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DI-S-RIT (98) 5

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

**GROUP OF SPECIALISTS ON  
RESERVATIONS TO INTERNATIONAL TREATIES  
(DI-S-RIT)**

**1st meeting  
Paris, Office of the Council of Europe  
26-27 February 1998**

**MEETING REPORT**

Secretariat memorandum  
Prepared by the Directorate of Legal Affairs

## 1. Opening of the meeting

1. The first meeting of the Group of Specialists on Reservations to International Treaties (DI-S-RIT) was held in Paris, 16-17 February 1998. The meeting was opened by Ambassador Franz CEDE (Austria), appointed Chairman of the DI-S-RIT by the CAHDI. Ambassador CEDE welcomed participants and highlighted the importance of the work that the Group was called upon to carry out. The list of participants appears in Appendix 1 to the report.

## 2. Adoption of the agenda

2. The Group approved the agenda as it appears in Appendix 2 to the report. It further decided that the first session of the meeting would be devoted to an exchange of view with the Special Rapporteur of the United Nations (UN) on reservations to international treaties, Professor Alain PELLET, who drafted the International Law Commission (ILC) preliminary conclusions on reservations to normative treaties including human rights treaties (hereafter "preliminary conclusions". The second session of the meeting would be devoted to more practical work in view of providing the CAHDI with recommendations on the follow-up to the activity.

3. The delegate of France invited members of the Group to a lunch at the *Centre de Conférences Internationales* of the Ministry of Foreign Affairs. The Chairman accepted the invitation on behalf of the Group and thanked Mr PERRIN DE BRICHAMBAUT for his kind invitation.

## 3. Definition of the work

4. The Chairman noted that the aim of the DI-S-RIT's work as defined by the terms of reference given to the Group, namely to examine the possible harmonisation of the Council of Europe member States' action in regard to inadmissible international reservations.

5. He further put forward a number of questions to be tackled by the members of the Group:

- a) Does the Vienna Convention meet requirements of all treaties and in particular, of the human rights treaties<sup>1</sup>?

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<sup>1</sup> *Convention on the Law of Treaties* signed in Vienna on 23 May 1969 (UN Doc. A/Conf.39/27. UN Conference on the Law of the Treaties. Official Records. Documents of the Conference (A/Conf.39/11 Add.2) United Nations, New York 1971, pp. 289-301.)

### Article 2 – Use of terms

1. For the purposes of the present Convention: (...) (d) "reservation" means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty; whereby it purports to exclude or to modify the legal effects of certain provisions of the treaty in their application to that State.

### Article 19 - Formulation of reservations

A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

(a) the reservation is prohibited by the treaty; (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or (c) in cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

### Article 20 - Acceptance of and objection to reservations

1. A reservation expressly authorized by a treaty does not require any subsequent acceptance by the other contracting States unless the treaty so provides.

2. When it appears from the limited number of the negotiating States and the object and purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

3. When a treaty is a constituent instrument of an international organization and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organization.

4. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:

- b) Who determines the admissibility of reservation to international treaties? In this connection, What is the role of Treaty bodies?
- c) What are the legal effects of illicit reservations to international treaties?
- d) Is there a distinct regime or practice of the Council of Europe's member States regarding reservations to international treaties?

6. As regards question b) the Chairman noted that this issue is not solved by Vienna Convention. The latter makes provision for three kinds of reservations but does not contain any provisions as to who decides on their admissibility nor on the procedures to be followed. In some instances certain bodies with monitoring powers, such as for instance the European Court of human rights (ECHR), have taken that role; yet the question arises of what is the role of treaty or monitoring bodies in general. In this respect, the General comment No. 24<sup>2</sup> of human rights Committee may provide some useful information.

7. As regards question c), the Chairman referred to document H (96) 18 *The European Convention on human rights and Reservations*. This documents puts together the basis of the consequences and legal effects of prohibited reservations which are contrary to the purpose

(a) acceptance by another contracting State of a reservation constitutes the reserving State a party to the treaty in relation to that other State if or when the treaty is in force for those States;

(b) an objection by another contracting State to a reservation does not preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is definitely expressed by the objecting State;

(c) an act expressing a State's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.

5. For the purposes of paragraphs 2 and 4 and unless the treaty otherwise provides, a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

#### **Article 21 - Legal effects of reservations and of objections to reservations**

1. A reservation established with regard to another party in accordance with articles 19, 20 and 23:

(a) modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and

(b) modifies those provisions to the same extent for that other party in its relations with the reserving State.

2. The reservation does not modify the provisions of the treaty for the other parties to the treaty inter se.

3. When a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation.

#### **Article 22 - Withdrawal of reservations and of objections to reservations**

1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State which has accepted the reservation is not required for its withdrawal.

2. Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.

3. Unless the treaty otherwise provides, or it is otherwise agreed:

(a) the withdrawal of a reservation becomes operative in relation to another contracting State only when notice of it has been received by that State; (b) the withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State which formulated the reservation.

#### **Article 23 - Procedure regarding reservations**

1. A reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting States and other States entitled to become parties to the treaty.

2. If formulated when signing the treaty subject to ratification, acceptance or approval, a reservation must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.

3. An express acceptance of, or an objection to, a reservation made previously to confirmation of the reservation does not itself require confirmation.

4. The withdrawal of a reservation or of an objection to a reservation must be formulated in writing.

<sup>2</sup> General comment No. 24 (52) *on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant*, adopted by the Committee at its 138th meeting (fifty-second session), on 2 November 1994; General comments adopted under article 40, paragraph 4, of the International Covenant on Civil and Political Rights; Report of the human rights Committee, Volume I, General Assembly, Official Records, Fiftieth Session, Supplement No. 40 (A/50/40).

and object of a treaty. In this respect, two reactions are possible: (i) to consider the reservation null and void or non-existent) and (ii) to consider that no treaty-relation will exist between the reserving State and the State that opposes the given reservation (opposing State). However, in the first case (i), a legal dispute will arrive between the reserving State and the opposing State. As regards the second case (ii) there are no procedure to solve this situation.

8. The Chairman noted that question d) concerns actually the follow-up to the Group's work and if the answer to this question is affirmative, the Group should consider whether the distinct practice of the Council of Europe's member States can be reflected in the ILC's work, particularly in the 2nd part of Professor PELLET's study on the legal effects of prohibited reservations, with a particular focus on the human rights perspective as provided, for instance by the EHRC.

9. The Group agreed with the definition of the work as put forward by the Chairman.

10. The delegate of Finland referred to document H (96) 10, stressing that author - Professor HORN's thesis concerned precisely reservations to multilateral treaties and yet, there was however no mention of the words "inadmissible" or "unacceptable". This could be explained because at the time the inadmissibility of reservations was not an issue. This is rather a new issue that appears particularly in connection with human rights treaties. The delegate of Finland presented a document prepared by his delegation<sup>3</sup>, which could be of interest in connection with question c) put forward by the Chairman. He concluded suggesting that the activity should not aim at amending the Vienna Convention but rather filling in its lacunae.

