

Strasbourg, 18/03/03

CAHDI (2002) 16

COMMITTEE OF LEGAL ADVISERS ON
PUBLIC INTERNATIONAL LAW
(CAHDI)

24th meeting
Bratislava, 9 and 10 September 2002

MEETING REPORT

Secretariat memorandum
drafted by the Directorate General of Legal Affairs

A. INTRODUCTION

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

1. Following the kind invitation by the Slovak authorities, the Committee of Legal Advisers on Public International Law (CAHDI) held its 24th meeting in Bratislava, at the Congress centre of the Ministry for Foreign Affairs on 9 and 10 September 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 (2002) 8 prov.) and authorised the Secretariat to post it on the CAHDI's web site (www.coe.int/cahdi).

3. Mr Roberto Lamponi, Director for Legal Co-operation of the Council of Europe, addressed the Committee and reported on matters of interest to the CAHDI, in particular concerning:

- the accession of Bosnia and Herzegovina to the Council of Europe on 24 April 2002, during the 2nd Session of the Parliamentary Assembly, making it the Organisation's 44th member state;
- the fairly rapid progress being made on the Federal Republic of Yugoslavia's application for membership;
- developments concerning the European Treaty Series (cf. document CAHDI (2002) Inf. 2 and web site: conventions.coe.int), namely:
 - o the opening for signature in Vilnius on 3 May 2002 of Protocol N°13 to the European Convention on Human Rights concerning the abolition of the death penalty in all circumstances, which gathered 33 signatures and 3 ratifications the same day;
 - o the signature in Bratislava on 28 May 2002 of a series of treaties relating to the field of social security;
 - o the adoption of the Protocol to the Criminal Law Convention on corruption, concerning the corruption of judges and arbitrators;
 - o the adoption by the Committee of Ministers of the Convention on Contact Concerning Children, which would be opened for signature at the next European Conference on Family Law (14 and 15 October 2002);
 - o the completion of the Protocol to the Convention on Cybercrime concerning the incrimination of acts of a racist or xenophobic nature committed through computer systems, due to be presented to the Parliamentary Assembly in June 2002 and adopted by the Committee of Ministers at the end of the year;
- the international Conference on the Council of Europe's contribution to the European Union's "acquis", to be held in Santiago de Compostela on 3 and 4 June 2002 at which significant conclusions (cf. document SdC (2002) Concl, distributed & web site: www.legal.coe.int/santiago) were adopted by the participants highlighting the importance of the Council of Europe legal instruments which form part of the EU acquis and thus, the complementarity between the two organisations; and the need to integrate the EU Charter of fundamental rights in the EU treaties together with the accession of the European Community or the EU to the European Convention of Human Rights;

- developments concerning the Council of Europe's work in the field of the fight against terrorism (see item 11 below);
 - the imminent establishment of the European Commission for Efficiency of Justice (CEPEJ) which would prove instrumental in helping States improving the efficiency of their justice systems;
 - the important role of the Council of Europe and the excellent co-operation with the European Union at the World Congress against sexual exploitation of children (Yokohama, 17-20 December 2001), in the course of which European countries prepared a European explanatory Declaration, based on the Council of Europe texts; the grouping together into a single project under the Directorate General of Legal Affairs of all issues concerning children (family law and sexual exploitation); the setting up by the Committee of Ministers of a group of specialists on the protection of children against sexual exploitation;
 - the entry into force of the Statute of the International Criminal Court and the Council of Europe's contribution in that field;
 - progress in the close co-operation with, inter alia, the Federal Republic of Yugoslavia, Bosnia and Herzegovina, Kosovo (UNMIK), the Caucasus, "the Former Yugoslav Republic of Macedonia", Moldova and the Russian Federation (in the context of the reform of Russia's judicial system, the Council of Europe had contributed its expertise to a number of laws, some of which were already in force, and at the request of Russia's Presidential Administration, a second round of expert appraisal concerning the federal institutions had been successfully initiated);
 - the next Conferences of European Ministers of Justice, to be held in Bulgaria (2003) and Finland (2004);
 - the *Morgan case* opposing Mr Morgan to the Council of Europe, a number of Council of Europe top officials and a number of member States which was pending in before a US district court of New York and concerned directly the immunity of international organisations –the Council of Europe- and the claim of such immunity before a domestic court of a State which was not member of the organisation and therefore not of the agreement on privileges and immunities of the organisation yet could be retained by the notion of "collective instrumentality of states".
4. Further to that, Mr Lamponi referred to the ongoing activities of the CAHDI and stressed their importance while noting the excellent relations between the Council of Europe and the International Law Commission.

B. ONGOING ACTIVITIES OF THE CAHDI

4. Decisions of the Committee of Ministers concerning the CAHDI and requests for CAHDI's opinion

5. 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).

6. The Chair recalled that the CAHDI had been 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.

7. Further to that, the Chair recalled that the CAHDI had considered this matter at its 23rd meeting and that on that occasion the CAHDI had held a preliminary exchange of views on the basis of which the Secretariat had been asked to prepare and circulate to delegations a draft opinion of the CAHDI with a view to adoption at the present meeting.

8. A delegation asked whether all the parties to the Convention in question were agreeing to allowing partial denunciation. The Secretariat replied that there was no formal indication in that sense.

9. Further to that, another delegation noted that the possibility of a partial denunciation of the Convention could affect the rights of contracting parties to make a declaration in pursuance of Article 7¹, paragraph 2 and therefore, where partial denunciation by a contracting party would be permitted, the other contracting parties which apply Chapters I and II of the Convention should have the possibility of making the declaration provided for under Article 7, paragraph 2 within a reasonable time after the partial denunciation.

