Foreign Affairs

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

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

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

Mr Pertti HARVOLA, Deputy director general for Legal Affairs, Ministry of Foreign Affairs

FRANCE: M. Denys WIBAUX, Sous-directeur de droit international public général, Ministère des Affaires étrangères

Mme Frédérique COULÉE, chargée de mission, Sous-direction du droit international public, Ministère des Affaires étrangères

GEORGIA/GEORGIE: Mr Theimuraz BAKRADZE, Director, Council of Europe and Human Rights Division, International Law Department, Ministry of Foreign Affairs

GERMANY/ALLEMAGNE: Mr Hans-Peter KAUL, Head of the Department for Public International Law

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

HUNGARY/HONGRIE: Mr Árpád PRANDLER, Ambassador, Head of the International Law Department, Ministry of Foreign Affairs

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

ITALY/ITALIE: M. Guido RAIMONDI, Juge à la Cour de cassation italienne, expert juridique, Service juridique, Ministère des Affaires étrangères

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

LATVIA/LETTONIE: Mr Ints UPMACIS, Director of Legal Department, Ministry of Foreign Affairs

LIECHTENSTEIN: Apologised/Excusé

LITHUANIA/LITUANIE: -

LUXEMBOURG: -

MALTA/MALTE: Mr Lawrence QUINTANO, Senior Counsel for the Republic, Attorney General's Office

MOLDOVA: M. Vitalie SLONOVSKI, Directeur, Direction Générale de droit international et des Traités, Ministère des Affaires étrangères

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

NORWAY/NORVEGE: Mr Hans-Wilhelm LONGVA, Director General, Section for International Law, Royal Ministry of Foreign Affairs

POLAND/POLOGNE: Mrs Anna WYROZUMSKA, Director, Ministry of Foreign Affairs, Legal and Consular Department

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

ROMANIA/ROUMANIE: M. Bogdan Lucian AURESCU, Directeur Général, Direction générale des Affaires juridiques, Ministère des Affaires Etrangères

Mlle Irina-Elena DONCIU, Secrétaire III, Direction du droit international et des Traités, Ministère des Affaires Etrangères

RUSSIAN FEDERATION/FEDERATION DE RUSSIE: Mrs Elena KOULIKOVA, First Secretary, Legal Department, Ministry of Foreign Affairs

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 (Chairman/Président)

M. Jan VARŠO, Directeur Général de la Section du droit international et Consulaire, Jurisconsulte du Ministère des Affaires étrangères

SLOVENIA/SLOVENIE: Mr Aleksander ČIČEROV, State Undersecretary of International Law Department, Ministry of Foreign Affairs

SPAIN/ESPAGNE: Mr Aurelio PEREZ GIRALDA, Ambassadeur, Directeur du Département de Droit International, Ministère des Affaires Extérieures

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

SWEDEN/SUEDE: Mr Bosse HEDBERG, Director, International Law and Human Rights Department, Ministry for Foreign Affairs

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

M. Jürg LINDENMANN, Suppléant du Jurisconsulte, Direction du Droit International Public, Département fédéral des Affaires Etrangères

"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"/"L'EX-REPUBLIQUE YUGOSLAVE DE MACEDOINE": Mrs Marija EFREMOVA, Assistant Minister, Ministry of Foreign Affairs

TURKEY/TURQUIE: Mme Filiz ERCAN COŞKUN, Juge, Direction générale du droit international et des Relations extérieures, Ministère de la Justice

Mr Aydin Sefa AKAY, Conseiller juridique, Ministère des Affaires étrangères

UKRAINE: Mr Olexandre KUPCHYSHYN, Director General, Legal and Treaty Department, Ministry for Foreign Affairs

UNITED KINGDOM/ROYAUME-UNI: Mr Michael WOOD CMG, Legal Adviser, Foreign and Commonwealth Office

Mr Douglas WILSON, Legal Research Officer, Foreign and Commonwealth Office

SPECIAL GUESTS/INVITES SPECIAUX

Mr James CRAWFORD, Director of the Lauterpacht Research Centre for International Law, , UNITED KINGDOM

Mr Mads ANDENAS, Director, British Institute for International and Comparative Law, UNITED KINGDOM

EUROPEAN COMMUNITY/COMMUNAUTE EUROPEENNE

EUROPEAN COMMISSION/COMMISSION EUROPEENNE: M. Esa PAASIVIRTA, BRUXELLES

OBSERVERS/OBSERVATEURS

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

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

JAPAN/JAPON: M. Takeshi AKAHORI, Deputy director, Legal Affairs Directorate, Treaties Bureau, 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