11. The delegate of the Netherlands pointed out that the subject matter of the Group's work is of a very theoretical nature but that it has very important practical consequences. In his view, a new question could be added to those put forward by Ambassador CEDE, namely: What obligation results from Article 19 paragraph c) of the Vienna Convention? And in particular, does this provision concern only "monitoring bodies" or also Party States? In her view, this question is at the very heart of the debate on reservations and implies assessing whether it is clear what is contrary or not by object and purpose of a treaty. Moreover, this was missing in the ILC preliminary conclusions.

12. The Chairman supported the remarks made by the delegate of the Netherlands and noted that this question could be examined in the context of the question c) he put forward.

13. The delegate of Romania pointed out that the Group's work should focus on means and ways of harmonising the practice of Council of Europe member States to avoid a purely theoretical discussion. This would lead to the last question put forward by the Chairman regarding a distinct regional practice. In this respect, the question is whether regional practice can positively influence universal practice or whether, on the contrary, such regional practices should not be fostered. In his view, there are some common features in Council of Europe practice, which should be examined with a view to possibly influencing universal practice.

14. The delegate of the Russian Federation supported the remarks made by the delegate of Romania stressing that Group's discussion should not be over-theoretical. In his view, national delegations expressed their view already, particularly during discussions at the Sixth Committee of the UN General Assembly. The Group should, therefore produce practical results. He suggested that the Group concentrates also in considering the possible role of CAHDI as an observatory of reservations to international treaties as stated in the terms of reference given to the Group.

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<sup>3</sup> *Some observations on the State practice concerning objections to Reservations made to the Convention on the elimination of all forms of discrimination against women and the Convention on the rights of the child*, document CAHDI (98) 11.

15. The delegate of Croatia supported the remarks made by the delegates of Romania and the Russian Federation. He further underlined two aspects of the problematic of reservations: the legal and the political dimension. The legal aspects are dealt with by several international institutions already. The political aspects concern the assessment of *bonna fide*. In his view, a reservation is an attempt to circumnavigate the commitments resulting from a treaty. This situation can be dealt with in two possible ways. The first concerns the consequences of inadmissible reservations. The second, more useful and delicate, poses the question of what to do with admissible but undesirable reservations. In dealing with the latter, the Group can positively contribute to the terms of reference given to CAHDI, especially to its term of reference b). The delegate of Croatia further referred to Recommendation No. 1223 of the Parliamentary Assembly of the Council of Europe. In view of this recommendation a certain percentage of objections to a given reservation could possibly render it inadmissible.

16. The Chairman agreed that the practical issues should be in the main focus of the Group's work and as agreed, the Group would devote the second session of its meeting to this matter. The Chairman further made a *tour de table* regarding the role of the CAHDI in respect of reservations to international treaties.

17. The delegates of Belgium and Croatia noted that the Council of Europe is an interesting intergovernmental forum in several regards: its member States all have the same obligations and are bound by the same *jurisprudence*. Therefore, it would be interesting to come up with guidelines in respect of reservations in addition to an observation mechanism.

18. The delegate of Finland referred to the concept of "regional practice" and noted that the ILC notes that its preliminary conclusions are "without prejudice to the practices and rules developed by monitoring bodies within a regional context" (see Preliminary conclusion 12). He observed that so far there are no such regional practices. As regards the "Strasbourg approach", he noted that the ECHR has taken a position with binding effect on Council of Europe's member States interpreting some reservations as inadmissible. The ECHR as a treaty monitoring body that it is, has that power and therefore it is not appropriate to speak in this respect of regional practice. The issue concerns rather the powers of a monitoring body as such. Therefore, the ILC statement in preliminary conclusion 12 of its preliminary conclusions does not concern the "Strasbourg approach".

19. The delegate of France elaborated further on the notion of regional practice. The first question is the definition of the regional practice itself. Such practice can have positive effects, e.g. fostering good practices, particularly in respect of human rights, but also negative effects, namely fragmentation. In any case, if a regional practice is to be accepted, it has to be "better" (in the sense of setting higher standards) than the universal practice. This is the case at European level with the "Strasbourg system" as it is indeed the system with the highest standards.

20. As regards the role of the Council of Europe and the CAHDI in particular, the delegate of France agreed that the CAHDI has a significant role to play as an "observatory" of reservations to international treaties with a view to harmonising and co-ordinating the position of its member States.

21. However, he acknowledged, together with the delegate of Germany, that even though the "Strasbourg approach" is far more advanced than the universal practice it is not realistic to think that it is possible to transfer this approach to a universal scale. In this respect it is necessary to ensure a universal minimum standards regarding respect of human rights.

22. The delegate of the Netherlands agreed that the CAHDI has a role to play in this field while stressing that regional instruments and regional practice should not be mixed. She noted that the "Strasbourg approach" regards exclusively the Council of Europe and this is far

different from the possible harmonisation or co-ordination of member States' positions within the CAHDI. This is a matter with important practical implications, e.g.: margin of manoeuvre of the CAHDI in view of the time-constraints imposed by the Vienna Convention. She pointed out that a similar exercise has been carried out within the European Union (EU). EU member States inform each other about objections to reservations and this practice stimulates time-reactions by half of the member States while there is a constant flow of information.

23. The representative of the OECD stressed that it is important to precise the real aim of the DI-S-RIT work and considered that the role that the CAHDI may be attribute in view of the terms of reference of the Group may be too ambition.

24. The delegate of the United States of America noted that the role of the CAHDI would be restricted to human rights treaties, but not all of them. Thus, he noted for instance that the United States of America are party to a European convention on the transfer of sentenced persons. It would not seem that there would be a role for the CAHDI to take decisions in respect of reservations to this particular treaty. As regards the "most important multilateral treaties for the international community" (see terms of reference of the DI-S-RIT), he gave the example of the OECD convention on corruption and wondered whether it would it be appropriate for CAHDI to take a stand on reservations made to this kind of treaty.

25. The delegate of Romania stated that at this stage of the exercise, the work of the Group could aim at preparing a recommendation on what type of reservations should be avoided. This recommendation should have a legal basis and it could have as a model the recommendation recently prepared by the CAHDI on debts of diplomatic missions. Further to that, the CAHDI could regularly consider observations submitted by States and examine practice and developments in this respect. The CAHDI could thus, promote common attitudes and foster the introduction in future conventions of the element of objectibility to inadmissible reservations and that a certain number of objections would result in the *ex officio* inadmissibility of a given reservation.