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

11. Further to that, the Chairman referred to 51st meeting of the European Committee on Crime Problems (CDPC) held in Strasbourg, 17-21 June 2002 at which decisions of relevance for the CAHDI were adopted and submitted to the Committee of Ministers, namely: the adoption of draft specific terms of reference for a Group of Experts for Consultation on the International Criminal Court (PC-S-ICC) which was to include a representative of the CAHDI and the adoption of an opinion of the CDPC on Recommendation 1523 (2001) of the Parliamentary Assembly: domestic slavery².

12. Subject to approval by the Committee of Ministers of the specific terms of reference for the PC-S-ICC, the CAHDI entrusted its Chair (see item 13) to ensure appropriate representation of the CAHDI at meetings of that Group of experts. Moreover, members of the CAHDI stressed that the CAHDI should continue to consider developments and issues relating to the ICC on its own since this was an important item on its agenda.

13. Moreover, the CAHDI took note of the CDPC's opinion on the Recommendation of the Parliamentary Assembly.

¹ Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality

Article 7

1. 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. This notification shall become effective as from the date of its receipt, and the provisions of Chapter I shall thereupon become applicable in relation to that Party.

2. Each Contracting Party which has applied the provisions of the first sub-paragraph of paragraph 1 of this article may declare, at the time of signing or at the time of depositing its instrument of ratification, acceptance or accession that it will apply the provisions of Chapter II only in regard to Contracting Parties which are applying the provisions of Chapters I and II. In this case the provisions of Chapter II shall not be applicable between the Party making such a declaration and a Party applying the second sub-paragraph of paragraph 1.

² It is recalled that the at its 762nd meeting (Strasbourg, 5 September 2001), the Committee of Ministers, at Ministers' Deputies level, 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. CAHDI adopted at its 23rd meeting (Strasbourg, March 2002) an opinion on this recommendation at its prior meeting. This opinion appears in the meeting report, document CAHDI (2002) 8, Appendix IV.

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

a. European Observatory on Reservations to International Treaties

14. As part of its role as European Observatory of Reservations to International Treaties, the CAHDI considered a list of outstanding declarations and reservations to international treaties, drawing on the document drafted by the Secretariat (see document CAHDI (2002) 10 & addendum). 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.

15. The CAHDI first considered outstanding reservations and declarations relating to treaties concluded outside the Council of Europe.

16. With regard to the reservation by the Democratic people's Republic of Korea, of 12 November 2001 to the International Convention for the Suppression of the Financing of Terrorism, New York, 9 December 1999³, the delegate of The Netherlands noted that his government had objected to it and the delegates of Germany, France and Sweden informed the Committee of their intention to do so shortly. Moreover, the representative of the European Commission informed the members of the CAHDI that the EU Troika had entered into a dialogue with the authorities of North Korea and invited them to withdraw their reservation.

17. With regard to the reservation by Qatar, of 14 December 2001 to the 2003 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, New York, 25 May 2000⁴, the delegates of Germany, France and the Netherlands informed the CAHDI that they had objected to this reservation for the reference to Sharia Law was not in line with the object and purpose of the treaty and the delegates of Spain, Sweden and Austria informed the Committee that they would be objecting shortly for the same reason. Moreover, the delegates of Portugal and the United Kingdom stressed that they were working towards becoming parties to the Protocol.

18. With regard to the declarations and reservations by Moldova of 21 January 2002 to the Convention relating to the Status of Refugees, Geneva, 28 July 1951⁵, the delegations of

³ Reservations:

1. The democratic people's Republic of Korea does not consider itself bound by the provisions of article 2, paragraph 1, sub-paragraph (a) of the convention.
2. The democratic people's Republic of Korea does not consider itself bound by the provisions of article 14 of the convention.
3. The democratic people's Republic of Korea does not consider itself bound by the provisions of article 24, paragraph 1 of the convention.

⁴ Reservation:

.....subject to a general reservation concerning any provisions in the protocol that are in conflict with the Islamic Shariah.

⁵ " ... with the following declarations and reservations:

1. According to paragraph 1, article 40 of the Convention, the Republic of Moldova declares that, until the full restoration of the territorial integrity of the Republic of Moldova, the provisions of this Convention are applicable only in the territory where the jurisdiction of the Republic of Moldova is exercised.
2. The Republic of Moldova shall apply the provisions of this convention with no discrimination generally not only as to race, religion or country of origin as stipulated in Article 3 of the Convention.
3. For the purposes of this Convention by the notion "residence" shall be understood the permanent and lawful domicile.
4. According to paragraph 1 of Article 42 of the Convention, the Republic of Moldova reserves the right that the provisions of the Convention, according to which refugees shall be accorded treatment not less favourable than that accorded aliens generally, are not interpreted as an obligation to offer refugees a regime similar to that

Portugal and the United Kingdom expressed doubts regarding the compatibility of some of the reservations, namely numbers 3 and 10 with the object and purpose of the Convention. Moreover, the delegate of Sweden, informed the CAHDI that the Working Group on Public Law of the Council of the European Union (COJUR) had considered this reservation and had decided to enter into a dialogue with the Moldova authorities. The Chairman asked the member States of the EU to inform the members of the CAHDI about the outcome of such dialogue.

19. With regard to the reservation by Belgium of 19 February 2002 to the Convention on the Safety of United Nations and Associated Personnel, New York, 9 December 1994⁶, the delegate of Portugal noted that the concept of "credibility" included in the reservation was uncertain and should be further précised. The delegate of Belgium noted that Article 9.1.c. of the Convention provided that the threat to commit any attacks against the persons or premises provided by Article 9.1.a and b should be made a crime under national law. The Belgium position in the context of negotiations of international conventions in the criminal field is that a threat should only be taken into consideration for the purposes of extradition and mutual assistance where it has a sufficient degree of credibility. This position has been defended recently in the context of negotiations regarding the draft international convention for the suppression of acts of nuclear terrorism.

