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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW
(CAHDI)

23rd meeting
Strasbourg, 4 and 5 March 2002

MEETING REPORT

Secretariat memorandum
drafted by the Directorate General of Legal Affairs

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A. INTRODUCTION

1-3. Opening of the meeting, adoption of the agenda and communication from the Secretariat

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 23rd meeting in Strasbourg on 4 and 5 March 2002 with Ambassador Tomka (Slovak Republic) in the chair. The list of participants is set out in Appendix I.

2. The agenda, as reproduced in Appendix II, was unanimously adopted. The Committee also approved the draft report of the previous meeting (document CAHDI (2001) 10 Prov.).

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

B. ONGOING ACTIVITIES OF THE CAHDI

4. Committee of Ministers decisions concerning the CAHDI

4. The Chair referred to the opinion which the Committee of Ministers had asked the CAHDI to give on **Parliamentary Assembly Recommendation 1523 (2001) on domestic slavery**. The Chair pointed out that at its 762nd meeting (Strasbourg, 5 September 2001), the Committee of Ministers, at Ministers' Deputies level, had decided to bring the recommendation to the attention of governments and to assign 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 to give an opinion by 30 March 2002. As far as the CAHDI was concerned, the request for opinion related primarily to the question of immunity from jurisdiction.

5. The Chair said that at its previous meeting, the Committee had held a preliminary exchange of views on the matter and the Secretariat had been instructed to prepare a draft CAHDI opinion which had subsequently been forwarded to delegations for comment.

6. The Secretariat said that it had received comments from the Hungarian, Portuguese and United Kingdom delegations. These had been incorporated into the revised draft submitted to the CAHDI.

7. The CAHDI adopted the opinion, as set out in Appendix IV, and instructed the Secretariat to transmit it to the Committee of Ministers in accordance with the terms of reference received.

8. The Chair then referred to the request for opinion received by the CAHDI from the European Committee on Legal Co-operation (CDCJ) (76th meeting, Strasbourg, 4-7 December 2001 – see the meeting report, document CDCJ (2001) 33) further to a proposal from the Committee of Experts on Nationality (CJ-NA) concerning the **possibility of partial denunciation of the Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality** (ETS No. 043).

9. The Chair said that the CAHDI was being asked to give an opinion in particular on the possibility of denunciation of Chapter 1 of that Convention and pointed out that if the CAHDI were to give a favourable opinion, the CJ-NA would

also be asking whether the States Parties to the convention could consider that opinion as a sufficient basis for states to proceed in such a manner.

10. The Secretariat pointed out that in accordance with Article 7 of the convention, "*Each Contracting Party shall apply the provisions of Chapters I and II. It is however understood that each Contracting Party may declare, at the time of ratification, acceptance or accession, that it will apply the provisions of Chapter II only. In this case the provisions of Chapter I shall not be applicable in relation to that Party. It may, at any subsequent time, notify the Secretary General of the Council of Europe that it is applying the provisions of Chapter I as well."* Article 12 of the convention states that "*Any Contracting Party may, in so far as it is concerned, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe. Such denunciation shall take effect one year after the date of receipt by the Secretary General of such notification."*

11. The Secretariat also said that a number of states had recently informed the CJ-NA that they no longer intended to be bound by Chapter I of the 1963 convention, in view of the fact that their domestic legislation would no longer be in line with the provisions contained therein. Nonetheless, these states had indicated that they wished to continue to be bound by the chapter of the 1963 convention relating to military obligations in cases of multiple nationality.

12. The Chair invited delegations to hold a preliminary exchange of views on the questions put to the CAHDI by the CDCJ at the request of the CJ-NA.

13. Several delegations said that there was no legal basis for a partial denunciation. Moreover, a partial denunciation would be counter to the principle of the stability of treaties guaranteed by Article 44 of the Vienna Convention on the Law of Treaties, and would be acceptable only if agreed to by all parties to the treaty in question.

14. Another delegation suggested that an amending protocol to the convention be drafted. However, another delegation said that such a procedure was too cumbersome and this was why the CAHDI was being asked to give its opinion on possible other approaches. The Chair suggested that the aim pursued could be achieved by means of (late) declarations excluding the application of Chapter 1 of the Convention in accordance with Article 7 of the convention.

15. Another delegation said that if such a denunciation were to be accepted outside the framework laid down in the aforementioned provision of the Vienna Convention, then it would be preferable for this to be done formally, for example by means of a Committee of Ministers resolution.

16. The Chair instructed the Secretariat to prepare a draft CAHDI reply in the light of the discussions and to circulate it among delegations with a view to its approval at the next CAHDI meeting.

17. The Chair then referred to the decisions taken by the Committee of Ministers at Ministers' Deputies level at the 765 bis meeting (Strasbourg, 21 September 2001) on the Council of Europe's activities in the **fight against terrorism**. On that occasion, the Ministers' Deputies had considered the follow-up to the Committee of Ministers Declaration of 12 September 2001 on the Fight against International Terrorism and, among other decisions, had instructed the CAHDI, in conjunction with its Observatory on Reservations to International Treaties, to consider the question of

reservations to regional and universal conventions relating to terrorism and to hold exchanges of views – with the involvement of observers – on conventions currently being drafted in the United Nations with a view to co-ordinating the positions taken by member states (see document CAHDI (2002) 6).

18. The CAHDI agreed to place on the agenda of its forthcoming meetings an item on developments in the fight against terrorism to enable it to be kept informed of the activities underway in the various international organisations and the measures taken at national level. It also decided to extend the scope of its Observatory on Reservations to International Treaties (see the following agenda item) to include treaties relating to the fight against terrorism in order to provide input to the Council of Europe's activities to counter terrorism.

5. The law and practice relating to reservations and interpretive declarations concerning international treaties: European Observatory on Reservations to International Treaties.

19. As part of its role as European Observatory of Reservations to International Treaties, the CAHDI considered a list of outstanding interpretive declarations and reservations to international treaties, drawing on the document drafted by the Secretariat (see document CAHDI (2002) 2 and addendum).

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

a. Outstanding reservations and declarations relating to treaties concluded outside the Council of Europe

21. With regard to the reservation and declaration by the Democratic People's Republic of Korea of 27 February 2001 to the Convention on the Elimination of All Forms of Discrimination against Women (New York, 18 December 1979)[1], the United Kingdom, Spanish, Austrian, Danish and Portuguese delegations said that they had objected to this reservation, and the Finnish delegation said that it intended to do so.

22. With regard to the reservation and declaration by the Republic of Korea, dated 9 May 2001, to the Protocol on prohibitions or restrictions on the use of mines, booby-traps and other devices as amended on May 3 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[2], the United Kingdom delegate was of the opinion that the reservation and declaration did not raise any difficulties.

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[1] 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]."

[2] Reservation

"With respect to the application of Protocol II to the 1980 Convention, as amended on 3 May 1996 (Amended Mines Protocol), the Republic of Korea reserves the right to use a small number of mines prohibited under this protocol exclusively for training and testing purposes."

23. With regard to the declaration by the Democratic Republic of the Congo, dated 11 November 2001, on the Optional Protocol to the Convention on the rights of the child on the involvement of children in armed conflict, New York, 25 May 2000[3], the Spanish delegation said that the declaration was not sufficiently precise to make it possible to assess the scope of the commitments of the Democratic Republic of the Congo in the light of the Protocol, and it would therefore be preferable to obtain further information from the Congolese authorities. The Spanish delegation would attempt to obtain such information via its diplomatic mission in the Democratic Republic of the Congo.

24. With regard to the reservation and declaration by Cuba, dated 15 November 2001, concerning the International Convention for the Suppression of Terrorist Bombings, New York, 15 December 1997[4], the CAHDI Chair was of the opinion that these should not pose any difficulties.

Declarations

For the Republic of Korea:

"1. With respect to Article 3(8)(a) of the Amended Mines Protocol, in case there is an evident indication that an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be considered as a military object."

2. Article 4 and the technical annex of the Amended Mines Protocol do not require the removal or replacement of mines that have already been laid.

3. A cessation of active hostilities provided for in Articles 9(2) and 10(1) of the Amended Mines Protocol is interpreted as meaning the time when the present armistice regime on the Korean peninsula has been transformed into a peace regime, establishing a stable peace on the Korean peninsula.

4. Any decision by any military commander, military personnel, or any other person responsible for planning, authorizing, or executing military action shall only be judged on the basis of that person's assessment of the information reasonably available to the person at the time the person planned authorized, or executed that action under review, and shall not be judged on the basis of information that comes to light after the action under review was taken."

[3] Declaration:

"Pursuant to Article 3, paragraph 2, of the protocol , the Democratic Republic of the Congo undertakes to implement the principle of prohibiting the recruitment of children into the armed forces, in accordance with Decree-law No. 066 of 9 June 2000 on the demobilization and rehabilitation of vulnerable groups on active service in the armed forces, and to take all feasible measures to ensure that persons who have not yet attained the age of 18 years are not recruited in any way into the Congolese armed forces or into any other public or private armed group throughout the territory of the Democratic Republic of the Congo."