26. The delegate of the Russian Federation provided replies to questions put forward by the Chairman. In his view, the regime established by the Vienna Convention meets with the requirements of all treaties including the human rights treaties because it is the only existing one and a new regime cannot be foreseen in the near future. As regards the decision on the admissibility of reservation to a treaty and the role of treaty bodies, a third body should be given this responsibility as this is a matter of interpretation. Regarding the legal effects of inadmissible reservations, the Vienna Convention makes provision for the consequences and the real issue is this connection is determining what is prohibited. As regards a distinct regional approach, it includes several elements: the Council of Europe's practice, the Council of Europe member States' practice in relation to Council of Europe treaties and the Council of Europe member states practice in relation to non-Council of Europe treaties. Moreover, there are certain sub-regional practices, e.g. within the Confederation of Independent States.

27. Regarding the possible role of the CAHDI, the delegate of the Russian Federation supported the proposals put forward by the delegate of Romania. He further indicated that a first possible outcome would be to outline possibilities to be followed by Council of Europe member States when confronted with inadmissible reservations.

28. The delegate of Spain proposed that Mr. Pierre-Henri IMBERT be invited to take part in the next meeting of the Group in order to exchange view with the members of the Group on the issue. Further to that, he supported the setting up of an observatory of international reservations for a quick exchange of information in this respect. This would represent a substantial contribution to the 50th Anniversary of the Council of Europe.

29. The delegate of the Slovak Republic agreed that the CAHDI has a role to play in the

field of reservations. It could it could have a pre-eminent role outward in addition to the important inward role that it already plays in respect of the activities of the Council of Europe. The operation of the "observatory" could include the exchange of view and practices concerning reservations to treaties and subsequent objections. However, the actual operation will depend on the efficiency of the legal departments of the member States' ministries of foreign affairs.

30. The delegate of Sweden stressed that the CAHDI is an outward looking body and it does not focus exclusively in the regional context, i.e. the Council of Europe instruments, because there are not significant problems. He pointed out that the terms of reference of the CAHDI could only be implemented if there is a political will to react to unacceptable reservations and this applies as well to the operation of the CAHDI as an observatory. In this respect, he supported the position of the delegate of the Netherlands. Thus, the CAHDI could be an observatory focusing on the human rights treaties with a view to harmonising the practice of member States in respect of these treaties, e.g. conventions on the rights of children, against discrimination of women, etc.

31. The delegate of Switzerland stressed that it is essential to harmonise reactions to unacceptable reservations. The CAHDI has a definite role to play in this respect as the regional practice of its member States concerns all international treaties and not only those concluded within the Council of Europe. Moreover, he noted that the CAHDI could play a significant role in promoting avoidance of inadmissible reservations.

32. The delegate of the United Kingdom noted that the subject matter for the Group's work presents great difficulty. This was due to the fact that when the Vienna Convention was drafted, issues such as, for instance, general reservations to human rights treaties did not exist. Therefore it is particularly important that the ILC examines this issue. On the other hand harmonisation would be unrealistic and the role of CAHDI would be that to make its members aware of reservations made by other States whether member- or not. However, he noted that the practical aspects of this operation are very important.

33. As regards the notion of regional practice, the delegate of the United Kingdom stressed that fragmentation should be avoided and that the important issue is to ensure a minimum universal standard. Moreover, the concept of "regional approach" is misleading as it can mean, as indicated by the delegate of Finland the actual application of a treaty i.e. the role ECHR, rather than a practice followed by States.

34. The Chairman summed up at this stage of discussion and noted that the ILC's preliminary conclusions refer to the "regional context" and this notion covers regional practices including in particular, the practice that has been developed in the context of the Council of Europe (the "Strasbourg approach"). According to the Chairman, Professor PELLET wanted to acknowledge this reality without prejudicing the principle of universality. As regards the role of the CAHD role on reservations, in the light of the notion of regional practice, it should be outward looking and not concern the functioning of treaties concluded within the Council of Europe. Moreover, it should focus on reservations in connection with universal treaties and in particular human rights. He stressed that the issue of reacting to reservations is not only a legal matter but especially political. He noted that the Group could recommend the CAHDI the preparation of a recommendation. Finally, he highlighted the importance of the practical aspects of the observation process, particularly the time limits and deadlines for reacting to reservations as the CAHDI only meets twice a year so some permanent mechanism should allow the speedy exchange of information among members.

35. Further to that, the Group considered the suitability of the regime provided for in the Vienna Convention.

36. The delegate of Sweden stated that the Nordic countries commonly agree that the Vienna Convention is applicable to all cases but it is "residual in character" particularly in regard to multilateral normative treaties including human rights. Concerning responsibility for deciding on the admissibility of reservations, particularly in the field of human rights, he further noted that where such responsibility is assigned to a specific (monitoring) body, States themselves are responsible and they are also called upon to ensure the integrity of human rights treaties. In this respect, General Comment 24 of the human rights Committee is interesting, however, the only legal effects resulting from inadmissible reservations are those stated in the Vienna Convention. In his view the most significant difficulties arise in connection with the legal effects of illicit or inadmissible reservations. In such cases, the Nordic countries have systematically considered the reservations void and the treaty entirely applicable.

37. The delegate of the Netherlands agreed that the regime provided for in the Vienna Convention is suitable. Yet, she noted that the issue of reservations is a very substantive one and for far too long it has been considered only as a formal one. Making reservations is not so much a political issue for if a given reservation is contrary to law the issue is then a legal one. Thus, making an objection would not be a political exercise but rather a technical one based on existing human rights policy. For this reason objections are normally not signed by Ministers but directors at the most. As regards decision about the admissibility of reservations, monitoring bodies have a definite role to play not only in the field of reservations to human rights treaties but also other fields such as environmental law, law of the sea, etc. Concerning the introduction of a system by which a certain percentage of objections to a given reservation would render the reservation inadmissible, she noted it would not be advisable for where this system has been introduced e.g. in the field of discrimination it has not worked. As regards the legal effects of inadmissible reservations, from a logical point of view these reservations are void. Yet, the question remains of what is the legal effect of the objections. Thus, the legal effects of inadmissible international reservations are ambiguous.

38. The delegate of France agreed with prior speakers that the regime provided for in the Vienna Convention applies to all treaties including human rights and stressed that its delegation fosters a system as universal as possible. He further noted that an objection does not prevent the treaty from entering into force between reserving State and the objecting State what is particularly important as regards human rights treaties.

39. The delegate of the United Kingdom noted that the Vienna Convention is in some respects unhelpful or misleading. It refers to inadmissible reservations but it does not make provision for the possibility of objecting to them. Objection is always possible whether or not the state considers it admissible or not as it can be made in relation not only to inadmissible but to admissible ones. In this respect, he pointed out that the Vienna Convention did not foresee two developments: the increasing role of monitoring bodies and the formulation of general reservations. As regards monitoring bodies, they are responsible for deciding on the admissibility of reservations if they exist and are given that competence. In some instances, monitoring bodies will give their view but in general it is for the States as "Masters of the treaty" that they are the sole ones to decide on the admissibility of reservations. However, there is a risk a reservation maybe valid for some states but not for the others what is clearly uncomfortable. It might be necessary to accept that ultimately this is a bilateral matter and the view of the ILC goes in that sense. The CAHDI for its part could possibly give thought to the issue of "permissible reactions by objecting states".