MEXICO/MEXIQUE: Mr Arturo A. DAGER GÓMEZ, Deputy Legal Adviser, Ministry of Foreign Affairs

AUSTRALIA/AUSTRALIE: -

BOSNIA AND HERZEGOVINA/BOSNIE-HERZEGOVINE: Mr Mitar PAVIC, Head of Department for International Law Affairs, Ministry of Foreign Affairs

ISRAEL/ISRAËL: Mr Alan BAKER, Legal Adviser, Ministry of Foreign Affairs

NEW ZELAND/NOUVELLE ZELANDE: -

NORTH ATLANTIC TREATY ORGANISATION/ORGANISATION DU TRAITE DE L'ATLANTIQUE NORD: Mr Baldwin DE VITS, conseiller juridique, Service Juridique

**ORGANISATION FOR ECONOMIC CO-OPERATION AND
DEVELOPMENT/ORGANISATION DE COOPERATION ET DE DEVELOPPEMENT**

ECONOMIQUES: Mr David SMALL, Director of Legal Affairs, OECD

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

SECRETARIAT GENERAL

M. Walter SCHWIMMER, Secretary General of the Council of Europe/Secrétaire Général du Conseil de l'Europe

M. Paul DEWAGUET, Private Office of the Secretary General/Cabinet du Secrétaire Général

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

INTERPRETERS

Mr William VALK

Mme Pascale MICHLIN

Mme Maryline NEUSCHWANDER

Appendix II**AGENDA****A. INTRODUCTION**

1. Opening of the meeting by the Chairman, Ambassador Peter Tomka
2. Adoption of the agenda and approval of the report of the 21st meeting
(Strasbourg, 6-7 March 2001) **CAHDI (2001) OJ 2 rev 3**
CAHDI (2001) 4 prov
3. Communication by the Director general of Legal Affairs, Mr. De Vel
CAHDI (2001) Inf. 3 **CAHDI (2001) Inf. 6**

B. ONGOING ACTIVITIES OF THE CAHDI

4. Decisions by the Committee of Ministers concerning the CAHDI **CAHDI (2001) 9**
5. The law and practice relating to reservations and interpretative declarations concerning international treaties : European Observatory of Reservations to international Treaties
CAHDI (2001) 6 and addendum
6. Expression of consent by States to be bound by a treaty: Presentation to the Secretary General of the Council of Europe of the report prepared under the aegis of the CAHDI
7. The State practice regarding jurisdictional immunities: proposals for the implementation of the activity **CAHDI (2001) 5 and addendum**
8. Immunities of Heads of State and government and of certain categories of top civil servants - preliminary consideration **CAHDI (2001) 7** **CAHDI (2001) Inf. 7**

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

9. The work of the Sixth Commission of the General Assembly of United Nations and of the International Law Commission (ILC): Exchange of views with Professor James Crawford, Special Rapporteur of the United Nations on State Responsibility on the ILC activity on State Responsibility
- *Report of the 53rd session of the International Law Commission* **CAHDI (2001) Inf. 4**
- *The work of the International Law Commission at its 53rd Session by Professor Bruno Simma, member of the International Law Commission* **CAHDI (2001) Inf. 5**
10. Implementation of international instruments protecting the victims of armed conflicts
11. Developments concerning the International Criminal Court
[Cf. Multilateral consultation of Council of Europe member States on the International Criminal Court, Strasbourg, 13-14 September 2001]
12. Implementation and functioning of the Tribunals established by United Nations Security Council Resolutions 827 (1993) and 955 (1994)
13. Law of the Sea: Protection of Sub aquatic Cultural Heritage

D. OTHER

14. Election of the Chair and Vice-Chair
15. Date, place and agenda of the 23rd meeting of the CAHDI
16. Other business
17. Closing

CAHDI (2001) 8

Appendix III

**ADDRESS BY MR GUY DE VEL
DIRECTOR GENERAL OF LEGAL AFFAIRS, COUNCIL OF EUROPE
TO THE 22ND MEETING OF THE CAHDI
(Strasbourg, 11 September 2001)**

Mr Chairman, Ladies and Gentlemen,

It is a great pleasure for me to take part in your 22nd meeting, which begins today.

First of all, I would like to welcome the legal experts taking part in this meeting for the first time.