[4] Reservation

The Republic of Cuba declares, pursuant to Article 20, paragraph 2, that it does not consider itself bound by paragraph 1 of the said article, concerning the settlement of disputes arising between States parties, inasmuch as it considers that such disputes must be settled through amicable negotiation. In consequence, it declares that it does not recognise the compulsory jurisdiction of the International Court of Justice.

Declaration:

"The Republic of Cuba declares that none of the provisions contained in Article 19, paragraph 2, shall constitute an encouragement or condemnation of the threat or use of force in international relations, which must under all circumstances be governed strictly by the principles of international law and the purposes and principles enshrined in the Charter of the United Nations.

Cuba also considers that relations between states must be based strictly on the provisions contained in Resolution 2625 (XXV) of the United Nations General Assembly.

25. With regard to the declaration by Chile, dated 10 November 2001, on the International Convention for the Suppression of the Financing of Terrorism, New York, 9 December 1999[5], the Spanish delegation said that this *notification* lacked precision regarding the crimes and offences which remained under Chilean jurisdiction. However, the delegation was of the opinion that this could be explained by the fact that the declaration provided for under Article 7.3 of the convention was a voluntary declaration.

26. With regard to the reservation by the Federal Republic of Yugoslavia, dated 12 March 2001, to the Convention on the prevention and punishment of the crime of genocide, New York, 9 December 1948[6], the delegations of Croatia and Sweden pointed out that the Federal Republic of Yugoslavia was a "successor state" of the former Socialist Federal Republic of Yugoslavia, on the same footing as Croatia and Slovenia. Accordingly, it was bound by all the provisions of the Convention by virtue of the signature by the Socialist Federal Republic of Yugoslavia, and the reservation in question should be considered as a late reservation.

b. Reservations and declarations concerning Council of Europe treaties

27. With regard to the reservation made by Azerbaijan on 25 January 2001 to the Convention on the Transfer of Sentenced Persons (ETS No. 112), 21 March 1983[7], the Finnish and Spanish delegations thought that the reference to national legislation could pose a problem as the legislation in question might not be known to the Parties to the Convention and it could change in the future. In addition, these delegations pointed out that the treaties should have precedence over domestic legislation and they were accordingly of the opinion that this reservation should either be withdrawn

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In addition, the exercise of state terrorism has historically been a fundamental concern for Cuba, which considers that the complete eradication thereof through mutual respect, friendship and co-operation between states, full respect for sovereignty and territorial integrity, self-determination and non-interference in internal affairs must constitute a priority of the international community.

Cuba is therefore firmly of the opinion that the undue use of the armed forces of one state for the purpose of aggression against another cannot be condoned under the present convention, whose purpose is precisely to combat, in accordance with the principles of the international law, one of the most noxious forms of crime faced by the modern world.

To condemn acts of aggression would amount, in fact, to condoning violations of international law and of the Charter and provoking conflicts with unforeseeable consequences that would undermine the necessary cohesion of the international community in the fight against the scourges that truly afflict it.

The Republic of Cuba also interprets the provisions of the present convention as applying with full rigor to activities carried out by armed forces of one state against another state in cases in which no armed conflict exists between the two."

[5] Declaration

"In accordance with article 7, paragraph 3, of the International Convention for the Suppression of the Financing of Terrorism, the government of Chile declares that, in accordance with article 6, paragraph 8, of the courts organization code of the Republic of Chile, crimes and ordinary offences committed outside the territory of the Republic which are covered in treaties concluded with other powers remain under Chilean jurisdiction."

[6] Reservation

"The Federal Republic of Yugoslavia does not consider itself bound by Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide and, therefore, before any dispute to which the Federal Republic of Yugoslavia is a party may be validly submitted to the jurisdiction of the International Court of Justice under this Article, the specific and explicit consent of the FRY is required in each case."

[7] 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."

or reworded without the reference to national law. In this connection, the German delegation said that the final date for making a reservation to the convention was 22 March 2002. The Norwegian delegation felt that because of this date limit, it would perhaps be simpler to withdraw the reservation rather than reword it.

28. With regard to Finland's declaration, dated 16 May 2001, concerning the Convention on the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), 4 November 1950[8], the Finnish delegation said that its declaration constituted a withdrawal of its reservation.

29. With regard to Bulgaria's reservation, dated 7 November 2001 to the Criminal Law Convention on Corruption (ETS No. 173), 27 January 1999[9], the Bulgarian delegation said that it hoped that domestic legislation would be brought into line with the Convention and that it would, therefore, be able to withdraw its reservation in the near future.

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[8] "Whereas the instrument of ratification contained a reservation to Article 6, paragraph 1, of the Convention, whereas after partial withdrawals of the reservation on 20 December 1996, 30 April 1998 and 1 April 1999, the reservation reads as follows:

"For the time being, Finland cannot guarantee a right to an oral hearing insofar as the current Finnish laws do not provide such a right. This applies to:

1. proceedings before the Water Courts when conducted in accordance with Chapter 16, Section 14 of the Water Act; and proceedings before the Supreme Court in accordance with Chapter 30, Section 20, of the Code of Judicial Procedure and proceedings before the Courts of Appeal as regards the consideration of petition, civil and criminal cases to which Chapter 26 (661/1978), Sections 7 and 8, of the Code of Judicial Procedure are applied if the decision of a District Court has been made before 1 May 1998, when the amendments made to the provisions concerning proceedings before Courts of Appeal entered into force; and the consideration of criminal cases before the Supreme Court and the Courts of Appeal if the case has been pending before a District Court at the time of entry into force of the Criminal Proceedings Act on 1 October 1997 and to which existing provisions have been applied by the District Court; and proceedings before the Water Court of Appeal as regards the consideration of criminal and civil cases in accordance with Chapter 15, Section 23, of the Water Act, if the decision of the Water Court has been given before the entry into force of the Act Amending the Code of Judicial Procedure on 1 May 1998; and the consideration of petition, appeal and executive assistance cases, in accordance with Chapter 15, Section 23, of the Water Act, if the decision of the Water Court has been given before the entry into force of the Act on Administrative Judicial Procedure on 1 December 1996;

2. the consideration by a County Administrative Court or the Supreme Administrative Court of an appeal on a submission from a decision given before the entry into force of the Act on Administrative Judicial Procedure on 1 December 1996, as well as of consideration of an appeal on such a matter in a superior appellate authority;

3. proceedings, which are held before the Insurance Court as the Court of Final Instance, in accordance with Section 9 of the Insurance Court Act, if they concern an appeal which has become pending before the entry into force of the Act Amending the Insurance Court Act on 1 April 1999;

4. proceedings before the Appellate Board for Social Insurance, in accordance with Section 8 of the Decree on the Appellate Board for Social Insurance, if they concern an appeal which has become pending before the entry into force of the Act Amending the Health Insurance Act on 1 April 1999.

Whereas the relevant provisions of the Finnish legislation have been amended so as they no longer correspond to the present reservation as far as they concern proceedings before the Water Courts and the Water Court of Appeal, and as the present reservation concerning the proceedings before the County Administrative Courts and the Supreme Administrative Court is no longer relevant,

Now therefore Finland withdraws the reservation in paragraph 1 above, as far as it concerns proceedings before the Water Courts and before the Water Court of Appeal. Finland also withdraws the reservation in paragraph 2 above concerning proceedings before the County Administrative Courts and the Supreme Administrative Court."

[9] "In accordance with Article 37, paragraph 1, of the Convention, the Republic of Bulgaria reserves the right not to establish as criminal offence under its domestic law the conduct referred to in Articles 6, 10 and 12 as well as the passive bribery offences defined in Article 5.

In accordance with Article 37, paragraph 1, of the Convention, the Republic of Bulgaria declares that it shall establish the conduct referred to in Articles 7 and 8 as criminal offence under its domestic law only if it comes under any of the definitions of criminal offences laid down in the Criminal Code of the Republic of Bulgaria."

30. With regard to Georgia's reservation, dated 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[10], the Georgian delegation made a declaration reproduced below as a footnote[11].

[10] "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."

[11] *During its previous meeting the CAHDI drew particular attention to the declaration made by Georgia with respect to Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.*

It was fixed in the minutes of the meeting that CAHDI would not prejudge a possible decision from the European Court of Human Rights concerning Georgia's declaration. [CAHDI (2002)2]

As far as I know, the given declaration has not been disputed (questioned), after its deposit to the Secretariat of the Council of Europe and nobody has taken decisions on its being challenged in the European Court of Human Rights yet and that the CAHDI in the nearest future would have an opportunity to influence upon something that is unlikely to happen.

But the way a question is put, about the theoretic (hypothetic) possibility of examination of the given declaration by the Court, means that the declaration needs explanations in any case.

I feel myself obliged to present some definitions regarding the essence and form of the declaration, because this issue exceeds the limits of one state's problem and touches upon some important problems of International Law as a whole.

The declaration literally says: "Georgia declines its responsibility for the violations of the Protocol on the territories of Abkhazia and Tskhinvali region until the full jurisdiction of Georgia is restored over these territories."