40. After a fruitful discussion the Chairman concluded that the regime provided for in the Vienna Convention was suitable to all treaties including human rights treaties (see below, preliminary conclusion 1). He welcomed Professor PELLET and thanked him for taking part in the meeting.

41. Professor PELLET introduced his work as Special *Rapporteur* of the UN for reservations to international treaties. Over 40 states have replied to the questionnaire he had sent to member States of the UN. Regarding the status of the preliminary conclusions of the ILC, in his second report he concentrated on reservations to international treaties and especially to human rights treaties. He had proposed that his report concluded with a resolution. However the ILC did not take his proposal but rather adopted preliminary conclusions. He noted that a minority within the ILC considered that in the field of human rights, monitoring bodies play a major role. The majority however, considered that human rights treaties are subject to the regime provided by the Vienna Convention just as all other international treaties. The preliminary conclusions represent therefore a compromise. In this connection, he admitted that preliminary conclusion<sup>12</sup> is a diplomatic concession to which he was not particularly favourable. Moreover, the preliminary conclusions incorporate certain novelties such as the actual format of the text (conclusions) and that the aims are stated. States will have one year to take position on the preliminary conclusions. The ILC will then take final position on the text and it will be forwarded to the General Assembly for adoption. It is expected that the conclusions will be adopted in 2000 or 2001.

42. The delegate of Finland referred to the document submitted by his delegation (document CAHDI (98) 11 mentioned before). This document deals with reservations to the 1979 UN Convention on the elimination of all forms of discrimination in relation to women and to the 1989 UN Convention on the rights of children. 280 objections have been made by 14 States concerning reservations to these treaties. Within the 14 States, some have only made 1 or 2 objections while 8 States had formulated most of the objections to reservations made to these treaties. Out of the total number of objections, 200 addressed the admissibility of the international reservations. Yet, the objecting States were generally ambiguous about the legal effects to be attached to the international reservation even though for the most part, the reservation was considered with no effect and convention entirely binding.

43. The Group undertook the examination of the preliminary conclusions together with the Professor PELLET.

#### Title of the ILC preliminary conclusions

44. The delegate of Romania referred to the actual title of the preliminary conclusions "(...) on reservations to normative multilateral treaties including human rights treaties" and noted that despite this title no other reference to normative treaties could be found in the text.

45. In this respect Professor PELLET observed that the monitoring bodies are introducing a debate on normative treaties and other bodies such as the human rights Committee of the UN even though the Vienna Convention excluded this item. He further noted that preliminary conclusion 3 referred to normative treaties as well.

#### Preliminary conclusion 1

46. The delegate of the Netherlands noted that in this conclusion reference is made to the "object and purpose of the Treaty" as the most important of the criteria for determining the admissibility of reservations. However, she stated that Articles 19.a and 19.b of the Vienna Convention represent a much more clear and stable rule and that the "object and purpose" rule is a last resort, even though a crucial problem is respect of reservations to human rights treaties. Moreover, these criteria disappear in practice behind the formalities, e.g. time limits and delays. In her view, the crucial question is how to determine the object and purpose of a treaty. This expression comes from the *Genocide case*. This was however a very specific case and by transferring that slogan to all treaties, things have not been facilitated necessarily because States may have different views.

47. Professor PELLET agreed that the current formulation of preliminary conclusion 1 not entirely satisfactory. This is partly due to translation as in the original draft (in French) the object and purpose were referred to as fundamental criteria ("critères fondamentaux") rather than as the most important ones. However, he stressed that they are objective criteria and do not disappear behind the procedures. An international reservation contrary to the object and purpose of a treaty is illicit but its legal effects remain to be determined and in this respect it might be appropriate to take a middle way. As regards the role of the monitoring bodies, the latter have a very rigid approach: if a reservation is contrary to a fundamental right, it is considered contrary to the object and purpose of the treaty. However this might not be always satisfactory and in certain cases it would be more useful to put pressure to a given State with a view to limiting the scope of a reservation.

48. The delegate of Finland observed that thought it might appear that the regime provided for in Vienna Convention is sufficient, it is not so and there are a number of unsolved problems. Therefore he wondered about the need for this conclusion.

49. In this sense, the delegate of Sweden wondered whether this conclusion means that the regime provided for in the Vienna Convention is still a satisfactory balance, as it would result from the preliminary conclusions.

50. Professor PELLET noted the system is balanced enough and therefore does not require dramatic changes. The starting point is therefore the regime of the Vienna Convention, which has already proven efficient. This does not exclude however some problems which moreover are not specific to human rights.

51. The delegate of Germany supported the conclusion and noted that in its second report, Professor PELLET clearly states that there is a lot of leeway. He suggested that it might be useful to mention in the preliminary conclusions that the Vienna Convention has a residuary character.

52. The delegate of Finland observed that inadmissible international reservations to treaties are a rather recent phenomenon. The Vienna Convention is of a residual nature and does not give solutions to solve these questions. It is not question of preparing a protocol to the Vienna Convention but to prepare guidelines regarding inadmissible international reservations to human rights treaties.

53. The delegate of the Netherlands noted that the Vienna Convention system is very flexible and wondered whether the possibility of making reservations to international treaties really fosters wider or universal acceptance of a treaty. In her view, the answer to this question is a cost/benefit issue.

54. According to the delegate of France, the great advantage of the international reservation system is to facilitate wider acceptance of the treaty. However he noted that preliminary conclusion 1 should be qualified by the terms "until now". The Vienna Convention system has functioned satisfactorily until now, but one can feel that the pressure on the system is increasing. Moreover, this conclusion should be read in connection with the others, namely 6 and 7 and it represent the backbone of the preliminary conclusions.

55. Professor PELLET insisted that the starting point, also for human rights treaties, is the regime provided for in the Vienna Convention. He informed members of the Group about how he intends to proceed in respect of this regime. He will state each provision of the reservations regime established by the Vienna convention and provide some guidance or recommendation. He observed that this course of action was approved by the General Assembly of the UN. While acknowledging that some states would not have problem to establish a completely different system, he noted that, there is not much risk for States because the Vienna

Convention is residuary in character and supplementary to states' will.

56. The delegate of Sweden insisted that it is not possible to state that the regime established by the Vienna Convention functions "satisfactorily" with regard to normative human rights treaties because it produces the contrary effect: the reserving State is no longer bound by the treaty.

57. The delegate of the United Kingdom observed that new phenomena has emerged since the adoption of the Vienna Convention, namely: the setting up of monitoring bodies and the formulation of general reservations which are now common. Therefore, it is necessary to finely tune the Vienna Convention to take into account those developments in international relations.