I would also like to welcome Professor James Crawford, the International Law Commission's Special Rapporteur and to thank him for accepting the Secretariat's invitation to attend this meeting. Professor Crawford's attendance reflects the excellent relations between the Council of Europe and the United Nations and more particularly between the CAHDI and the International Law Commission (ILC). It also forms part of the regular exchanges between CAHDI members and prominent public figures. I therefore warmly welcome the importance attached to the work of the CAHDI.

Before talking about developments in the Council of Europe in general since your last meeting, I would first like to talk for a few minutes about the activities of the CAHDI.

The CAHDI is continuing to monitor reservations to international treaties as a European Observatory on reservations to international treaties. This exercise has proven very useful to delegations. It has also helped to establish dialogue with the States concerned and, in some cases, to understand the underlying reasons for reservations and thus to avoid the need for objection, to modify or not to enter their reservations. This endeavour to establish dialogue between States has been reflected in the work of the Special Rapporteur of the ILC, as Professor Pellet himself pointed out when speaking recently at the CAHDI meeting. I therefore believe I am quite right in saying that the Observatory will continue to be a very important aspect of the CAHDI's future work.

Moreover, at your last meeting, your Committee pinpointed a new field of activity: state immunity. You will have to decide on how this important activity should be conducted and will have to work in co-operation with the ILC and in particular with Professor Hafner who was the ILC's Special Rapporteur on state immunity and who chaired the working group set up by the UN General Assembly to study the proposals put forward by the ILC.

This activity is of great interest to the scholarly community and should make a practical contribution to the work being carried out by the United Nations.

I would also like to mention the activity you launched in 1999 and 2000, which led to the publication of a report describing the situation in 43 states, including 39 Council of Europe member states, and a study carried out under your aegis by the British Institute of International and Comparative Law.

We will have the opportunity to return to this matter since the Secretary General of the Council of Europe, Mr Schwimmer, will honour us with his presence tomorrow morning when you will present this publication, Mr Chairman.

Finally, I would also like to talk about developments in the Rome Statute for the International Criminal Court, which are regularly monitored by the CAHDI. Following your joint initiative with the European Committee on Crime Problems (CDPC), the Council of Europe organised a multilateral consultation in May 2000 on the implications of the ratification of the Rome Statute in the domestic legal order of Council of Europe member States. This consultation resulted in the adoption of significant conclusions and proved to be of great help towards achieving the Council of Europe's objective, ie the earliest possible entry into force of this new Court. Following the initiative taken by the Principality of Liechtenstein, which is currently chairing the Committee of Ministers, a second consultation meeting will be held in Strasbourg immediately after the CAHDI meeting. In this connection, I would like to inform you of the efforts being made by the Secretariat to perform its role of *clearing house* for the circulation of information on changes that have taken place in the various member states with a view to signing and ratifying the Rome Statute.

To conclude this part of my address, I would like to say that we can only hope that the CAHDI will continue its excellent work for the benefit not only of Council of Europe member states and observer states but also of the international and scholarly community. The establishment of a website on the CAHDI's activities, which will be presented to you at this meeting, should help to increase the effectiveness of your work.

A complete list of changes in the European Treaty Series since the last meeting of the CAHDI has been distributed to you. I would nevertheless like to remind you of the conventions.coe.int website, which contains all the information concerning Council of Europe conventions, including a table of signatures and ratifications, reservations and declarations, the texts of conventions and their explanatory memoranda, etc as well as a number of developments which are, in my opinion, of particular importance.

As usual, I would also like to mention other activities for which the Directorate General of Legal Affairs is responsible and which are mentioned in the document *Working together to build Europe on the rule of law* published by our Directorate General. This document will be distributed to you in the course of this meeting.

Concerning the fight against corruption: the Group of States against Corruption (GRECO), a partial agreement open to both member and non-member states on an equal footing is constantly expanding and now numbers 31 members, including two non-member states: Bosnia and Herzegovina and the United States (this is the first time the USA has become a full member of a Council of Europe agreement). The GRECO has already held several meetings - indeed the 6th is being held at this very moment - and has launched a first evaluation cycle, covering the period 2000-2001. National reports concerning Spain, Finland, Georgia, Luxembourg, Sweden, Slovenia, Belgium and Slovakia have already been approved by the GRECO and others are being drafted.