The essence of the declaration lies in the ascertaining of the existing fact that owing to forcible limitations of de facto internal jurisdiction of Georgia over the constitutive and integral parts of its territory by separatists' militarized forces, which are not recognized and cannot be recognized by the International Community, our country is deprived of the possibility to ensure the protection of rights and freedoms provided by the Protocol.

At this stage, our country is unable to use certain powers with regard to the acts of self-proclaimed authorities, which are illegal according to International Law and the Constitution of Georgia, acting on these territories.

Mrs. Donna Gomien, Mr. David Harris and Mr. Leo Zwaak in their book "Law and Practice of the European Convention on Human Rights and European Social Charter" underlined that "For the convention to be applicable, the presence of real possibilities of a state for the insurance of the determined rights is necessary…. It is quite enough for a state to be able to use certain powers with regard to a private individual"

In compliance with Article 1 of the Convention which reads: "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention" Georgia doesn't decline the jurisdiction over the private individuals which are on the territories of Abkhazia and Tskhinvali region. But, owing to the absence of a real possibility and to the non-recognition of de facto existing illegal authorities, Georgia declines the responsibility for the actions or omissions of these authorities with respect to the individuals being on these territories.

At the same time, the problem of the real danger of infringement of human rights by self-proclaimed separatist authorities still remains unsolved, since there is no international legal mechanism for the real protection of these rights on a theoretical as well as a practical level.

I fully realize that any territorial withdrawal from the sphere of the convention in question and international law as whole, leads to the creation of a terrae nullius; from the point of view of International Law this is inadmissible, since all territories out of control of international law breed terrorism and other contemporary vices.

I would like to draw your attention particularly to the issue of the form of our declaration. By its form and content the given declaration doesn't refer to the reservation in any way.

This is an attempt to make a pure declaration of the real circumstances, which we believe is not prohibited by any provision of the Convention or its protocols and will be of help to fully understand the possibility of applying the Protocol in Georgia.

6. Council of Europe pilot project on State practice regarding immunities

31. The Chair referred to the arrangements agreed upon by the CAHDI at its previous meeting and invited delegations to appoint their national co-ordinator and to submit their national contribution in good time. He also referred to the work of the United Nations International Law Commission and the United Nations General Assembly's Special Committee, adding that it would be useful for the CAHDI to hold an exchange of views with its Chair, Professor Hafner.

7. Immunities of heads of state and government and certain categories of senior civil servants

32. The Chair referred to the documents submitted by the Swiss and Swedish delegations (documents CAHDI (2002) 3 et 7), whom he thanked for their contributions. He also referred to developments concerning the judgment of the International Court of Justice (ICJ) in the case of the Democratic Republic of the Congo v. Belgium.

33. The Swiss delegation said that its document had been drafted before this judgment was delivered and that it would have been drafted differently if the author had been able to take it into account. The Swiss delegation felt that in the case in question the ICJ had adopted a functional approach in deciding that immunity from criminal jurisdiction protected a Minister of Foreign Affairs against any act by another state which obstructed the discharge of the minister's duties. It also considered that the issue had now become of somewhat less interest for the CAHDI given that the ICJ had ruled on a controversial issue. However, a number of uncertainties persisted and it would be profitable for the CAHDI to look closely at the arrangements for the

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To clarify – when the proposal on such a declaration was presented to the Parliament of Georgia, the Government of Georgia directly informed the Parliament that this declaration might not have any legal consequences from the point of view of the European Court of Human Rights [Note that by this time Ilascu case wasn't even at this stage].

Article 2 of the protocol – Territorial application – in our case is inapplicable, since reference to this article is possible only according to paragraph 1 of Article 56 of the Convention which states that "Any State may at this time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible."

Georgia is responsible for the international relations of its whole territory, including the territories of Abkhazia and Tskhinvali region as integral parts of its territory. However, it is deprived of the possibility to exercise an effective internal jurisdiction with respect to these territories.

Article 57 of the Convention is also inapplicable, as it prohibits reservations of a general character.

In our opinion, there is a need for an explicit legal definition of the term "declaration", since there isn't still a clear definition of this term in International Law. The explanations to such notions like "interpretative declaration", "conditional interpretative declaration" are given in the "Draft Guidelines on Reservations to Treaties" in the 5th report on reservations to treaties of the International Law Commission. The term "geographical reservation" is also found in practice.

Just to conclude, let me mention that the full and quick integration to the European legal area, and namely to the Council of Europe's international legal documents is a priority topic for Georgian foreign policy. In the meantime we are facing some difficulties in combining our legal concepts with the structure and operation of these treaties.

That is why, let me inform you, that the Ministry of Foreign Affairs of Georgia has requested the Council of Europe's Secretariat to organize in the nearest future the working meeting concerning the operation of the convention. We expect that during this brainstorming meeting, which we hope will take place very soon, we will see participants from the Council of Europe's Legal Directorate and Treaty Office, as well as from different Member States of the Council of Europe."

exercise of universal jurisdiction and the status of members of national parliaments, and whether other members of a government enjoyed the absolute immunity from criminal jurisdiction established by the ICJ in its judgment.

34. The Swedish delegation said that the document it had submitted should not be regarded as an alternative activity proposal but rather as a contribution to the debate.

35. The Belgian delegation pointed out that the ICJ decision was very clear and quoted paragraph 51 which stated: “in international law it is firmly established that, as also diplomatic and consular agents, certain holders of high-ranking office in a State, such as the Head of State, Head of Government and Minister for Foreign Affairs, enjoy immunities from jurisdiction in other States, both civil and criminal.” The ICJ had limited its consideration to immunity from criminal jurisdiction. The delegation also quoted paragraph 60 to highlight the fact that the immunity from prosecution granted to a minister did not mean impunity, and referred to the circumstances, set forth by the ICJ in paragraph 61 of its decision, in which criminal liability might be incurred.

36. The Belgian delegation then referred to the individual and dissenting opinions of the various judges on the question of universal jurisdiction, which the ICJ had not addressed, as the Congo had decided not to challenge this principle. It mentioned the position of the President of the ICJ, Judge Guillaume, who expressed regret that the Court had not ruled on this matter and the issue of universal jurisdiction in absentia. It also referred to the individual opinion of Judge Rancheva who would have liked the ICJ to have dealt with universal jurisdiction which, in his view, was a very topical issue on which a decision in the case in hand would necessarily have constituted case-law. Judges Higgins, Kooijmans and Buergenthal had viewed the four circumstances under which the criminal liability of a Foreign Minister might be incurred as being too theoretical; in their opinion, the principle of immunity had to be recognised with the utmost restraint. Lastly, the delegation referred to ad hoc Judge van den Wyngaert, who believed that there was no such thing as the immunity of a Foreign Minister, such immunity being merely “international courtesy”.

37. The Belgian delegate said that the judges at the Court had had difficulty in accepting the principle of universal jurisdiction to judge people in absentia. He noted that the judges had had differing views on the issue and that it would not be easy to reach a compromise.

38. He concluded by pointing out that the Court had limited its decision to immunity *rationae personae*. He thought that a balance needed to be struck between immunity and impunity.

39. The French delegate thanked Switzerland and Sweden for their valuable work and expressed his gratitude to the Belgian delegate for his clarifications on the aforementioned decision of 14 February.

40. Nonetheless, he thought his interpretation of the decision of the International Court of Justice differed from that of the previous delegations. It was his opinion that the Court had dealt with all the issues and had not left any uncertainty or doubt. In interpreting this decision, the French delegate wished to refer exclusively to the decision itself and would leave to one side the question of universal jurisdiction which had not been addressed by the Court.

41. The French delegate understood this decision as conferring absolute immunity from criminal prosecution to Foreign Ministers for the whole duration of their term of office. The nature of the crime, the date on which it had been committed (before or after taking up their post) and whether or not it had been committed in a private or official capacity created no exemption from immunity. Accordingly, it was the French delegate's view that in the light of the ICJ decision, there was no exception to this immunity, even in the event of crimes against humanity (cf para 55 of the judgment).

42. He also believed, in the light of paragraph 61 of the decision, that former Foreign Ministers continued to enjoy immunity from criminal prosecution for acts committed while they were in post and in the performance of their duties. However, the principle of differentiating private and official acts had not entirely been settled.

43. The French delegate said that the Court had, however, outlined the circumstances in which Foreign Ministers' immunity from prosecution could be set aside. These included state consent, or where such was provided for in specific international texts (for example, the statute of current criminal courts or the future International Criminal Court).

44. He felt that this case-law should be understood as also applying to Heads of State or Government.

45. Before concluding, he wished to state that the reference to paragraph 15 of the ICJ decision in footnote no. 7 in the discussion paper submitted by the Swiss delegation reproduced what was in the facts and concerned only universal jurisdiction.

46. The Swiss delegation had not wished to imply anything in its footnote no. 7, and concurred with the French interpretation of the decision. Nevertheless, the delegation wondered why the Court had deliberately said that there was no link between the alleged crimes and the state which had issued the arrest warrant.