20. With regard to the interpretative declaration by Jordan of 11 April 2002 to the Rome Statute of the International Criminal Court, Rome, 17 July 1998⁷, the delegates of The Netherlands, Sweden and the United Kingdom noted that the exact intention of the Jordan authorities could not be ascertained because the language of the declaration was unclear. Therefore, they suggested the authorities of Jordan should be asked for an explanation. In this connection, the delegate of Germany informed the CAHDI that his authorities had approached the authorities of Jordan and that the latter had confirmed that their declaration was in line with the Rome Statute.

21. With regard to the reservation by Vietnam of 10 October 2001 to the Convention on the Law of the Treaties, Vienna, 23 May 1969⁸, the delegates of the United Kingdom,

accorded to the citizens of the state with which the Republic of Moldova has signed regional customs, economic, political and social security treaties.

5. According to paragraph 1 of Article 42 of the Convention, the Republic of Moldova reserves the right to consider the provisions of Article 13 as recommendations and not as obligations.

6. According to paragraph 1 of Article 42 of the Convention, the Republic of Moldova reserves the right to consider the provisions of Article 17 (2) as recommendations and not as obligations.

7. According to paragraph 1 of Article 42 of the Convention, the Republic of Moldova interprets the provisions of Article 21 of the Convention as not obliged to accord housing to refugees.

8. The Government of the Republic of Moldova reserves the right to apply the provisions of Article 24 so that they do not infringe upon the constitutional and domestic legislation provisions regarding the right to labor and social protection.

9. According to paragraph 1 of Article 42 of the Convention, in implementing Article 26 of this Convention, the Republic of Moldova reserves the right to establish the place of residence for certain refugees or groups of refugees in the interest of the state and society.

10. The Republic of Moldova shall apply the provisions of Article 31 of the Convention as of the date of the entry into force of the Law on Refugee Status

⁶ The Belgian Government declares the following: article 9, paragraph 1 (c), only covers cases where the threat is credible.

⁷ Interpretative Declaration

The government of the Hashemite Kingdom of Jordan hereby declares that nothing under its national law including the Constitution, is inconsistent with the Rome Statute of the International Criminal Court . As such , it interprets such national law as giving effect to the full application of the Rome Statute and the exercise of relevant jurisdiction thereunder ."

⁸ Reservation:

"Acceding to this Convention, the Socialist Republic of Vietnam makes its reservation to article 66 of the said Convention."

Germany, The Netherlands and Spain informed the CAHDI that they had objected to it. The delegate of the United Kingdom further noted that as a result of their objection, they consider the convention as not in force between them and Vietnam. Similarly, the delegate of Spain noted that as a result of their objection, they consider that part V of the Convention is not in force between them and Vietnam.

22. The CAHDI went on to consider Reservations and declarations concerning Council of Europe treaties.

b. Reservations and Declarations to International Treaties applicable to the fight against terrorism

23. The Chairman recalled 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.

24. The Chairman noted that as a result, 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 (see item 11 below), and it also decided to extend the scope of its Observatory on Reservations to International Treaties to include treaties relating to the fight against terrorism.

25. The Chairman then referred to the document prepared by the Secretariat at the request of the CAHDI (document CAHDI (2002) 11) including the state of signatures and ratifications and the reservations made to most important international treaties applicable to the fight against terrorism.

26. Members of the CAHDI thanked the Secretariat for the useful document which present an up-to-date state of the situation and was instrumental in considering the usefulness of maintaining existing reservations.

27. The delegate of the United Kingdom urged members of the CAHDI to look at this matter closely and the Chairman noted that the purpose of the inclusion of this item on the agenda of the CAHDI was to ask delegations to consider at domestic level whether their reservations could be withdrawn.

28. The delegate of the Netherlands informed the CAHDI that his authorities made standard reservations to earlier anti-terrorism conventions. These reservations were subsequently considered to be contrary to the object of purpose of these conventions. As a result, the authorities of the Netherlands are no longer formulating such reservations and are in the process of withdrawing the ones they had already made.

29. The CAHDI concluded consideration of this item by deciding to keep it on its agenda and asking the Secretariat to regularly produce updated versions of the document.

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

30. The Chairman recalled that at its 21st meeting (Strasbourg, 6-7 March 2001) the CAHDI decided to carry out an activity entitled "Pilot Project of the Council of Europe on State practice regarding State Immunities" which focused particularly, although not exclusively, on judicial practice in the member States of the Council of Europe and aims at collecting the most relevant judicial decisions involving foreign States and their property.

31. He further noted that at its 22nd meeting (Strasbourg, 11-12 September 2001) the CAHDI agreed on Secretariat proposals for the implementation of this activity and decided on the guidelines for carrying out the activity.

32. The Secretariat informed the CAHDI that to date contributions had been provided by: Austria, Croatia, Czech Republic, Finland, Greece, Ireland, Norway, Poland, Portugal, Slovakia, Spain, Sweden and United Kingdom.

33. The Chairman stressed the importance of the Pilot Project and asked delegations not having yet done so to provide their contribution before 31 December 2002. He also referred to the work of the United Nations International Law Commission and the United Nations General Assembly's Special Committee (see item 7.a below).

34. The delegates of Germany and Hungary informed the CAHDI that they would be submitting their contribution shortly.

35. The delegate of Slovakia welcomed the initiative of the CAHDI in carrying out this Pilot Project and noted that the aim should be the harmonisation of State practice while supporting the preparation of an international instrument at the UN.

36. The CAHDI decided on the follow up to be given to the Pilot Project, including possibly the preparation of an analytical report, at its 25th meeting in March 2003, in the light of the contributions that would be received from States.

C. GENERAL ISSUES CONCERNING PUBLIC INTERNATIONAL LAW

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

a. Exchange of views with Professor Gerhard Hafner, President of the Working Group of the General Assembly of the United Nations on State Immunities

37. The Chairman welcomed Professor Hafner and thanked him for accepting to take part in the meeting in order to have an exchange of views with the members of the CAHDI on this important topic.