With regard to international instruments in this field, the Criminal Law Convention on Corruption (ETS 173), opened for signature on 27 January 1999, has been signed by 29 states and ratified by 10, and the Civil Law Convention on Corruption (STE 174), opened for signature on 4 November 1999, has already been signed by 24 states and ratified by 3. These conventions will come into force as soon as they have been ratified by 14 member states. I would also like to point out that this body of international legal instruments now includes a Model Code of Conduct for Public Officials, which has led to the adoption of national codes of conduct for public officials based on this model.

In the field of data protection, a Draft Additional Protocol to the Convention for the protection of individuals with regard to automatic processing of personal data (ETS No. 108) on supervisory authorities and transfrontier data flows was adopted by the Committee of Ministers on 23 May 2001 and will be opened for signature on 8 November next at the 109th

meeting of the Committee of Ministers. This protocol takes account of the provisions of European Directive 95/46/EC.

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 (ETS N° 164) has been signed by 20 member states and ratified by 10. Its Protocol on the Prohibition of Cloning Human Beings (ETS No. 168) has been signed by 21 states and ratified by 8. The Convention and its Protocol came into force on 1 December 2000 and 1 March 2001 respectively. I should also point out that a draft protocol to this Convention on the transplantation of organs and tissues of human origin will shortly be submitted to the Committee of Ministers for adoption.

Recent developments across the Atlantic show that our legal co-operation activities concern issues that are important to society.

The draft Convention on Cyber-Crime is another example of our efforts to address the problems confronting society. On 22 June 2001, at its 50th plenary meeting, the European Committee on Crime Problems approved the final draft of the Convention on Cyber-Crime. Intense negotiations are still taking place at the level of the Committee of Ministers on a number of aspects of this Convention but I firmly believe that it will be ready for adoption within a few days and that it will be opened for signature before the end of 2001. A draft additional protocol to this Convention on the criminalisation of acts of a racist or xenophobic nature committed through computer networks is currently being prepared.

In the field of sexual exploitation of children, the Council of Europe is continuing its activities, taking account of existing legal instruments, in particular the Committee of Ministers' Recommendation to member States, R(91) 11, concerning sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults.

A draft recommendation on the Protection of Children against Sexual Exploitation to update Recommendation No. R (91) 11 is also in preparation and will soon be submitted to the Committee of Ministers for adoption.

This draft takes account of the provisions concerning child pornography in the draft Convention on Crime in Cyber-Space.

The Council of Europe is also actively contributing to the efforts of the international community to protect children. It will, for example, take part in the World Congress against Commercial Sexual Exploitation of Children to be held in Yokohama from 17 to 20 December.

Another important instrument being prepared and which I would like to mention is the second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.

I would also like to mention the 24th Conference of European Ministers of Justice, which will take place in Moscow from 4 to 5 October 2001 on the subject of the implementation of judicial decisions in conformity with European standards. On this occasion the following texts should be opened for signature: the Convention on information and legal co-operation concerning "Information Society Services" and the Additional Protocol to the 1977 European Agreement on the transfer of requests for legal assistance (ETS N°92) which the Committee of Ministers should adopt shortly.

Moreover, as part of the co-operation programme to strengthen the rule of law, the Council of Europe and the Supreme Court of Georgia will hold the 7th meeting of the Presidents of European supreme courts in Tbilisi (Georgia) from 17 to 19 October 2001. The theme of this

meeting will be "Cassation: scope, character and managing the flow of appeals". The purpose of this meeting will be to discuss questions concerning the functioning of cassation and discuss possible solutions to the extremely large number of cases pending before supreme courts, while fully respecting the principles of the rule of law.

Finally, I would like to report on our excellent relations with the European Union, with which we collaborate in several fields. For example, in the field of "justice and home affairs", the Directorate General of Legal Affairs of the Council of Europe maintains constant dialogue with the relevant departments of the European Commission and the Council of the European Union and with the successive presidencies of the European Union. Lastly, it should be pointed out that as part of the co-operation activities to strengthen the rule of law, the Council of Europe and the European Commission are partners in carrying out several "joint programmes".

Mr Chairman, Ladies and Gentlemen,

The CAHDI is a very energetic committee and this can be seen from its activities and the large attendance at its meetings.

This energy can also be seen in the growing number of opinions it is asked to give, showing the importance the Committee of Ministers attaches to the CAHDI's experience and expertise.