47. The Norwegian delegate agreed with the French delegate. However, he noted that the Court had not ruled on certain matters, in particular universal jurisdiction. He also pointed out that in Norway, immunity and universal jurisdiction were not codified. Both rules were recognised within the limits of international and customary law.

48. The German delegate thanked Switzerland for its very clear description of the question of the immunity of heads of state, heads of government and certain categories of state officials and said that in his view the ICJ decision clarified the matter. However, and this was echoed by the Greek delegation, a number of questions had not been settled by the decision. He wondered what regime should apply to heads of state, heads of government and other ministers; he wondered about the consequences of the decision for the domestic legislation of the various countries and how this case-law would fit in with Article 27 of the Rome Statute.

49. The Italian delegate thought that the ICJ decision was very clear but that it was incomplete. He agreed with the German and Israeli delegates that the position adopted by the Court did not reflect the provisions in the statutes of the various international criminal tribunals. Accordingly, he wondered about the impact of this decision on general international law.

50. The United Kingdom delegate thought that several questions had been settled by the Court. He thanked the Swiss and Swedish delegations for their documents which helped clarify the problem. However, he preferred the terms immunity *rationae personae* and *materiae* rather than "procedural" and "substantive" and noted that the Swiss study of the immunity of former heads of state differed from the French interpretation of the decision by the International Court of Justice.

51. The United Kingdom, Israeli and Spanish delegates wondered what should be done in the light of this decision and whether there should be a break in the discussions on this matter in order to see how the decision was received. The Spanish delegation thought such an approach would be wiser in order not to encroach upon the authority of the Court.

52. The United Kingdom and Israeli delegations had some doubts about one point in paragraph 4.5 of the Swedish document, which said that states which had accepted the Rome Statute could empower an international court to exercise jurisdiction over senior officials even of third-party states. The Finnish delegation said that it was not its understanding that by ratifying the Rome Statute it had been given such competence. The Chair, speaking as a member of the Committee, thought that this paragraph in the Swedish document went a little far. He pointed out that to date, only piracy was regarded as a case of universal jurisdiction.

53. The Swedish delegation repeated that its document was intended merely as a contribution to the discussion.

54. The Greek delegation agreed with the interpretation of the Rome Statute given by the Swedish delegation in paragraph 4.5.

55. The Chair concluded the discussion by deciding not to include the question of immunity on the agenda of the next meeting.

C. GENERAL ISSUES CONCERNING PUBLIC INTERNATIONAL LAW

8. Exchange of views with the Secretary General of the Hague Academy of International Law, Ms Geneviève Burdeau.

56. Ms Burdeau thanked the Committee for inviting her. The Academy would shortly be celebrating its 80th anniversary. The role of the Academy was to develop opportunities for peace and to offer high-level courses on international law to a receptive target audience (lecturers, judges, lawyers, diplomats). One of the striking features of the Academy was its considerable cultural and intellectual diversity as the students and lecturers came from all over the world and the collected lectures were disseminated worldwide.

57. The Academy had an Administrative Council, composed of senior Netherlands authorities, and a Curatorium run by specialists in international law. The fact that the Academy's funding came primarily from the private sector ensured its academic independence.

58. The Academy had managed to overcome political difficulties by pooling ideas, enabling it to avoid excessively unilateral approaches. The Academy's role was to make international public law more international and to reach out to the new generations.

59. The lecturers were not exclusively academics. Courses were also given by a number of legal professionals. The choice of courses and topics reflected topical concerns, but there were also a number of themes which were dealt with on an ongoing basis (such as international criminal justice, extraterritoriality) in order to retain an overview of international law at a time when it was diversifying and becoming increasingly more technical.

60. The Italian delegation said that it would be useful for the Academy to involve practitioners to a greater extent, to devote more courses to state practices and the practices of international organisations, case-law and the topics dealt with by the International Court of Justice.

61. The Spanish delegation thanked the Academy for the work it had accomplished and asked about the possibility of holding an international law congress immediately before or after a CAHDI meeting. It also asked about the topics to be dealt with by the Academy in the near future.

62. In reply, Ms Burdeau referred to environment law (water, the concept of sustainable development), human rights (refugees, Rome Statute), WTO law (theory of state contract), the role of state commitment in international law (concept of distress, international aspects of constitutional law), as well as topics of legitimate interest to the CAHDI such as state immunity from jurisdiction, sanctions and the way in which such were implemented by states.

63. The Danish delegation asked about the Academy's relations with the International Court of Justice and whether it was able to arrange for traineeships at the Court.

64. Ms Burdeau said that there was an excellent relationship with the Court and that, as a result, the Academy was able to arrange for traineeships with the Court. However, there was a problem of resources and the need for confidentiality.

65. The United Kingdom delegation wondered whether the specialist courses were more useful than the general courses and commented that not all nationalities were well represented.

66. Ms Burdeau said that the reason for these imbalances was the difference in the scholarship policies of the various states and the fact that some countries might have little information on the Academy. She then commented that the general courses were more useful for academics than for practitioners, and for students who had studied law for only four years and who needed a more general overview of the subject.

67. The Maltese delegation wondered whether the Academy had dealt with the problem of the appropriate incorporation of international law instruments into domestic law.

68. Ms Burdeau said that such a topic could be dealt with in one of the Academy's courses.

69. The Chair thanked Ms Burdeau for this exchange of views with the members of the CAHDI.

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

70. The Swiss delegation referred to two developments concerning international instruments protecting the victims of armed conflicts which had occurred since the last CAHDI meeting.

71. The first concerned the International Humanitarian Fact-Finding Commission. As depository of the 1949 Geneva Conventions and their additional protocols of 1977, Switzerland had convened a meeting on 9 November 2001 in order to elect the 15 members of the International Humanitarian Fact-Finding Commission. The Commission, set up under Article 90 of Additional Protocol no. 1 of 1977, had been formed in 1991. Its members were elected for a period of 5 years. Accordingly, the first two elections had been held in 1991 and 1996. The Hungarian delegate to the CAHDI, Ambassador Arpad Prandler, was among the 15 members elected in November last.

72. Between 18 and 20 February this year, the Commission had been reconstituted with its newly elected members. Of the 159 States Parties to Protocol no. 1, 60 had so far accepted the Commission's competence. The Commission's secretariat was run by the Federal Department of Foreign Affairs' Directorate of International Public Law which made every effort to ensure the smooth operational functioning of the Committee.

73. The Hungarian delegate confirmed that the Commission's competence was recognised by sixty states. However, he noted that there was a lack of support from continents other than Europe, as two thirds of the Commission's members came from European states.

74. The second development referred to by the Swiss delegation concerned the Conference of the High Contracting Parties to the Fourth Geneva Convention held in Geneva on 5 December 2001. The Conference had looked at the application of international humanitarian law in the Palestinian Occupied Territories, including East Jerusalem. It had carried on with the work of a similar conference which had been held on 15 July 1999 and adjourned because of the then prospects of a resumption in the peace process.

75. The holding of the Conference on 5 December 2001 had been requested following the beginning of the new Intifada, in Autumn 2000, by the member states of the Arab League, supported by the Organisation of the Islamic Conference, and subsequently by a large number of states at the UN General Assembly, meeting in a special emergency session. In its resolution A/RES/ES-10/7 of 20 October 2000, the General Assembly had called upon "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."

76. Switzerland had then consulted the 189 States Parties to the Geneva Convention with a view to holding a new conference. In spring 2001, the vast majority of replies received from the States Parties were in favour of the principle of a

conference. As depository, and in accordance with its humanitarian tradition and customary good offices, Switzerland had continued its consultations, seeking to find as broad an agreement as possible.

77. The conference, held on 5 December 2001, had been attended by 122 participants (114 States Parties and 8 other participants and observers). Of the 189 States Parties, only 3 had refused to take part in the conference.

78. The States Parties had heard three humanitarian agencies, the ICRC, the High Commissioner for Human Rights and the United Nations Relief and Works Agency for Palestine Refugees in the Near East.

79. States Parties from the various regions or groups of countries had then taken the floor:

- Jordan, on behalf of the High Contacting Parties (HCP) of the Arab League;
- Belgium on behalf of the HCP of the European Union and others;
- South Africa on behalf of the HPC of the Non-Aligned Movement;
- Malaysia on behalf of the HCP of the Organisation of the Islamic Conference;
- China;
- Canada, for the western countries and others;
- Russia, for the countries of central and eastern Europe.

80. The conference reconfirmed, in a declaration, the applicability of the 4th Geneva Convention to the Occupied Palestinian Territories, including East Jerusalem In the Declaration, the High Contracting Parties called on “all parties, directly involved in the conflict or not, to respect and to ensure respect for the Geneva Conventions in all circumstances, to disseminate and take measures necessary for the prevention and suppression of breaches of the Conventions.”

81. With a view to the protection of the civilian population, the Declaration recalled the general obligations incumbent on all States Parties, the respective obligations of the parties to the conflict and the specific obligations of the Occupying Power. It referred to applicable law and expressed its support for the mechanisms provided for in the 4th Convention.