58. Professor PELLET agreed with the delegate of the United Kingdom that a treaty has to adapt to circumstances. However, as regards the comments by the delegation of Sweden, he noted that there is not a complete lack of reciprocity. Moreover, even the absence of primary reciprocity does not raise a problem for the application of the Vienna Convention, which would still apply with the exception of articles 20 and 21.

59. The delegate of the Netherlands agreed that reciprocity is a fundamental issue. Yet, even though formally there might be reciprocity because it is an international treaty, there might not be the case substantially. She suggested that the ILC might give come up with some creative ideas about the consequence of the lack of substantial reciprocity obligations. Truly human rights treaties are treaties, but their obligations are substantially different.

60. In this respect, the delegate of France noted that human rights treaties they have some specific features. They have reciprocity not only *vis-à-vis* States but also citizens and this link is essential. Further more, they normally make provision for a monitoring body called upon to verify the commitment of States towards other parties and especially in relation to citizens. This body fosters continuous exchanges of view on practice and experiences and therefore plays a central role.

61. The delegate of Spain added on the specific features of human rights treaties noting in particular that they are irreversible due to the current state of society that presents greater risks for the human being.

62. The delegate of the United Kingdom stressed that it realistically one cannot expect to establish at universal level monitoring bodies such as the ECHR. As regards those States, which are not part to any system providing for a monitoring body, the gap might be filled in by a system of objection to reservations. The ILC will not be able to fill in that gap by using traditional rules of international law such as those in the Vienna Convention and there is some margin for improving the system. Yet, one has to be realistic about what ILC can achieve.

63. The delegate of Germany stressed that the residual nature of the Vienna Convention should be preserved but expressed his hopes that the ILC preliminary conclusions will evolve to more substance in terms of suggestions for States to deal with inadmissible reservations.

### Preliminary conclusion 3

64. The Chairman noted that normative human rights treaties, in addition to introducing reciprocity between States, create a "social contract". The Vienna Convention works satisfactorily as regards relations between States but not in relations between States and individuals. The delegation of Austria would therefore like to see the human rights concern explicitly mentioned in this conclusion.

65. The delegate of the Russian Federation observed that this conclusion does not state

that the Vienna Convention is satisfactory in every respect. It is rather a statement of fact: the Vienna Convention applies to all treaties whether human rights or not.

#### Preliminary conclusions 4-8

66. The delegate of France observed a contradiction resulting from preliminary conclusions 5-8. While conclusion 5 admits the possibility for monitoring bodies to grant themselves significant powers to give opinions and make recommendations on the admissibility of international reservations, conclusion 7 states that States should make protocols to grant monitoring bodies such powers. In this context, preliminary conclusion 6 would seem contradictory.

67. Professor PELLET noted that, on the one hand, preliminary conclusions 4-6 are *de lege lata*, i.e. substantive law. Where monitoring bodies exist, they cannot abstain from considering the admissibility or validity of reservations. This power results from the principle of the “implied powers of international bodies” but it is not exclusive and States will always be able to take a stance on the admissibility of reservations. On the other hand, conclusion 7 is *de lege ferenda*, as it would be useful to grant, by means of the actual treaties or of protocols thereto, specific powers to monitoring bodies in respect of the admissibility of international reservations. In this connection, conclusion 8 states that the powers that monitoring bodies would have in this respect could not go beyond the powers which are given to them, explicitly or implicitly, for the performance of their general monitoring role. Finally, conclusion 8 is both *de lege lata and ferenda*. It calls upon States to co-operate with monitoring bodies and give due consideration to any recommendation that they would make or comply with their determination if the monitoring bodies were given in the future competence to that effect.

68. The delegate of Sweden noted that preliminary conclusion 8 is the most important.

69. The delegate of Switzerland observed a contradiction between preliminary conclusions 4 and 5. He noted in particular that conclusion 5 goes quite far and wondered whether the ILC is competent to “shortcut” the States and grant monitoring bodies powers which were not provided for in the treaties.

70. In this connection, Professor PELLET stressed that preliminary conclusion 4 simply acknowledges that at the time the Vienna Convention was drafted, no though was given to inadmissible international reservations. In this context, conclusion 5 is not a contradiction and the ILC is not trying to “shortcut” the States in so far as States have granted treaty bodies monitoring powers and the latter go beyond in the exercise of those powers. This has happened in the context of the Council of Europe with the ECHR (“Strasbourg approach”) and in the context of the UN the human rights committee seems to go in the same direction in its General Comment 24. Yet, it has not done. However, monitoring bodies cannot replace States in what they wanted to state at the time of formulating a reservation. Consent belongs to States and monitoring bodies cannot take over this power. For this reason conclusion 10 was introduced in the text. In this respect, Professor PELLET noted that he was astonished by 2 decisions of the ECHR against Switzerland<sup>4</sup> and Turkey<sup>5</sup> which go far beyond the rules of international law.

71. The delegate of Germany stressed that it is not possible to deny that *de lege lata* monitoring bodies are entitled to give their view on the admissibility of reservation.

72. The delegate of Finland pointed out that conclusion 4 acknowledges that some

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<sup>4</sup> ECHR, *Belilos vs. Switzerland*, 29.04.1988, Series A, no. 132.

<sup>5</sup> ECHR, *Loizidou vs. Turkey*, (preliminary objection), 23.03.1995, Series A, no. 310.

situations were not envisaged at the time monitoring bodies were established. He noted that this includes the legal effect of reservations. He further noted that preliminary conclusion 7 might not be necessary and might be redundant. Finally, conclusion 9 acknowledges that monitoring bodies may in the future be given power to consider the admissibility of reservations. However, these bodies exist already e.g. the ECHR and they have given themselves that power and States have accepted. Therefore, the scenario depicted in this conclusion is present in the regional context that represents the Council of Europe.

73. Professor PELLET noted that during preparatory work leading to the preliminary conclusions, the specific issue of the human rights treaties was addressed<sup>6</sup>. In this respect, he insisted that preliminary conclusion 5 is *lex lata* while the first part of preliminary conclusion 9 is *lex ferenda*. The passage from one to the other is necessary and that is the reason for preliminary conclusion 7. As regards the regional practice of the Council of Europe, namely the fact that the ECHR is already examining the admissibility of reservation and deciding on legal effects of inadmissible reservation. He considered that the ECHR is surpassing its powers. As concerns Council of Europe's member States reactions to this practice and in particular the reaction of Switzerland and Turkey in respect of the cases cited previously<sup>7</sup> he observed that Switzerland was about to denounce the European Convention of human rights for this reason. In this connection, he concluded that preliminary conclusion 12 is wrong but it constitutes a compromise.

74. The delegate of the Russian Federation expressed support for preliminary conclusion 5. Monitoring bodies have the inherent right to look on reservations because otherwise they cannot carry out their general monitoring functions. However, the reserving State does not have any obligation to comply with the monitoring body's findings. Moreover, he pointed out that conclusion 10 refers only to reserving States but the issue remains about the role of the other States that are Parties to the treaty in question.