38. Professor Hafner thanked the CAHDI for the invitation to attend the meeting and welcomed the ongoing Pilot Project of the Council of Europe which represents a useful contribution to the ongoing work of the UN in this area.

39. He referred to document UN A/57/22 which included the report of the meeting of the Ad Hoc Committee on Jurisdictional Immunities of States and Their Property (AHC) held in New York, 4-15 February 2002 and the progress made by the Working Group of the General Assembly (WG). His statement appears in Appendix IV.

40. The representative of the European Commission referred to the form of the instrument and asked about the relations between existing regional international instruments and the possible universal UN instrument.

41. Professor Hafner noted that this issue had been addressed by the AHC and that the problem could be tackled through the inclusion in the UN instrument of a *lex specialis* clause.

42. The delegate of the United Kingdom welcomed the progress made by the WG and noted that the solution of the outstanding issues was within reach. He stressed that the time had come to make a particular effort to conclude in the near future and supported the adoption of a soft-law text.

43. Further to that, the delegate of the United Kingdom referred to the case of *Al-Adsani v. The United Kingdom* (Application no. 35763/97)⁹ which concerned State the UK Immunity Act 1978, section 1(1) and where a violation of Article 6 of the European Convention of Human Rights was alleged. The European Court of Human Rights decided that there was no violation of that provision.

44. The delegates of Slovakia and the Netherlands also supported the quick conclusion of negotiations underway in the UN and referring to the *commercial nature* issue stressed that this was not a real problem and that it should be left for national courts and legislators.

45. The delegate of Germany referred to the issue of *military actions* and stressed that the immunity principle applies fully to this area.

46. Professor Hafner referred to this issue and noted that this issue should be solved in the manner of the European Convention on State Immunities which leaves it completely out of the scope of the Convention.

47. Regarding the form of the instrument, the delegates of Germany and Greece favour a convention however, if that would not appear possible, they would support an interim soft-law text in the short term to be subsequently reviewed.

⁹ Hudoc reference	REF00002995
Originating body	Court (Grand Chamber)
Document type	Judgment (Merits)
Language	English ; French
Title	CASE OF AL-ADSANI v. THE UNITED KINGDOM
Application number	00035763/97
Respondent	United Kingdom
Date of judgment	21/11/2001
Applicability	Article 6 applicable
Conclusion	No violation of Art. 3 ; No violation of Art. 6-1
Separate opinions	Yes
Articles	1 ; 3 ; 6-1 ; 30
Law at issue	State Immunity Act 1978, section 1(1)

Strasbourg Case Law A. v. the United Kingdom judgment of 23 September 1998, Reports of Judgments and Decisions 1998-VI, § 22 ; Aksoy v. Turkey judgment of 18 December 1996, Reports 1996-VI, §§ 62 et 63 et § 98 ; Assenov and Others v. Bulgaria, judgment of 28 October 1998, Reports 1998-VIII, § 91, § 102 ; Fayed v. the United Kingdom judgment of 21 September 1994, Series A no. 294-B, § 65 ; Golder v. the United Kingdom judgment of 21 February 1975, Series A no. 18, pp. 13-18, §§ 28-36 ; Loizidou v. Turkey judgment of 18 December 1996, Reports 1996-VI, § 43 ; Selmouni v. France [GC], no. 25803/94, ECHR 1999 ; Soering v. the United Kingdom judgment of 7 July 1989, Series A 161, § 86 ; Waite and Kennedy v. Germany [GC], no. 26083/94, § 59, ECHR 1999-I ; Z. and Others v. the United Kingdom [GC], no. 29392/95, § 87, ECHR 2001

External sources 1972 European Convention on State Immunity ; International Law Commission Working Group, Report on Jurisdictional Immunities of States and their Property (1999) ; United States Foreign Sovereign Immunities Act ; United States Anti-Terrorism and Effective Death Penalty Act 1996, section 221 ; Universal Declaration of Human Rights 1984, Article 5 ; International Covenant on Civil and Political Rights 1966, Article 7 ; United Nations Declaration on the Protection of All Persons from Being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1975, Article 3 ; United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984 ; International Criminal Tribunal for the Former Yugoslavia, Prosecutor v. Furundzija judgment of 10 December 1998 (case no. IT-95-17/I-T (1999) 38 ILM 317) ; International Criminal Tribunal for the Former Yugoslavia, Prosecutor v. Delacic and others judgment of 16 November 1998 (case no. IT-96-21-T) ; International Criminal Tribunal for the Former Yugoslavia, Prosecutor v. Kunarac judgment of 22 February 2001 (case no. IT-96-23-T and IT-96-23/1) ; House of Lords judgment of 24 March 1999, Regina v. Bow Street Metropolitan Stipendiary and Others, ex parte Pinochet Ugarte (No. 3) [2000] AC 147

Keywords TORTURE ; NON DEROGABLE RIGHTS AND FREEDOMS {ART 3} ; POSITIVE OBLIGATIONS ; CIVIL RIGHTS AND OBLIGATIONS ; ACCESS TO COURT

48. The delegate of Hungary supported moving ahead and concluding in the near future. He brought the attention of the Committee to Articles 10 and 11 which are key provisions and should be considered carefully.

49. The delegates of the Netherlands and the United Kingdom further supported deletion of Articles 10.3 and 18.c.

50. Regarding *employment contracts* the delegate of the Netherlands supported a limited application of the principle of State immunity which should not be extended beyond diplomats' contracts. He further supported the inclusion in the UN instrument of a provision stressing that the articles only deal with *civil matters* and regarding the form of the instrument he proposed to leave this matter open until the final decision.

51. The observer of Israel noted that her authorities were currently preparing a law on State Immunities and therefore would favour the adoption of a soft-law text in the UN.