82. Its aim was therefore a humanitarian one and concerned the current emergency, in other words the way in which civilians should be protected by universal rules until the end of hostilities. The Declaration was also an encouragement for the resumption of negotiations to find a just and lasting peace. The Conference was a major joint diplomatic exercise to ensure upholding of the law in a specific humanitarian crisis. The follow-up to the conference would consist of implementation, by all the stakeholders concerned, of the rules set out in the Declaration.

83. For Switzerland, the success of the conference could be measured only by its impact on the humanitarian situation on the ground.

84. The Chair thanked the Swiss delegation for its efforts and the detailed information provided.

10. Developments concerning the International Criminal Court

85. The Norwegian delegation pointed out that the first budget of the International Criminal Court would be discussed at the forthcoming session of the Preparatory

Committee (PrepCom) and commented that given the importance of the budget, it needed to be negotiated as effectively as possible in order to ensure that the Court would be able to operate appropriately.

86. The Canadian observer said that there had already been 52 ratifications of the Rome Statute and thought that by April next there would be a sufficient number of ratifications for the Statute to enter into force. Canada was actively supporting the future International Criminal Court and strongly encouraged all states which had not yet done so to ratify the Statute as soon as possible.

87. The Italian delegation added that it would also be very important for there to be a large number of signatures in the period between the entry into force of the Statute and the start of the Court's operation, to ensure its universality and avoid its being used for political purposes.

88. The Portuguese delegation said that Portugal had ratified the Rome Statute last December and that the delay in ratification had been caused exclusively by problems of a constitutional nature.

89. The delegations of Estonia, Austria and "the former Yugoslav Republic of Macedonia" also reported that their countries had ratified the Rome Statute.

90. The observer from Mexico said that the Rome Statute would be considered before parliament in the near future.

91. The Romanian delegation said that Romania expected to have ratified the Statute by early April 2002.

92. The Chair thanked delegations for the information provided and expressed the hope that the Statute of the International Criminal Court would enter into force by the time of the Committee's next meeting.

12. Law of the Sea protection of the sub-aquatic cultural heritage

93. The Committee was informed about developments within UNESCO for negotiating a convention for the protection of the sub-aquatic cultural heritage.

94. The CAHDI agreed to resume consideration of this topic at its 25th meeting in March 2003.

13. Fight against terrorism – information on work being carried out in the Council of Europe and other international fora

95. The Secretariat provided information on Council of Europe activities in this field.

96. Following the terrorist attacks in the United States on 11 September, the Council of Europe's response had been both resolute and immediate. In its Declaration of 12 September 2001, the Committee of Ministers immediately and with the utmost force had condemned the terrorist attacks "committed against the American people" to whom it expressed its "sympathy and solidarity". It had also begun looking at what specific action could be taken by the Council of Europe, within

its area of expertise, to counter "such barbaric acts". With that in mind, on 21 September 2001 the Ministers' Deputies had "noted with interest a proposal for the establishment of a Multidisciplinary Group on Terrorism (GMT) dealing with criminal, civil and administrative matters" and "invited the Secretary General, after evaluation of the various options, to propose inter alia draft terms of reference for such a group."

97. During the fourth (September) part-session in 2001, the Parliamentary Assembly of the Council of Europe had also condemned "in the strongest possible terms those barbaric acts" and adopted two important texts on democracies facing terrorism (Resolution 1258 (2001) and Recommendation 1534 (2001)). The Assembly had stressed that "these attacks have shown clearly the real face of terrorism and the need for a new kind of response" and had made a number of suggestions to be considered in order to step up the international fight against terrorism.

98. The European Ministers for Justice, at their 24th meeting held in Moscow on 4 and 5 October 2001, had changed their agenda at the last minute to deal with terrorism-related issues and stressed that the Council of Europe should act immediately to combat "all forms of terrorism" in order to avoid in the future "the loss of life and the injuries suffered by thousands of innocent people". The Ministers of Justice were also convinced of the need for a multidisciplinary approach to the problem of terrorism, involving all relevant legal aspects.

99. As part of these resolute and unconditional policy commitments, the Committee of Ministers, at its 109th session held on 8 November 2001, had "agreed to take steps rapidly to increase the effectiveness of the existing international instruments within the Council of Europe on the fight against terrorism, by setting up a Multidisciplinary Group on international action against Terrorism (GMT)."

100. The multidisciplinary nature of this Committee showed that there was broad consensus that a sectoral approach would not produce appropriate and speedy results to solve the problems posed by the new forms of terrorism.

101. The GMT had been active since December last, drawing on the Declaration and relevant decisions of the Committee of Ministers, the resolutions of the Parliamentary Assembly and the Conference of European Ministers of Justice, the Council of Europe's standards in the field of the rule of law and human rights, and the activities of other international institutions and other Council of Europe committees and groups. The GMT had already held three meetings and drafted a progress report for the 110th session of the Committee of Ministers (Vilnius, 3 May 202), on the action the Council could be taking in this field. It was also working on an update of the 1977 European Convention on the Suppression of Terrorism.

102. Lastly, at its 765 bis meeting (Strasbourg, 21 September 2001) the Committee of Ministers at Ministers' Deputies level had considered the follow-up to the Committee of Ministers Declaration of 12 September 2001 on the Fight against International Terrorism and, among other decisions, had instructed the CAHDI, in conjunction with its Observatory on Reservations to International Treaties, to consider the question of reservations to regional and universal conventions relating to terrorism and to hold exchanges of views – with the involvement of observers – on conventions currently being drafted in the United Nations with a view to co-ordinating the positions taken by member states.

103. The Israeli observer thought that the setting up of the GMT was a very useful means of contributing to the fight against terrorism, and for this reason, his country had asked to be an observer to the GMT. He called on the CAHDI members to support this request.

104. The CAHDI agreed to include the examination of reservations to international treaties relating to terrorism in the remit of the European Observatory on Reservations to International Treaties, in accordance with a specific document which the Secretariat was asked to draft.

14. Request by the Federal Republic of Yugoslavia for observer status

105. The Secretariat said that by letter of 18 January 2002 sent to the Council of Europe's Director of Legal Affairs, the Consul General of the Federal Republic of Yugoslavia had requested observer status to the CAHDI for his government (see document CAHDI (2002) 5).

106. In accordance with Article 5 of Committee of Ministers Resolution (76) 3 on committee structures, terms of reference and working methods (cf Appendix 2) the Secretariat had initiated the specific procedure concerning the admission of observers to intergovernmental committees, and by letter dated 1 February 2002, the Director of Legal Co-operation had informed the member states of the Council of Europe of the request from the government of the Federal Republic of Yugoslavia. As no delegation had asked for the request to be considered by the Committee of Ministers, the item had been included on the agenda of the 23rd meeting of the CAHDI. (4-5 March 2002).

107. The CAHDI noted the decision by the Committee of Ministers on the participation of the Federal Republic of Yugoslavia in the work of the Council of Europe's intergovernmental committees (CM/Del/Dec(2000)733/2.1). In the light of that decision, and written confirmation from the Consul General, the CAHDI welcomed participation by the Federal Republic of Yugoslavia as observer at the CAHDI meetings.

15. Date, place and agenda of the 24th meeting of the CAHDI

108. Following the kind invitation from the Chair, the CAHDI agreed that its next meeting would be held in Bratislava on 9 and 10 September 2002 and approved the preliminary draft agenda, as reproduced in Appendix V.

16. Other business

109. The abridged report of the CAHDI's 23rd meeting is reproduced in Appendix VI.

110. The CAHDI thanked Ambassador Rotkirch for his valuable contribution to the Committee's meetings in recent years.

111. Ambassador Rotkirch said that the CAHDI had accomplished some very productive work and he welcomed the opportunity he had had to contribute to this. He thanked the Chair and the members of the committee for their kind words and suggested that the letters AH (for ad hoc) be removed from the CAHDI title, so that it became a standing committee.