75. In this respect, Professor PELLET noted that preliminary conclusion 6 has tried to answer that question: the Vienna Convention applies to all the other States. If it is accepted that States can modify their reservations, objecting States should then be allowed to modify their objections. However, this interpretation might be at the limit of interpretation affordable by the Vienna Convention.

76. The representative of OECD wondered whether preliminary conclusion 5 applied only to human rights treaties or to all treaties. In his view, where the treaties do not provide for any specific powers of the monitoring bodies in respect of reservations to international treaties, these bodies enjoy however, a minimum power to make recommendation and give their opinion in that respect. If more powers are to be given to the monitoring bodies, the State's consent is required explicitly.

77. Professor PELLET stressed that preliminary conclusion 5 concerns all treaties not only human rights. As regards the powers of monitoring bodies, by virtue of the theory of the implied powers, they can make observations on reservations, including their admissibility and their legal effects.

78. The Chairman thanked Professor PELLET for his valuable contribution to the work of the Group and noted with satisfaction that a very fruitful exchange of view had taken place between national delegation and the Special Rapporteur of the UN on reservations to normative international treaties including human rights treaties.

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<sup>6</sup> See Professor PELLET's 2nd report on reservations to normative multilateral treaties including human rights treaties, paragraph 103, note 147.

<sup>7</sup> *Supra* 4 & 5.

79. He called upon the members of the Group to discuss about the practical follow-up to the work of the Group as regards in particular its terms of reference. He put forward two questions to the attention of the Group: Should the activity of the Group be restricted to human rights treaties of universal character or only Council of Europe? What ways and means should be used to pursue the activity?

#### Scope of the activity

80. The delegate of Sweden suggested that the scope of the activity should be all international treaties, but for practical reasons for the beginning the activity should be limited to human rights treaties. At a later stage the activity could expand to cover international treaties in other areas.

81. The delegate of the Netherlands supported the suggestion and observed that this would not mean only UN treaties but also treaties from other organisations or specialised agencies. Moreover, subsequently the activity could concern other fields such as e.g. the law of the sea. She noted that from a political point of view the CAHDI and the activity of the Group should not be seen as from the "human rights gang" exclusively.

82. The delegate of Finland supported the position of the delegate of the Netherlands as regards the "human rights gang" argument. However he stressed that, at the beginning the activity should focus on human rights treaties for practical reasons. In his view, the Council of Europe conventions should be included because it would otherwise look awkward that a Council of Europe committee would discard Council of Europe instruments. Council of Europe conventions in such fields as e.g. human rights, national minorities, minority languages, etc. would be very interesting to consider.

83. In this respect, the delegate of the United Kingdom noted that there might be a problem for the CAHDI to consider Council of Europe human rights instruments as other Council of Europe specialised committees or bodies might be carrying out that exercise already. However, the delegate of Croatia noted that the existence of other committees carrying out a similar exercise in relation to other Council of Europe instruments does not preclude the CAHDI's role, on the contrary, it adds to it because the CAHDI could bring in some order in that work. The CAHDI will be called upon to carry out a significant work of consultation and co-ordination with other bodies, particularly as regards universal human rights treaties.

84. The delegate of Sweden observed that it would be interesting to examine depository practice if the Group would consider Council of Europe instruments.

85. The delegates of the United Kingdom, the Slovak Republic and Germany supported that the activity would concentrate at the beginning on human rights and then move on to other fields depending on the results. Other universal treaties could thus, be added if a member of the CAHDI would consider that they would give rise to problems similar to those encountered in the field of human rights. They concluded by stressing that no field should be excluded *a priori*.

86. The delegates of Romania, Croatia and Belgium supported limiting the activity on human rights because the Group and the CAHDI might not have the expertise required in other specific fields. Moreover, it should restrict to reservations and exclude declarations because they constitute a very complicated and ambiguous field. Only those declarations amounting to reservations should be considered for the purpose of the activity. Council of Europe instruments should also be included for the Group and the CAHDI have a moral obligation to bring in the Council of Europe experience.

87. The delegate of France noted that at a certain point, it would be necessary to give a more theoretical or academic thought to subjects such as interpretative declarations. The experience gained will be very useful for other related fields e.g. law of the sea.

88. The Chairman concluded that the activity of the Group and subsequently of the CAHDI should in the first place concentrate on universal human rights treaties. Latter on it might be expanded to other fields e.g. law of the sea. Moreover, he noted that the Group agrees that a theoretical debate on international law is essential to this exercise.

#### Means and ways to carry out the activity

89. The Chairman called upon the members of the Group to consider the most suitable means to bring closer the view of member States in the field of reservations to international treaties and to find a common approach. He referred to the possible introduction of guidelines in this area. He further observed that the document *Considerations on an enhanced harmonisation of measures taken by the member States of the Council of Europe regarding the inadmissibility of reservations*<sup>8</sup>, submitted to the CAHDI by the delegation of Austria provides some ideas, namely: a) preparing model-types of objection outlining the main legal considerations for reacting and b) setting out a guideline practice giving member States of the Council of Europe indications for reacting to reservations without precise wording as opposed to the proposal in a). As regards the latter, he noted a certain risk of overlap with the activity currently being carried out by the ILC that could be interpreted as a counter approach of Council of Europe *vis-à-vis* the efforts of the international community.

90. The delegate of Finland wondered how in practice delegations would be informed of reservations formulated by States and possible objections thereto. In this connection, he asked about the specific role of the Secretariat, particularly in connection with the possible “observatory” of reservations to international treaties.

91. The delegate of the Netherlands brought the attention of the Group to the fact that so far the activity was focussing only on objections, a phenomenon occurring at the last stage of the treaty making process. In her view, the Group should anticipate possible conflicts and cover the whole range of developments leading to the problem of reservations and objections. She distinguished 3 stages in relation to treaties: negotiation, ratification and objection. Reservations are normally formulated at the negotiation stage. At this stage the key issue is to ensure the reservation in question fall within paragraphs a) or b) of article 19 and do not come under the scope of paragraph c of this article. At the ratification stage, when a reservation is formulated, it is necessary to consider preparatory work in order to determine if the reservation is compatible with the object and purpose of the treaty, if applicable. Finally, as regards, the objection stage, she supported the proposal to prepare model objection clauses. She stressed the need to highlight the time issue and proposed to give States some indication about elements to include in internal procedure for dealing with reservations e.g. consultation procedure. She observed that, above all, the exercise be practice-oriented.

92. The delegate of France noted that the CAHDI could benefit from the information and practice gathered within the EU while ensuring that duplication is avoided. In his view, the proposal made by the delegation of the Netherlands could serve as a basis even though he expressed some reservations about the feasibility of anticipating reservations at the various stages of treaty making. He concluded stressing that there is no risk of interference with the work of the ILC because there is a good relationship between the latter and the CAHDI.