52. The Chairman concluded this item welcoming the shift in the position of some States and expressing the hope that a result could be reached in the short term for reaching a result was of capital importance.

b. Exchange of views with Professor Bruno Simma, member of the ILC

53. The Chairman welcomed Professor Simma and thanked him for accepting to take part in the meeting in order to have an exchange of views with the members of the CAHDI on the ongoing work of the ILC and for the useful summaries of the ILC's sessions that he has been kindly providing to the CAHDI.

54. Professor Simma thanked the CAHDI for the invitation to attend the meeting and reported about developments concerning the 54th session of the ILC.¹⁰

55. The International Law Commission held its fifty-fourth session in two parts: from 29 April to 7 June and from 22 July to 16 August 2002, in Geneva. In November 2001, the UN General Assembly had elected twelve new and re-elected twenty-two members. For the first time in its history the Commission includes two women among its members. Under the chairmanship of Mr. Robert Rosenstock (U.S.A.), the Commission addressed four topics "inherited" from the last quinquennium: reservations to treaties, diplomatic protection, unilateral acts of States, and international liability for injurious consequences arising out of acts not prohibited by international law. In addition, the Commission started its consideration of three new topics: responsibility of international organizations, shared natural resources, and fragmentation of international law.

56. With regard to the topic of *Reservations to treaties*, the Commission adopted eleven draft guidelines dealing with formulation and communication of reservations and interpretative declarations. The Commission also considered the Special Rapporteur's seventh report and referred fifteen draft guidelines dealing with withdrawal and modification of reservations to the Drafting Committee.

57. As regards the topic *Diplomatic protection*, the Commission considered the remaining portions of the Special Rapporteur's second report relating to the exhaustion of local remedies rule, (articles 12 and 13), as well as the third report (draft articles 14 to 16), dealing with the exceptions to that rule, the question of the burden of proof and the Calvo clause, respectively. The Commission also undertook a general discussion, *inter alia*, on the scope of the study and held several open-ended Informal Consultations on the issue of the diplomatic protection of crews and that of corporations and shareholders. The Commission further adopted articles 1 to 7 on the recommendation of the Drafting Committee. It also

¹⁰ Comprehensive information about the ILC session is included in document CAHDI (2002) Inf. 4. For the official report of the Commission to the General Assembly see *International Law Commission, Report on the Work of its Fifty-Fourth session, Official Records of the General Assembly, Fifty-Seventh Session, Supplement No. 10 (A/57/10)*.

referred to the Drafting Committee draft articles 14 (a), (b), (c) and (d) (both to be considered in connection with paragraph (a)), and (e), concerning futility, waiver and estoppel, voluntary link, territorial connection and undue delay, respectively.

58. As regards the topic *Unilateral acts of States*, the Commission considered part of the fifth report of the Special Rapporteur. In his report, the Special Rapporteur reviewed the progress made thus far on the topic and presented revised draft article 5 (a) to (h) on the invalidity of a unilateral act, as well as articles (a) and (b) on interpretation. In Addendum 2 of his report, which the Commission did not consider, he proposed draft article 7 on *acta sunt servanda*, draft article 8 on non-retroactivity, draft article 9 on territorial application, as well as a structure for the draft articles.

59. With regard to the topic *International liability for injurious consequences arising out of acts not prohibited by international law*, the Commission decided to resume the study of the second part of the topic and to establish a working group to consider the conceptual outline of the topic. The report of the Working Group, which was considered by the Commission, set out some initial understandings and presented views on the scope of the endeavour, as well as on the approaches which could be pursued. Mr P.S. Rao was (re-) appointed as Special Rapporteur.

60. Concerning the topic *Responsibility of international organizations*, the Commission decided to include the topic in its programme of work and established a working group to consider, *inter alia*, the scope of the topic. It further appointed Mr. Giorgio Gaja as Special Rapporteur. The Commission subsequently adopted the report of the Working Group, and approved its recommendation that the Secretariat approach international organizations with a view to collecting relevant materials on the topic.

61. With regard to the topic *Fragmentation of international law: difficulties arising from the diversification of international law*, the Commission decided to include the topic in its programme of work and established a study group, chaired by the author of the present report. It subsequently adopted the report of the study group thus, *inter alia*, approving the proposed change of the title of the topic from *The risks ensuing from the fragmentation of international law* to the current title, as well as the recommendation that the first study to be undertaken will be on the issue entitled *The function and scope of the lex specialis rule and the question of "self-contained regimes"*.

62. Finally, the Commission decided to include in its programme of work the topic of *Shared natural resources* and appointed Mr. Chusei Yamada as Special Rapporteur. The Commission further recommended the establishment of a working group.

63. In response to paragraph 13 of General Assembly Resolution 56/82, the Commission indicated specific issues relating to the first five of the just-described topics, on which expressions of views by Governments either in the Sixth Committee or in written form would be of particular interest in providing effective guidance for the Commission on its further work.

64. The observer of Japan, Mr Yamada, reported about developments regarding the topic for which he had been appointed Special Rapporteur.

65. The delegate of the United Kingdom commented on some of the topics being considered by the ILC. Regarding *Reservations to Treaties*, his delegation was disappointed about the way in which the work was being conducted and suggested that the ILC should address it in a practical manner and build on States' practice. Specifically referring to provisional guideline 2.5.4 he stressed the importance of having a clear understanding about the notion of *monitoring bodies* and noted that there was a key distinction between a judicial body such as the European Court of Human Rights and a treaty monitoring body such as the UN Human Rights Committee. Regarding *Unilateral acts of States*, his authorities see no future for this topic in the manner in which is currently being addressed. Regarding *International liability for injurious consequences arising out of acts not prohibited by*

international law, he suggested that the ILC should not devote too much time to it. Finally, he stressed the interest in the topics *Responsibility of international organizations*, *Shared Natural Resources and Fragmentation of international law: difficulties arising from the diversification of international law*.

66. The delegate of Hungary referred to the ILC activity on *Reservations to International Treaties* and in this connection noted that the role of the depositary was a key issue.