In this connection, I would like to inform you that last week the Committee of Ministers decided to ask the CAHDI for an opinion on Recommendation 1523 (2001) on domestic slavery and, especially on the issue of immunity from jurisdiction.

You will have the opportunity to discover this text in the course of this meeting and then to give your opinion at your next meeting - the ad hoc terms of reference given to the CAHDI by the Committee of Ministers expire on 30 March 2002.

I wish to conclude by encouraging you to continue your excellent work and to take advantage of your privileged position as the only committee where legal advisers to the ministers of foreign affairs of Council of Europe member states and a large number of observer States and other organisations with which we co-operate have the opportunity to exchange and even co-ordinate their views in the field of international public law and so help to ensure that it is applied and developed.

Thank you.

Appendix IV

LIST OF ITEMS DISCUSSED AND DECISIONS TAKEN

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 22nd meeting in Strasbourg, 11 and 12 September 2001. The meeting was chaired by Ambassador Peter Tomka (Slovak Republic), Chairman of the CAHDI. The list of participants can be consulted in the draft meeting report (document CAHDI (2001) 10 prov. – Appendix I) and the agenda appears in Appendix II.
2. The CAHDI was informed by the Director General of Legal Affairs, Mr. Guy De Vel, about recent developments concerning the Council of Europe including those relating to European treaties and the setting up of an Internet site relating to the CAHDI (www.legal.coe.int - public international law). The speech can be consulted in Appendix III.
3. Moreover, the CAHDI was informed of the decisions taken by the Committee of Ministers concerning the Committee and in particular the specific terms of reference given to the CAHDI concerning the Recommendation 1523 (2001) of the Parliamentary Assembly on domestic slavery. The CAHDI had a preliminary exchange of views on the Recommendation of the Parliamentary Assembly and instructed the Secretariat to prepare a draft opinion of the CAHDI on that basis for consideration at its next meeting.
4. 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.
5. In the context of its activity on Expression of consent by States to be bound by a treaty, the Chairman of the CAHDI presented to the Secretary General of the Council of Europe, Mr. Walter Schwimmer, the book prepared by the CAHDI in co-operation with the British Institute for Comparative Public Law and International Law, in the presence of the Director of this Institute, Mr. Mads Andenas.
6. In the context of the activity on State practice regarding States' jurisdictional immunities, the CAHDI agreed on the proposals for the implementation of the activity made by the Secretariat.
7. Members of the CAHDI examined the document submitted by the Swiss delegation on Immunities of Heads of State and government and of certain categories of top civil servants. They thanked the Swiss delegation for the preparation of the paper and agreed to pursue consideration of the issue on the basis of a revised document to be submitted at the 23rd meeting of the Committee.
8. The CAHDI held a fruitful exchange of views with Professor James Crawford, special Rapporteur of the International Law Commission (ILC) of the United Nations on State responsibility concerning this activity of the ILC in view of the discussion by the Sixth Commission of the General Assembly of United Nations.
9. The CAHDI also examined the report of the 53rd Session of the ILC (Geneva, 23 April to 1st June 2001 and 2 July to 10 August 2001) as well as a summary report concerning the 53rd 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 the International Criminal Court and was informed about the organisation by the Council of Europe of a second 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 to be held in Strasbourg, 13-14 September 2001.

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

13. The CAHDI re-elected Ambassador Peter Tomka (Slovak Republic) and Ambassador Nocal Michel (Suisse) respectively as Chair and Vice-Chair for one year.

14. The CAHDI decided to hold its next meeting in Strasbourg, from 4 to 5 March 2002 and adopted the preliminary draft agenda in Appendix V.

Appendix V**DRAFT AGENDA OF THE 23rd MEETING****A. INTRODUCTION**

1. Opening of the meeting by the Chairman, Ambassador Peter Tomka
2. Adoption of the agenda and approval of the report of the 22nd meeting (Strasbourg, 11-12 September 2001)

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. State practice regarding States' jurisdictional immunities
7. Immunities of Heads of State and government and of certain categories of top civil servants

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

8. Exchange of views with the President of the Hague Academy of International Law (tentative)
9. Implementation of international instruments protecting the victims of armed conflicts
10. Developments concerning the International Criminal Court
11. Implementation and functioning of the Tribunals established by United Nations Security Council Resolutions 827 (1993) and 955 (1994)
12. Law of the Sea: Protection of Underwater Cultural Heritage

D. OTHER

13. Date, place and agenda of the 24th meeting of the CAHDI
14. Other business
15. Closing