APPENDIX I

List of participants

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

ARMENIA/ARMENIE: Mr Vaner HARUTYUNYAN, Attaché, Legal Department, Ministry of Foreign Affairs

AUSTRIA/AUTRICHE: Dr Helmut TICHY, Head of International Law Unit, Office of the Legal Adviser, Federal Ministry for Foreign Affairs

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

BELGIUM/France: M. Jan DEVADDER, Directeur Général, Jurisconsulte, Ministère des Affaires Etrangères

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

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

Ms Simona ALEXOVA, Permanent Representative of Bulgaria to the Council of Europe, Strasbourg

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

CYPRUS/CHYPRE: Mrs Georghia EROTOKRITOU, Attorney of the Republic, Attorney General's Office

TCHEQUE: Apologised/Excusé

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

ESTONIA/ESTONIE: Mrs Marina KALJURAND, Deputy Under-Secretary 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. Ronny ABRAHAM, Directuer des Affairs Juridique, Ministère des Affaires étrangères

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

GEORGIA/GEORGIE: Mr Irakli KATSITADZE, Principal Assistant, International Law Department, Ministry of Foreign Affairs

GERMANY/ALLEMAGNE: Dr Gerd WESTDICKENBERG, Director General for Legal Affairs, Federal Foreign Office (Auswärtiges Amt), Werderscher Markt 1, 10117 BERLIN (Tel: 49 1888172722 – E-mail:5-D@auswaertiges-amt.de)

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: Prof. Umberto LEANZA, Chief of the Legal Service of the Italian Ministry of Foreign Affairs

Dr Frederica MUCCI, External expert of the Legal Service, Ministry of Foreign Affairs

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

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

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

NETHERLANDS/PAYS-BAS: Mrs Liesbeth LIJNZAAD, Deputy Head, International Law Division, Legal Service, Ministry of Foreign Affairs

NORWAY/NORVEGE: Mr Rolf Einar FIFE, Director General, Department for Legal Affairs, Royal Ministry of Foreign Affairs

Mr Aasmund ERIKSEN, Advisor, Department for Legal Affairs, Ministry of Foreign Affairs

POLAND/POLOGNE: Mr Julian SUTOR, Senior Counsellor to the Minister of Foreign Affairs, Ministry of Foreign Affairs

PORTUGAL: Mrs Lidia NABAIS DA SILVA, Legal Affairs 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 : Mr Roman KOLODKIN, Director of the Legal Department, Ministry of Foreign Affairs

SLOVAK REPUBLIC/REPUBLIQUE SLOVAQUE: Mr Peter TOMKA, Ambassador, Permanent Representative to the UN, Permanent Mission of Slovakia to the United Nations, New York **(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/France: 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 Carl Henrik EHRENKRONA, Director General for Legal Affairs, Ministry for Foreign Affairs

Mr Bosse HEDBERG, Director, International Law and Human Rights Department, Ministry for Foreign Affairs

SWITZERLAND/SUISSE: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 YOUGOSLAVE DE MACEDOINE": Mrs Marija EFREMOVA, State Counselor for issues of International Law and Consular Affairs, Ministry of Foreign Affairs

TURKEY/TURQUIE: 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 Andrew CANNON, Assistant Legal Adviser, Foreign and Commonwealth Office

SPECIAL GUESTS/INVITES SPECIAUX

Madame Geneviève BURDEAU, Secrétaire Général de l'Académie de droit international de La Haye

EUROPEAN COMMUNITY/COMMUNAUTE EUROPEENNE

EUROPEAN COMMISSION/COMMISSION EUROPEENNE: M. Esa PAASIVIRTA

OBSERVERS/ OBSERVATEURS

CANADA: M. Alain TELLIER, First Secretary and Consul, Permanent Mission of Canada to the Office of the United Nations, Geneva

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

JAPAN/JAPON: Mrs Rumi ARIYOSHI, Officer, Legal Affairs Division, Treaties Bureau, Ministry of Foreign Affairs

M. Naoki ONISHI, Consul, Consulat Général du Japon, Strasbourg

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

MEXICO/MEXIQUE: Mr Erasmo LARA CABRERA,Director Legal Affairs, Ministry of Foreign Affairs

Mr Carlos SALAZAR-DIEZ DE SOLLANO, Deputy Permanent Observer of Mexico to the Council of Europe, Strasbourg

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

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT/ORGANISATION DE COOPERATION ET DE DEVELOPPEMENT ECONOMIQUES: Apologised/Excusé

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

SECRETARIAT GENERAL

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

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

Mr Rafael A. BENITEZ, Secretary of the CAHDI/Secrétaire du CAHDI, Deputy Head of the Department of Public Law/Adjoint au Chef du 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,

INTERPRETES
Mr Robert SZYMANSKI
Mme Monique PALMIER
Mr William VALK

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 22nd meeting (Strasbourg, 11-12 September 2001) — CAHDI (2002) OJ 1 rev 3, CAHDI (2001) 10 prov

3. Communication by the Director general of Legal Affairs, Mr. De Vel — CAHDI (2002) Inf. 1, DGI (2001) 13

B. ONGOING ACTIVITIES OF THE CAHDI

4. Decisions by the Committee of Ministers concerning the CAHDI and requests for CAHDI's opinion — CAHDI (2002) 1, CAHDI (2002) 4, CAHDI (2002) 6

5. The law and practice relating to reservations and interpretative declarations concerning international treaties : European Observatory of Reservations to international Treaties — CAHDI (2002) 2

6. Pilot Project of the Council of Europe on State practice regarding State immunities

7. Immunities of Heads of State and government and of certain categories of top civil servants — CAHDI (2002) 3, CAHDI (2002) 7

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

8. Exchange of views with the Secretary General of the Hague Academy of International Law, Mrs Geneviève Burdeau

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 Sub aquatic Cultural Heritage

13. Fight against Terrorism - Information about work undertaken in the Council of Europe and other international Fora — GMT (2001) 7, www.legal.coe.int - GMT

D. OTHER

14. Request by the Federal Republic of Yugoslavia for observer status — CAHDI (2002) 5

15. Date, place and agenda of the 24th meeting of the CAHDI

16. Other business

APPENDIX III

Address by Mr Guy De Vel,
Director General of Legal Affairs, Council of Europe

Mr Chair, Ladies and Gentlemen,

I am delighted to be able to attend your 23rd meeting which begins today. It is always a pleasure to meet you and to inform you of developments in our Organisation.

I would, first of all, like to welcome the legal advisers who are attending the meeting for the first time.

I would also like to welcome Madame Burdeau, Secretary General of the Hague Academy of International Law, whom I thank for having accepted the invitation from the Secretariat to attend.

Her attendance reflects the excellent relations between the Council of Europe and other international organisations, and also with the academic world. This has been borne out by attendance at previous CAHDI meetings by Professors Greenwood, Meron, Crawford and Pellet, and Doctors Klabbers, Zimmermann, Ribbelink, Lueke and Wickremasinghe.

Before moving on to developments concerning the Council of Europe since your last meeting, I would first of all like to dwell a few moments on the activities of your committee.

The CAHDI is continuing to monitor reservations to international treaties, as the European Observatory on Reservations to International Treaties. This work has proved to be extremely valuable. It has helped to establish dialogue with the states concerned and, in some cases, to understand the reasons behind the reservation. On occasion, this has avoided the need to raise an objection or has led to a change to or withdrawal of the reservation. This exercise has become a very important part of the CAHDI's activities and is followed with considerable interest not only by the academic community, but also by governments and more recently a number of Council of Europe intergovernmental committees, including the one responsible for monitoring the implementation of the Council of Europe's instruments in the human rights field. In addition, as you will see, the Committee of Ministers has issued specific terms of reference to the CAHDI for it to contribute to the work going on within the Council on the fight against terrorism via its Observatory on Reservations to International Treaties. I shall come back to these activities.

At your 21st meeting in March 2001, you decided to start work on a new Council of Europe pilot project on state practice regarding state immunities. You also decided on the arrangements for carrying out this important activity which will be taking account of the work of the UN and its International Law Commission. This activity is of considerable interest and there is no doubt that it will make a practical contribution to the UN's work on this. We hope that the initial phase – gathering details of state practices – will be completed by the end of this year and that you will then be able to decide on the appropriate follow-up, possibly an analytical report to supplement the excellent work you did on state succession and questions of recognition, and on consent of states to be bound by a treaty, all of which were published.

To conclude this part of my address, I would like to assure you of the Secretariat's unconditional commitment to the success of your committee's activities for the benefit of not only the Council of Europe's member and observer states but also the international and academic community.

A document outlining the changes in the European Treaty Series since the CAHDI's last meeting, has been distributed to you *(reference to some of the more important signatures/ratifications)*.

I would also like to mention some of the other activities coming under the Directorate General of Legal Affairs. First of all, I should bring to your attention the document you have been given on the results of the DGI's activities in 2001, which shows the dynamism of our Directorate General and the importance of the Council of Europe's work in the field of legal co-operation. There is no doubt that this is one of the areas where the Council of Europe can legitimately claim considerable experience and expertise.

With regard to the fight against corruption, the Group of States against Corruption (GRECO), an enlarged partial agreement open to member and non-member states is constantly expanding and now has 34 members following the accession of Malta, the Netherlands and Portugal. There is an ongoing number of new accessions to international instruments in this field, including the Criminal Law Convention on Corruption and the Civil Law Convention on Corruption, which now have respectively 28 signatures and 13 ratifications, and 25 signatures and 6 ratifications. I would remind you that both conventions will enter into force as soon as they have been ratified by 14 member states.

In the field of bioethics, the Convention for the protection of human rights and the dignity of the human being with regard to applications of biology and medicine: Convention on Human Rights and Biomedicine has been signed by 18 member states and ratified by 12. Its protocol on the prohibition on cloning human beings has been signed by 19 states and ratified by 10. A second protocol to the convention, on the transplantation of organs and tissues of human origin, was opened for signature on 24 January last and has already been signed by 7 states. I would remind you that the Convention and its first additional Protocol entered into force on 1 December 2000 and 1 March 2001 respectively. To date these are the only international instruments in this field. In addition, we have been informed that the UN is interested in this issue and we have been consulted by the UN Secretariat General asking us to offer our experience. Mr Chair, as you yourself have been appointed Chair of the Working Party set up to look into this question in the UN, you will be better placed to inform the CAHDI members of this.