67. The Chairman concluded this item stressing the usefulness of pursuing exchanges of views with the members of the ILC and thanking Professor Simma for his presence.

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

68. The delegate of Switzerland reported about recent developments concerning this issue. He proposed to take into consideration the following two ideas.

69. The first referred to comments that have been made during the 12 months preceding the present meeting, concerning the relevance of international humanitarian law in view of the qualitatively different acts of violence that are being committed today. In this context it is important to be careful not to react over-hastily. In-depth and careful analysis shows that international humanitarian law retains its full relevance. Prudence would therefore suggest that care be taken to remain mindful of and to protect the achievements of international humanitarian law. This attitude does not exclude the possibility of dialogue as a means to identifying areas where progress is possible. However, it remains a high priority to apply international humanitarian law in its current form, to raise awareness of it, and to disseminate it.

70. The second idea was based on the observation that although in its current form international humanitarian law is not lacking in substantive rules, there is room for improvement in its implementation. Hence the importance that attention be given to improving the mechanisms for implementing it. In this regard, Switzerland underscored the major role of the International Criminal Court, welcomed the entry into force of the Rome Statute on 1 July 2002, and sees this event also as progress in the implementation of international humanitarian law.

71. The Chairman stressed the crucial role of Switzerland in promoting international humanitarian law.

72. The delegate of Greece noted that it was essential to protect the *acquis* of international humanitarian law and stressed that particular attention should be paid to its application.

73. The delegate of Hungary informed the members of the CAHDI that they will organise a conference to celebrate the 25th anniversary of the adoption of the two additional protocols to the Geneva Convention. Moreover, he stressed the importance of supporting the Fact Finding Commission provided for by article 90 of the first additional protocol to the Geneva Convention.

74. The delegate of Slovakia informed the members of the CAHDI about the establishment in early 2002 of the Slovak National Committee on International Humanitarian Law and reported about its activities.

9. Developments concerning the International Criminal Court

75. The Chairman recalled that the first meeting of the States Parties to the Rome Statute was currently being held in the UN Headquarters and stress its importance.

76. The delegate of Switzerland referred to Article 98 of the Rome Statute¹¹ and stressed his country's position that the ICC should be strong and independent and as universal as possible. In light of the above, he expressed concern about a possible increase in the number of exceptions to the jurisdictions of the ICC which would result in weakening the institution. He stressed that the Rome Statute contained sufficient guaranties to avoid that it be used for political purposes. He stressed that Article 98 had been accepted as a concession in view of achieving a compromise in the context of a dynamic and changing process. Specifically referring to the Status of forces agreements, he noted that these agreements have a limited scope as far as the types of operations and the persons covered by them. He concluded that any exceptions to the jurisdictions of the ICC should not result in impunity.

77. The delegate of Denmark on behalf of the EU Presidency referred to the EU Common Position 2001/443/CFSP defined by the Council of the European Union on 20 June 2002 and to the informal meeting of EU ministers for foreign affairs held in Denmark 30-31 August 2002. On this occasion, the EU ministers agreed that the EU should continue to work towards a common response which in any event should not undermine the obligations of EU member States towards the Rome Statute and at the same time accommodate the US concerns.

78. With this in mind the Legal Advisers of the EU Member States met in Brussels on 4 September 2002. They called for a broader dialogue between the EU and the US and concluded that it was essential to find a common EU response to the problem posed by this type of agreements and that entering into bilateral agreements as currently proposed would be inconsistent with the obligations resulting from the Rome Statute. Any possible solution would have to include the following elements:

- no impunity; any possible solution would have to include appropriate provisions to ensure that persons who have committed crimes falling within the jurisdiction of the Court do not enjoy impunity;
- principle of reciprocity; any solution could only cover the surrender of persons who are not nationals of an ICC State Party;
- the scope of persons; any solution should cover only persons present on the territory of a requested State because they have been sent by a sending State.

79. Further to that, he noted that the issue was being considered by the Committee on Common Foreign and Security Policy on the 10 September 2002.

80. The delegate of Germany supported the positions expressed by the delegates of Switzerland and Denmark. He further referred to the meeting of the Assembly of States Parties and the far reaching convergence of views of participating States that bilateral agreements as now presented are unacceptable because they are contrary to the object and purpose of the Rome Statute and that any possible solutions would have to be fully in line with the obligations resulting from the Rome Statute and in particular its Part IX, especially

¹¹ Rome Statute of the International Criminal Court

Article 98 - Cooperation with respect to waiver of immunity and consent to surrender

1. The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.

2. The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender.

as regards the need to avoid impunity. He stressed that there should be a constructive dialogue with the US which should have as objective the support of the ICC.

81. The delegate of France referred to the declaration that his authorities had made in accordance with article 124 of the Rome Statute and stressed that the possibility offered by this provisions should be used instead of bilateral agreements as currently being proposed.

82. The delegate of Portugal further noted that the proposed agreements are in breach of Article 26 of the Vienna Convention on the Law of the Treaties for they are contrary to the object and purpose of the Rome Statute. Moreover, she stressed that reciprocity was a false issue because the US are not a Party to the Rome Statute and this issue only arises in relation to compliance by States parties of their obligations under the Statute.

83. The delegate of Romania informed the members of the CAHDI about the bilateral agreement that his authorities had signed with the US authorities on 1st August 2002 at the initiative of the US authorities and noted that ratification by the Romanian Parliament was required for the agreement to enter into force¹².

¹² Full text of the statement :

1. On August 1st, 2002, in Bucharest, the **Agreement between the Government of Romania and the Government of the United States of America regarding the Surrender of Persons to the International Criminal Court** (the Agreement) was signed, at the initiative of the American side. According to art. 4 of the Agreement, it shall enter into force upon an exchange of notes confirming that each Party has completed the necessary domestic legal requirements to bring the Agreement into force. In accordance with the Romanian legislation on the conclusion of treaties, the Agreement needs to be ratified by the Parliament in order to enter into force.