93. The Chairman invited the delegate of the Netherlands to prepare a working document

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<sup>8</sup> Document CAHDI (97) 7.

on the systematic approach to international reservations and further referred to the importance of dialogue as stated in above-mentioned document<sup>9</sup> submitted by the delegation of Austria. He informed members of the CAHDI that this is a practice in the Austrian diplomatic relations, yet the outcome has not always been satisfactory.

94. The delegates of Sweden and Germany stressed the importance of dialogue, which has resulted in very satisfactory results in the context of the EU.

95. In this respect, the delegate of the United States of America observed that dialogue is not always the best way to promote friendly relations.

96. As regards the practical follow-up of the activity, the delegate of Germany suggested that it begins progressively and that the CAHDI not be overburden. The delegates of Croatia and Finland and the representative of OECD strongly supported the entrance into operation of the observation mechanism as soon as possible. They observed that the practice including formal and informal notification procedures for reservations and or objection that exists in the frame of the Council of Europe would facilitate the observation exercise.

97. The Chairman concludes that the activity on reservations to international treaties should in the first place concentrate on universal human rights treaties without excluding other fields in the future. The delegation of Sweden agreed to prepare a working document on model objections and the delegation of the Netherlands to prepare a document on the issues relating to reservations at the various stages of conclusion of treaties. Moreover he noted that the activity should represent an efforts to increase awareness about international reservations which are a significant problem States and that it should seek to improve co-operation.

98. He further observed that the Secretariat of the CAHDI would be called upon to play an important role in the implementation of the observation procedure, particularly in terms of receiving and circulating information relating to reservations and objections to international treaties covered by the exercise. In this respect, he noted that the information regularly circulated within the EU could possibly be provided to the Council of Europe Secretariat and subsequently transmitted to all member States.

99. As regards the actual role of the “observatory”, in the Chairman’s view, it would be called upon to bring together the view of member States on how to react to a particular kind of reservations. To that extent, it would be a “watchdog” for alerting member States of the Council of Europe about problematic international reservations without interference for the sovereignty of individual States to react unilaterally. Yet, this would not exclude the possible use of a common action on the part of a group of countries with the same values, particularly in human rights because this results from the actual role and vocation of the Council of Europe. The Chairman concluded highlighting that there is an institutional framework for carrying out the exercise of observing international reservation which can already be used to that extent.

100. The delegate of Romania stated his satisfaction with the outcome of the meeting. He highlighted that the preventive element should be included in both bilateral and multilateral (“observatory”) relations. In this respect, the CAHDI could make specific recommendations to ameliorate the situation. He noted that it would be useful that States already inform each other States of their view about the CAHDI preparing a recommendation on this field.

101. Following the suggestion of the delegate of Romania, the Chairman stressed that it would be very useful if member States and observers in the CAHDI would provide information on their internal procedures regarding the treatment of objections and reservations in the light

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<sup>9</sup> *Supra* 3.

of their constitutional requirements. This information would cover interaction between the different departments of the executive and possibly other State powers or organs. He informed members of the Group that in the EU, a comparative study was prepared on the basis of a questionnaire but so far the analysis did not deal in great detail with reservations and objections.<sup>10</sup>

102. The delegate of Sweden supported the Chairman's proposals regarding the operation of the "observatory". In his view these proposals would meet the need for practical results. However he wondered about the practical aspects of the functioning of the observatory. He asked in particular about the procedure for selecting the problematic international reservations to be the subject of discussion.

103. The Chairman suggested that a selected group of rapporteurs could be set up. This group could possibly include representatives of 1 Scandinavian, 1 Central or Eastern European and 1 other member State. This group would be responsible for the screening procedure. In addition, a permanent structure could be set up with a co-ordinator responsible for alerting member States about problematic international reservations that would call for consideration by the observatory.

104. The delegate of France supported this proposal. Therefore, in the context of the observation procedures, States would be called upon to inform the Secretariat of the CAHDI about problematic international reservations. The secretariat for its part would inform members of the CAHDI about those problematic international reservations. He noted that the "observatory" as such would be the actual deliberations in the CAHDI. As suggested by the Chairman, a selected group of rapporteurs would be in charge of screening the problematic reservations as notified by States and, if appropriate, submitting recommendations for the attention of the CAHDI.

105. The delegate of the Netherlands observed that in the context of the EU, a list of pending reservation is circulated to members of the Council of the EU Working Party on Public Law (COJUR). This list could be transmitted to the Secretariat of the CAHDI and the Secretariat could subsequently transmit it to members of the CAHDI.

106. The Chairman concluded highlighting that the first meeting of the Group had been successful. A very interesting discussion took place with the Special Rapporteur of the UN on reservations to international treaties, Professor PELLET, something that happen for the first time.

107. The discussions in the Group showed wide agreement on the fact that the regime established by the Vienna Convention should be kept uniform and cover all forms of treaties including normative and human rights treaties. In this respect, the Group agreed with the preliminary conclusions of the ILC. However, the Group did not agreed with the way the preliminary conclusions address the role of treaty or monitoring bodies. Despite the clarifications provided by Professor PELLET, particularly as to the articulation between the preliminary conclusions *de lege lata* and those *de lege ferenda*, there were still some discrepancies even though not overall objections.

108. As regards the terms of reference of the DI-S-RIT, the Group agreed on the preparation of guidelines for member States on reacting to inadmissible reservations. It also agreed on the usefulness of establishing an observatory on reservations to international

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<sup>10</sup> In this respect, the delegate of the United States of America informed members of the Group about a comparative study dealing with this issue: *National treaty law and practice: France, Germany, India, Switzerland, Thailand, United Kingdom*, edited by Monroe LEIGH and Merritt BLAKSLEE. Studies in Transnational Legal Policy, no. 27. American Society of International Law, 1995.

treaties. This observatory would be responsible for communicating reservations and objections as well as observations there to, for co-ordination the position of member States and for developing common reactions to inadmissible reservations.

109. Finally, the Group agreed on having a second meeting, possibly before the meeting of the CAHDI in order to facilitate the participation of as many members of the CAHDI as possible<sup>11</sup>.

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<sup>11</sup> Following the meeting, the Chairman issued a summing-up for the attention of the members of the CAHDI. This text is the subject of appendix 3 and was submitted to the CAHDI as document CAHDI (98) 8 rev.