Recent developments on the other side of the Atlantic have shown that the legal co-operation activities we are carrying out are fully in tune with the major questions of our society.

The draft Convention on Cyber-crime is another example of our efforts to address the problems confronting society. This Convention was opened for signature on 23 November 2001 and has already been signed by 32 states, including 4 non-member states which were closely involved in negotiating the text. A draft additional protocol to this Convention, on the criminalisation of acts of a racist or xenophobic nature committed via computer networks is in preparation.

In the fight against the sexual exploitation of children, the Council of Europe is continuing its activities, taking account of existing legal instruments, in particular Committee of Ministers Recommendation to member states No. R (91) 11 on sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults.

Recommendation (2001) 16 on the protection of children against sexual exploitation, updating Recommendation No. R (91) 11 was approved by the Committee of Ministers on 31 October 2001 and takes account of the provisions relating to child pornography contained in the Convention on Cyber-crime.

The Council of Europe is also making an active contribution to the efforts of the international community to protect children. For example, we took part in the second World Congress against the Commercial Exploitation of Children, held in Yokohama from 17 to 20 December 2001.

A further instrument currently in preparation is the second additional protocol to the European Convention on Mutual Assistance in Criminal Matters, which was opened for signature on 8 November last and has been signed by 19 states.

I would also like to refer to the 24th Conference of European Ministers of Justice held in Moscow on 4 and 5 October 2001, which was looking at the implementation of judicial decisions in conformity with European standards. During the conference, a number of major decisions were taken and I would like to place special emphasis on Resolution No. 1 on combating international terrorism, Resolution No. 2 on the implementation of long-term sentences and Resolution No. 3 on general approaches to and means of achieving the effective enforcement of judicial decisions.

I would like, if I may, to dwell awhile on the first resolution adopted by the European Ministers of Justice on international terrorism, as it constitutes the basis of the activities launched by the Council of Europe in the wake of the attacks on the United States which took place during your last meeting.

The Council's response to these attacks of unprecedented violence was both resolute and immediate. In its Declaration of 12 September 2001, the Committee of Ministers immediately and with the utmost force condemned the terrorist attacks "committed against the American people" to whom it expressed its "sympathy and solidarity". It also began looking at what specific action could be taken by the Council of Europe, within its area of expertise, to counter "such barbaric acts".

With that in mind, on 21 September 2001 the Ministers' Deputies "noted with interest a proposal for the establishment of a Multidisciplinary Group on Terrorism (GMT) dealing with criminal, civil and administrative matters" and "invited the Secretary General, after evaluation of the various options, to propose inter alia draft terms of reference for such a group."

During the fourth (September) part-session in 2001, the Parliamentary Assembly of the Council of Europe also condemned "in the strongest possible terms those barbaric acts" and adopted two important texts on democracies facing terrorism (Resolution 1258 (2001) and Recommendation 1534 (2001)). The Assembly stressed that "these attacks have shown clearly the real face of terrorism and the need for a new kind of response" and made a number of suggestions to be considered in order to step up the international fight against terrorism.

The European Ministers for Justice, in their Resolution No. 1, to which I have just referred, stressed that the Council of Europe should act immediately to combat "all forms of terrorism" in order to avoid in the future "the loss of life and the injuries suffered by thousands of innocent people". The Ministers of Justice are also convinced of the need for a multidisciplinary approach to the problem of terrorism, involving all relevant legal aspects.

As part of these resolute and unconditional policy commitments, the Committee of Ministers, at its 109th session held on 8 November 2001, "agreed to take steps rapidly to increase the effectiveness of the existing international instruments within the Council of Europe on the fight against terrorism, by setting up a Multidisciplinary Group on international action against Terrorism (GMT)."

The multidisciplinary nature of this Committee shows that there is broad consensus that a sectoral approach would not produce appropriate and speedy results to solve the problems posed by the new forms of terrorism. There is a need for a holistic approach, covering issues in the fields of criminal, civil, commercial and administrative law, and all other legal matters. A multidisciplinary group, which would also take account of the activities being carried out by other relevant bodies, is the best way of addressing this urgent and fundamental task.

The responsibilities of the GMT are set out in its terms of reference adopted by the Committee of Ministers on 8 November 2001, a copy of which is to be found in the appendix to the report of the first meeting held last December. The GMT's two main tasks are to:

- review the operation of, and to examine the possibility of updating in particular the European Convention on the Suppression of Terrorism;
- prepare a Progress Report to the Ministers' Deputies in time for its presentation to the Committee of Ministers at its 110th Session (Vilnius, May 2002) on the action which the Council of Europe could usefully carry out in the field of the fight against terrorism, taking account of the work in progress in the European Union.

In accordance with the terms of reference assigned to it, the GMT began its work to contribute to the international action to combat terrorism, using the added value of the Council of Europe, and in particular the protection and promotion of the rule of law and human rights, its efforts to strike a fair balance between freedom and security, its multidisciplinary approach, its vast range of legal instruments, the only ones in force throughout Europe, and its geographical composition.

This multidisciplinary approach was endorsed by the Parliamentary Assembly which in Recommendation 1550 (2002) welcomed the setting up of the GMT and gave a number of very useful pointers for the Group's activities.

The GMT has already held two meetings – one in December 2001 and the other in February 2002. It is assisted in fulfilling its tasks by two working groups which held their first meeting immediately prior to the 2nd plenary meeting of the GMT in February last.

Thanks to the contributions from its working groups, the GMT was able to make significant progress at its 2nd meeting last February. For example, with regard to the review and updating of the European Convention on the Suppression of Terrorism, it has drawn up a series of guidelines which take account of the changes to the

background against which the European Convention was concluded in 1977, and the complexity of the terrorism problem, which requires action at various levels and which should no longer be seen as a national but a universal problem. It agreed on the need to review the convention, by:

- being realistic and pragmatic
- avoiding duplication of work
- avoiding topics on which consensus would be clearly impossible;
- reflecting the specific nature of the Council of Europe
- preserving the depoliticising nature of the Convention;
- avoiding an approach of international criminal liability which could lead to insurmountable difficulties.

The GMT also considered in detail the provisions of the convention, bearing in mind the possibility of its becoming open to non-member states of the Council of Europe and the need to update the list of relevant international instruments, while avoiding any gaps.

The GMT has also taken into consideration the results of the work carried out by the Group of Specialists on Terrorism and Human Rights, by incorporating into Article 5, which deals with grounds for refusing an extradition request, a new clause on the death penalty, in accordance with a request from the Parliamentary Assembly.

With regard to its second task, the GMT has also made progress in drafting a report for the session of the Committee of Ministers in Vilnius in May next. The GMT has identified a number of questions to be looked at in greater detail or indeed become practical activities for the GMT or other committees. These include:

- Substantive criminal law (including a definition of terrorism and the offence of condoning terrorism),
- Special investigative techniques,
- Funding of terrorism with particular emphasis on the freezing and confiscation of assets and accounts, financial transparency and the liability of companies set up or used by terrorist groups for the funding or concealment of their activities,
- Protection of witnesses and pentiti;
- International law-enforcement co-operation to improve mutual assistance, in conjunction with the Committee on the supervision of treaties in the criminal field,
- Protection of victims, by revising the functioning of the Convention on the Compensation of Victims of Violent Crimes.

I would like to conclude this discussion of the Council of Europe's activities in the fight against terrorism by stressing that the GMT works in close co-operation with other committees in the Council whose activities have a bearing – direct or indirect – on the vast field of counter-terrorism. These include the European Committee on Crime Problems (CDPC), the European Committee on Legal Co-operation (CDCJ), the Steering Committee on the Mass Media (CDMM), the Steering Committee for Human Rights (CDDH) and your own Committee which, as I have said before, is being asked to make its contribution to the activities of the Council of Europe in this field by its regular consideration of the reservations to international treaties of relevance to the fight against terrorism, and by taking advantage of its unique position as the only forum where the legal advisers of the Ministers of Foreign Affairs

of the member states, and a significant number of observer states and organisations can exchange and, where appropriate, co-ordinate their views.

You will have an opportunity to acquire further information during this meeting.

Lastly, I would like to refer to our excellent relations with the European Union, with which we are collaborating in a number of areas. For example, in the field of justice and home affairs, the Council of Europe's Directorate General of Legal Affairs maintains constant dialogue with the relevant departments in the European Commission and the Council of the European Union, and with the successive presidencies of the European Union. Lastly, it should be stressed that as part of the co-operation activities to strengthen the rule of law, the Council of Europe and the European Commission are running a number of joint programmes.

The CAHDI is a very energetic body as reflected in its activities and the large number of participants at its meetings.

This energy can also be seen in the growing number of opinions requested of the Committee, bearing witness to the importance attached by the Committee of Ministers to the CAHDI's experience and expertise. For example, during this meeting, you will be giving your opinion on Recommendation 1523 (2001) on domestic slavery and, in particular, the question of immunity from jurisdiction, in response to a request from the Committee of Ministers and further to a preliminary discussion you held at your previous meeting.