2. The Agreement provides the obligation for the Romanian side not to surrender or transfer American nationals to the International Criminal Court and not to surrender, transfer or expel American nationals to a third country, for the purpose of surrendering to or transferring them to the ICC, absent the expressed consent of the US Government (Art. 2).

3. The signing of the Agreement took place **in the context of the compromise** (supported also by some EU Member States) reached some weeks before, **that made possible for Resolutions 1422, 1423 and 1424 to be adopted by the Security Council on July 12th, 2002**. Among these, Resolution 1422 represents an application of Art. 16 of the Statute (which grants the possibility for the Security Council to request the Court to suspend for a period of 12 months any investigation or prosecution proceeded under the Statute), as the Agreement represents, at its turn, an application of Art. 98 of the Statute.

4. The provisions of **Art. 98** of the Rome Statute of the International Criminal Court create **the possibility of concluding agreements by which a member State to the Rome Statute undertakes the obligation not to surrender to the ICC nationals of a State which is not a Party to the Statute**. The provisions of Art. 98 are **the expression of a compromise solution** between the supporters of the idea of the necessity of creating the Court and the opponents of this idea (the United States being one of the most active opponents). The inclusion of this article in the Statute proves that its authors considered that the conclusion of such bilateral agreements does not prejudice the effective functioning of the Court.

5. **The bilateral Agreement does not intend to go beyond the framework established by Art. 98 of the Statute (which is expressly mentioned in para. 6 of the Preamble of the Agreement), considered by the Romanian side as an exceptional provision and, consequently, of strict interpretation.** Taking into account the obligations undertaken by Romania as a party to the Rome Statute, the provisions of the Preamble (para. 4) reiterate **Romania's commitment to be bound by the rules and principles embodied therein.**

Moreover, **the Agreement has a non-synallagmatical character.** Only the Romanian side undertakes the obligation of not surrendering or transferring US nationals absent the express consent of the Government of the United States. **Consequently, the consent of the Romanian authorities for the surrender or transfer to the ICC of a Romanian citizen accused of having committed a crime under art. 5 is not set forth by the Agreement.** The non-synallagmatical character of the Agreement proves the commitment of the Romanian side to the obligations undertaken by Romania when becoming a party to the Rome Statute.

6. The provisions of the Agreement do not exclude the possibility of surrendering an American citizen to the ICC, but establish the condition of obtaining the expressed consent of the United States in this respect. The possibility for the consent of the United States to be obtained stays open. It can be obtained either by the requested State or by the Court, by virtue of the provisions of Art. 98, para. 2 (second thesis).

7. The exemption of the American nationals from the jurisdiction of the ICC absent the expressed consent of the United States **does not have as a consequence the granting of impunity for those**

84. The delegate of Bulgaria informed the members of the CAHDI that his authorities have been proposed a similar draft bilateral agreement by the US. He stressed the importance of avoiding impunity and the asymmetric nature of the agreement and noted that his authorities were awaiting the Common Position to be adopted by the EU on 30 September 2002 in order to proceed further.

85. The delegate of Estonia noted the historic role of the ICC and stressed that the ICC should not be undermined in any manner. She welcomed the exchanges that the CAHDI had on this issue and supported pursuing consideration of the matter in future meetings.

86. The Chair thanked delegations for the information provided and concluded the item stressing how important it was for the CAHDI to pursue consideration of developments relating to the ICC.

10. Implementation and functioning of the Tribunals established by UN Security Council Resolutions 827 (1993) and 955 (1994)

87. The Chairman referred to developments regarding the International Criminal Tribunal for Rwanda and noted that following the adoption by the Security Council of the United Nations of Resolution 1431 (2002) a pool of eighteen *ad litem* judges will be created in order to enhance the capacity of the Tribunal to dispose of the cases pending before it. The

persons. They will be submitted to the competent courts in accordance with the rules of competence and with the provisions of the extradition agreements. Thus, the Agreement does not prejudice the possibilities of exercising the international criminal justice, but recognises the primacy of the national jurisdiction.

In this respect, para. 5 of the Preamble provides the intention of the United States "to investigate and to prosecute where appropriate acts within the jurisdiction of the International Criminal Court alleged to have been committed by (...) its nationals". The concerns of the international community with regard to the necessity of punishing those who commit the most serious crimes are thus taken into consideration.

8. The above mentioned aspect is in line with the principle of complementarity, which is one of the most important guiding lines of the Rome Statute and which defines the general philosophy of the ICC jurisdiction. According to this principle – expressly mentioned in para. 10 of the Preamble and in art. 1 of the Statute and reflected in articles 17 to 20 – the jurisdiction of the International Criminal Court will only be exercised in a case where the State which has jurisdiction is unwilling or unable to carry out the investigation or prosecution. The mechanism established by the Agreement between the Government of Romania and the Government of the United States of America complies with the principle of complementarity.

As an application of this principle, certain States, when depositing the instrument of ratification of the Rome Statute, declared, for instance, that, in accordance with art. 124 of the Statute, they do not accept the jurisdiction of the Court with respect to the category of crimes referred to in art. 8 (war crimes) which are alleged to have been committed by their nationals or on their territory, reserving thus the right to pursue and to judge such crimes, within their own jurisdiction, without submitting them to the Court.

9. The Agreement signed by the Romanian and American Governments reflects the spirit of compromise incorporated in the Rome Statute and which made possible the adoption of the Statute. It should be reminded that Romania was actively involved in this process.

Romania has actively contributed to the creation of the International Criminal Court, within the Diplomatic Conference of the Plenipotentiaries (Rome, July 1998), as well as within the Preparatory Commission. Equally, its significant contribution aiming at reaching a solution with regard to the definition the crime of aggression is a proof of the importance accorded by Romania to the newly created institution.