## APPENDIX 1

### List of participants

**AUTRICHE/AUSTRIA**: Mr Franz CEDE, Legal Adviser, Ministère Fédéral des Affaires Etrangères (**Chairman/Président**)

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

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

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

Ms. Sari MÄKELÄ, Legal Officer, Legal Department, Ministry for Foreign Affairs

**FRANCE**: M. Marc PERRIN DE BRICHAMBAUT, Directeur des Affaires Juridiques, Ministère des Affaires Etrangères

M. Jean-Marie MAGNIEN, Sous-directeur du droit international public, Direction des Affaires Juridiques, Ministère des Affaires étrangères

Monsieur Jean-Michel FAVRE, Ministère des Affaires étrangères

**GERMANY/ALLEMAGNE**: Dr Ernst MARTENS, Deputy Head of the Treaty Division, Federal Foreign Office

**PAYS-BAS/NETHERLANDS**: Ms. Liesbeth LIJNZAAD, Legal Counsellor, Ministry of Foreign Affairs

**NORWAY/NORVEGE**: Apologised/Excusé

**POLOGNE/POLAND**: Mr Janusz LACKI, Head of Section, Legal and Treaty Department, Ministry of Foreign Affairs

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

**RUSSIAN FEDERATION/FEDERATION DE RUSSIE**: M. Kirill GUEVORGUIAN, Deputy Director, Legal Department, Ministry of Foreign Affairs

**SLOVAKIA/SLOVAQUIE**: Mr Milan JEZOVIKA, Director, Department of human rights, Ministry of Foreign Affairs

**ESPAGNE/SPAIN**: M. Maximiliano BERNAD Y ALVAREZ DE EULATE, Professeur de Droit international public et d'Institutions et Droit communautaire européens, Université de Saragosse

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

**SUISSE/SWITZERLAND**: M. Serge GAMMA, Chef de la Section des traités internationaux, Direction du droit international public, Département fédéral des affaires étrangères

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

**RAPPORTEUR SPECIAL DE LA COMMISSION DE DROIT INTERNATIONAL DES NATIONS UNIES CONCERNANT LES RESERVES AUX TRAITES MULTILATERAUX NORMATIFS/ SPECIAL RAPPORTEUR OF UNITED NATIONS INTERNATIONAL LAW COMMISSION ON RESERVATIONS TO NORMATIVE MULTILATERAL TREATIES**: M. Alain PELLET, Université Paris X, Faculté de Droit

#### **OBSERVATEURS/OBSERVERS**

**AUSTRALIE/AUSTRALIA**: Mr Peter SHANNON, Embassy of Australia, Paris

**CANADA**: Mme Isabelle POUPART, Délégation du Canada auprès de l'OTAN, Bruxelles

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

**OECD/OCDE**: Mr Nicola BONUCCI, Legal Adviser, Legal Directorate

#### **SECRETARIAT**

##### **Direction des Affaires Juridiques**

Mr. Alexey KOZHEMYAKOV, Chef de la Division du droit public et international

Mr Rafael A. BENITEZ, **Secrétaire of the CAHDI**, Division du droit public et international

Mr Jörg POLAKIEVICZ, Administrateur, Section centrale

Mme Francine NAAS, Assistante, Division du droit public et international

## APPENDIX 2

Agenda

1. Opening of the meeting
2. Adoption of the agenda DI-S-RIT (98) OJ 1
3. Reservations to international treaties:
  - a. definition of the work
    - Introductory document* DI-S-RIT (98) 1
    - Report of the 14th meeting of the CAHDI* CAHDI (97) 14
  - b. preliminary exchange of view
  - c. follow-up to the activity
    - Considerations on an enhanced harmonisation of the measures taken by the member States of the Council of Europe regarding the inadmissibility of reservations* CAHDI (97) 7
    - Issues concerning reservations (Meeting in Vienna, June 1995), Summary and suggestions by the delegation of Austria* CAHDI (95) 24
    - Council of Europe practice relating to treaties* CAHDI (96) 10
    - The European Convention on human rights and Reservations* H (96) 18
    - Preliminary conclusions of the International Law Commission on reservations to normative multilateral treaties including human rights treaties* DI-S-RIT (98) 2
    - Reservations and declarations to selected European treaties* DI-S-RIT (98) 3
4. Other business
5. Date and place of the next meeting.

### APPENDIX 3

#### Chairman's Summing up

The first meeting of the Group of Specialists on Reservations to international treaties was held in Paris, 26-27 February 1998. 17 member States of the Council of Europe participated as well as three observers. The Group was co-ordinated by Ambassador CEDE.

1. There was a very fruitful exchange of view with Professor Pellet, Special Rapporteur of the International Law Commission, on the preliminary conclusions on reservations to multilateral normative treaties, including human rights treaties. For the first time, the Special Rapporteur had the opportunity to exchange view with representatives of various European States.

The Group shared the view of the ILC that:

- the regime of the Vienna Convention is applicable to all treaties, including normative and human rights treaties;
- the regime should not be changed.

However, it was felt that the issue of the role of treaty monitoring bodies still required further consideration; some delegations were not in full agreement with conclusions 5 and following in particular the articulation between *lex lata* and *lex ferenda* provisions. On the whole however the Group was agreeable to the main thrust of the preliminary conclusions.

2. Regarding the DI-S-RIT's terms of reference:

The Group agreed on the need to avoid duplication with the activities currently under way in the ILC. On the other hand the Group considered that it could make a complementary contribution to the advancement of the work of the ILC in a practical manner.

The Group decided that its activity should concentrate in the first stage on universal human rights treaties, not excluding the possibility of addressing other international instruments in the future. Moreover, the Group agreed:

As to point a) of the terms of reference, to pursue the examination of ways and means to assist member States in developing their practice regarding their response to reservations. To that effect, the delegate of Sweden offered to prepare a working document on **model objections to reservations** and the delegate of the Netherlands, a working document on **the key issues regarding reservations at the various stages of the process of concluding treaties (negotiation, signature, ratification) and post-ratification stage**.

As to point b) of the terms of reference, the Group agreed to initiate an observation mechanism with a view to assigning to the CAHDI the role of observatory of reservations to multilateral treaties. To this effect, the Secretariat was requested to prepare a working document for the next meeting of the Group on the practical aspects of this mechanism.

3. The Group was in favour of having a second meeting, possibly before the 16th meeting of the CAHDI.

The Group will be provided at the second meeting with the following working documents:

- the paper prepared by the Swedish delegation on model objections,
- the paper prepared by the Dutch delegation on key issues regarding reservations at the various stages of the process of concluding treaties (negotiation, signature and ratification) and post-ratification stage,
- the note of the Secretariat regarding practical aspects of the functioning of the CAHDI as observatory on reservations to multilateral treaties,
- a list of reservations giving rise to doubts as to their admissibility as notified by States concerned. This may serve as a pilot experience in the attempt to further define the functioning of the observatory within the CAHDI.

The result of this second meeting will be reported to the CAHDI in pursuance of the terms of reference given to the Group.

In addition to the working documents submitted in advance, the Finish delegation submitted a useful working document entitled *Observations on State practice with regard to two UN-human rights treaties* and the British delegation a list of reservations outstanding as of 12 February 1998 prepared in the framework of the Public International Law Working Group (COJUR).