In addition, the European Committee on Legal Co-operation (CDCJ) has asked the CAHDI to give an opinion following a request from the Committee of Experts on Nationality on the possibility of a partial denunciation of the European Convention on Nationality.

The CAHDI's energy can also be seen in the growing number of observers to the Committee. The Federal Republic of Yugoslavia has officially applied for observer status. This would be in line with the decisions taken by the Committee of Ministers concerning this country's participation in the Council's various activities.

I wish to conclude by encouraging you to continue your excellent work and to take advantage of your unique position. I can assure you of our support.

Thank you.

Appendix IV

Opinion of the CAHDI on Parliamentary Assembly Recommendation 1523 (2001) on domestic slavery

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 22nd and 23rd meetings in Strasbourg respectively on 11-12 September 2001 and on 4-5 March 2002. The agenda of both meetings included an item on "Decisions of the Committee of Ministers concerning the CAHDI".

2. In the framework of this item, pursuant to the Council of Ministers' decision at their 762nd meeting (Strasbourg, 5 September 2001), the CAHDI examined Parliamentary Assembly Recommendation 1523 (2001) on Domestic Slavery and, in accordance with its terms of reference and its role in the Council of Europe intergovernmental structure, concentrated on what it understood to be the public international law issues connected with the Recommendation, and adopted the following

O P I N I O N

3. The CAHDI welcomes the adoption by the Parliamentary Assembly of Recommendation 1523 (2001) which acknowledges the seriousness of the issue of domestic slavery and the need to deal with it appropriately in order to prevent this phenomenon and to protect the victims' rights.

4. In certain circumstances, States may have a positive obligation in relation to such matters by virtue of Articles 3 and 4 of the European Convention on Human Rights. The CAHDI points out that the European Court of Human Rights has recently held that domestic legislation providing for State immunity in respect of disputes between a diplomatic mission and the members of staff of the mission does not infringe Article 6(1).

5. With regard to *paragraphs 8 and 10, iv* concerning the possible amendment of the Vienna Convention on Diplomatic Relations of 1961 (VC), since the VC is a universal multilateral treaty, member States of the Council of Europe cannot undertake any amendments thereof.

6. The CAHDI stresses that the VC is a key element for the stability of diplomatic relations. Any question of amendment thereto is therefore a sensitive matter and would have to be carefully considered.

7. Excluding immunity for *all* offences committed by diplomats in the sphere of their private life as suggested by the Parliamentary Assembly would amount in practice to reduce the scope of immunities granted under international law to functional immunity and thus put at stake the legitimate interest of the international community in facilitating international relations between States.

8. In any event, the CAHDI notes that the VC does not grant immunity to international civil servants although they do enjoy some degree of immunity by virtue of other instruments, e.g. headquarters agreements, specific conventions on privileges and immunities, etc.

9. The CAHDI recognises that diplomatic immunities may represent an obstacle for the prosecution of the authors of offences connected with domestic slavery. However, such immunities do not exempt the persons enjoying them from the duty to respect the laws and regulations of the receiving State and could not be considered incompatible with the provisions of the ECHR.

10. Moreover, the CAHDI notes that under the VC the receiving State may request the sending State to waive the immunity of a diplomat or any other member of the staff of the mission to allow them to be prosecuted where appropriate and, if such waiver is not granted, may declare the individual concerned persona non grata or not acceptable and expel him or her.

11. Further, the CAHDI wishes to recall that the VC does not exclude the authorities of receiving State from exerting other methods of control over diplomats and other staff of missions in their territory and dealing with abuses in a way which is fully compatible with the VC. Such methods could include, for instance, devising procedures for the exchange of information between Ministries of Foreign Affairs regarding mistreatment of domestic employees and abuses of immunities and privileges in relation thereto so that, where necessary, the diplomat concerned could be declared persona non grata as provided by the VC, or a residence permit for the domestic servant could be withheld (e.g. on applying for entry).

12. The CAHDI would like to stress furthermore that according to the VC, the immunity of a diplomatic agent from the jurisdiction of the receiving Stage does not exempt him from the jurisdiction of the sending State and, therefore, States should be encouraged to exercise such jurisdiction to prosecute offences connected with domestic slavery.

13. In view of the above, the CAHDI concludes that in order to tackle the problem of domestic slavery, amending the VC is not a realistic solution nor is it advisable on policy grounds, and that the focus should be put on making use of the possibilities that the VC and international co-operation mechanisms offer.

Appendix V

Preliminary draft agenda of the 24th meeting of the CAHDI (Bratislava, 9-10 September 2002)

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 23rd meeting (Strasbourg, 4-5 March 2002) — CAHDI (2002) 0J2, CAHDI (2002) 8 prov

3. Communication by the Director general of Legal Affairs, Mr. De Vel — CAHDI (2002) Inf 2

B. ONGOING ACTIVITIES OF THE CAHDI

4. Decisions by the Committee of Ministers concerning the CAHDI and requests for CAHDI's opinion — CAHDI (2002) 9

5. The law and practice relating to reservations and interpretative declarations concerning international treaties : European Observatory of Reservations to international Treaties
   a. Consideration of outstanding reservations and declarations to international Treaties — CAHDI (2002) 10
   b. Consideration of reservations and declarations to international Treaties applicable to the fight against terrorism — CAHDI (2002) 11

14. Pilot Project of the Council of Europe on State practice regarding State immunities — CAHDI (2002) 12

D. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

15. The work of the Sixth Commission of the General Assembly of United Nations and of the International Law Commission (ILC)
   a) Exchange of views with Professor G. Hafner, President of the Working group of the General Assembly of the United Nations on State Immunities — CAHDI (2002) 12
   b) Exchange of views with Professor B. Simma, Member of the ILC — CAHDI (2002) Inf 3 and 4

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

17. Developments concerning the International Criminal Court

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

19. Fight against Terrorism - Information about work undertaken in the Council of Europe and other international Fora — GMT (2002) 11

D. OTHER

20. Draft specific terms of reference of the CAHDI for 2003 – 2004 — CAHDI (2002) 14

21. Election of the Chair and Vice-Chair — CAHDI (2002) 15

22. Date, place and agenda of the 25th meeting of the CAHDI

23. Other business

Appendix VI

Abridged report of the 23rd meeting of the CAHDI

List of items discussed and decisions taken

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 23rd meeting in Strasbourg, on 5 and 6 March 2002. The meeting was chaired by Ambassador Tomka (Slovak Republic), Chairman of the CAHDI. The list of participants can be consulted in the meeting report (document CAHDI (2002) 8 prov) and the agenda appears in Appendix I.

2. The CAHDI was informed by the Director General of Legal Affairs, Mr De Vel, about recent developments concerning the Council of Europe.

3. The CAHDI was informed of the decisions taken by the Committee of Ministers concerning the Committee and requests for CAHDI's opinion. In this connection, the CAHDI adopted an opinion about Parliamentary Assembly Recommendation No. 1523 (2001) on domestic slavery and decided to transmit it to the Committee of Ministers in pursuance of the specific terms of reference received (see Appendix II). The CAHDI also held an exchange of views regarding the possibility of partial renunciation of the Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality (European Treaty Series No. 043) and asked the Secretariat to prepare a preliminary draft opinion on the basis of the views expressed by delegations and to circulate it to delegations by end of May 2002.

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 and several delegations advised the Committee about the follow-up they envisaged to give to certain of the reservations and declarations considered.

5. The CAHDI was informed about the implementation of the Pilot-Project on State practice regarding State immunities and delegates not having yet done so were kindly invited to appoint a national coordinator as soon as possible.

6. The CAHDI pursued considerations of aspects connected with immunities of heads of State and of Government as well as the ministers for foreign affairs, on the basis of the documents submitted by the Swiss and Swedish delegations bearing in mind the International Court of Justice's judgement of 14 February 2002 concerning the case Democratic Republic of Congo v. Belgium.

7. The CAHDI held a fruitful exchange of views with Mrs Burdeau, Secretary General of the Hague Academy of International Law regarding the activities of the Academy.

8. The CAHDI considered developments concerning the implementation of international instruments protecting the victims of armed conflicts, the implementation and the functioning of the Tribunals established by UN Security Council Resolutions 927 (1993) and 955 (1994) and the International Criminal Court.

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

10. Following the formal request by the Federal Republic of Yugoslavia and in the light of the decision of the Committee of Ministers concerning the participation of the Federal Republic of Yugoslavia in the intergovernmental work of the Council of Europe (CM/Del/Dec(2000)733/2.1), the CAHDI welcomed the participation of the Federal Republic of Yugoslavia as observer in the meetings of the CAHDI.

11. The CAHDI decided to invite Professors Hafner and Simma, respectively Chair of the UN Ad Hoc Committee on Jurisdictional Immunities of States and their Property and member of the UN International Law Commission (ILC) to its next meeting, in order to have an exchange of views respectively on the UN activity on Immunities of States and their Property, and on ongoing activities of the ILC.

12. Following the invitation by the Chair of the CAHDI, the CAHDI decided to hold its next meeting in Bratislava 9 - 10 September 2002 and adopted the preliminary draft agenda in Appendix III.