Moreover, Romania was a member of the group of the 10 countries which, by their ratification of the Statute on April 11th 2002 (within a special ceremony organised at the UN Headquarters in New York), contributed to the accomplishment of the number of ratifications necessary for its entry into force. As a founding member of the International Criminal Court, Romania supports its optimal functioning. It is worth mentioning also that Romania is one of the States that have offered a voluntary contribution to the ICC budget.

Romania's position as an active promoter of the effectiveness of the International Criminal Court has not changed. Moreover, it intends to contribute directly further on, to its activities, the candidature of the Romanian representative to the position of judge to the Court standing as a proof in this respect. In the opinion of the Romanian side, ICC represents a modern instrument for the promotion of international justice and a peace-keeping mechanism, which has to be enforced most effectively.

amendments brought to the ICTR Statute by Resolution 1431 provide for only four of the *ad litem* judges to sit in the Trial Chambers at any one time, rather than the nine proposed by the Tribunal with a view to completing our mandate by a projected date of 2008. The eighteen *ad litem* judges will be appointed by the General Assembly at its next session and the deadline for submitting candidates is 23 September 2002¹³.

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

88. The Secretariat informed members of the CAHDI about developments regarding Council of Europe activities in this field, namely: the rapid progress of the Multidisciplinary Group on International Action against Terrorism (GMT) which had already completed part of its specific terms of reference by presenting a progress Report at the 110th Session of the Committee of Ministers, in Vilnius on 3 May 2002 and following a formal decision of the Ministers taken on that occasion was currently preparing a draft protocol to the European Convention on the Suppression of Terrorism which it hoped to be able to submit to the Committee of Ministers in November 2002; and the adoption by the Committee of Ministers of a set of guidelines on human rights and the fight against terrorism (document H(2002)4).

89. The delegate of Georgia stressed the importance of providing Council of Europe activities in this field with a specific follow-up mechanism. He further stressed the importance of securing appropriate input of the CAHDI in the ongoing Council of Europe efforts.

90. In this connection, the Secretariat informed the members of the CAHDI that its Secretary was at the same time Secretary of the GMT and in this manner could ensure appropriate circulation of information between the two bodies.

91. The delegate of Switzerland referred to Guideline IX.1¹⁴. He welcomed the setting up of a counter-terrorism Committee by Security Council Resolution 1373 (2001) concerning counter-terrorism and called upon delegations to share information about the application of that guideline. He concluded stressing the importance of proportionality and the need to strike an appropriate balance between the respect of human rights and the efficient fight against terrorism.

D. OTHER

12. Draft specific terms of reference of the CAHDI for 2003-2004

92. The CAHDI approved its draft specific terms of reference for 2003-2004 as they appear in Appendix V and decided to submit them to the Committee of Ministers for adoption.

13. Election of the Chair and Vice-Chair for 2003

93. The Chairman referred to the rules regarding the election of its Chair and Vice-Chair (included in document CAHDI (2002) 15). He further proposed the election of the Vice-Chair, Ambassador Michel as Chair of the CAHDI for 2003 due to his significant qualifications and in accordance with a well established CAHDI practice.

94. The CAHDI elected Ambassador Nicolas Michel (Switzerland) Chair of the CAHDI for 2003. Ambassador Michel thanked members of the CAHDI for their trust and stressed the importance of the Committee's work. He recalled that one year ago, the terrorist attacks on the

¹³ The text of the Security Council Resolution and the detailed provisions of the Statute governing the election and service of the *ad litem* judges are included in Security Council Press release SC/7482 of 14 August 2002. Further information can be obtained from the ICTR Website at www.icttr.org.

¹⁴ Guideline IX - *Legal proceedings*

1. A person accused of terrorist activities has the right to a fair hearing, within a reasonable time, by an independent, impartial tribunal established by law.

United States occurred while the CAHDI was on session and he stress that the CAHDI should continue to contribute to the fight for civilisation. Further to that, he paid tribute to the way in which Ambassador Tomka had conducted the meetings of the CAHDI which had resulted in significant results.

95. Further to that, the Chair proposed to postpone the election of the Vice-Chair of the CAHDI to the 25th meeting of the Committee in view of the absence of a significant number of legal advisers who regularly participate at CAHDI meetings were absent due to the first meeting of the States parties to the Rome Statute. The CAHDI agreed to this proposal.

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

96. The CAHDI decided to hold its 25th meeting in Strasbourg, 17 and 18 March 2003. The Committee further decided to invite Mr Alvaro Gil-Robles, Commissioner of Human Rights of the Council of Europe for an exchange of views, and Mr Vaclav Mikulka, Director of the Codification Division at the UN Secretariat General for an exchange of views regarding the ongoing UN work relating to the fight against terrorism. The CAHDI adopted the preliminary draft agenda which appears in Appendix VI.

15. Other business

97. Members of the CAHDI thanked its Chairman and through him, the Slovak authorities for the hospitality and excellent organisation of the 24th CAHDI meeting.

98. The abridged report of the meeting appears in Appendix VII.

Appendix I

List of participants

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

ARMENIA/ARMENIE: Apologised/Excusé

AUSTRIA/AUTRICHE: Mr Michael POSTL, Office of the Legal Adviser, Federal Ministry for Foreign Affairs

AZERBAIJAN/AZERBAIDJAN: Mr Rashad ASLANOV, International Law and Treaties Department, Ministry of Foreign Affairs

BELGIUM/BELGIQUE: Mme Anne-Marie SNYERS, Conseiller Général, Service public fédéral Affaires Etrangères, Direction Générale des Affaires Juridiques

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE: -

BULGARIA/BULGARIE: Ms Guenka BELEVA, Head of the Public International Law Department, Ministry of Foreign Affairs

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

CZECH REPUBLIC/REPUBLIQUE TCHEQUE: Mr Tomáš BOČEK, Head of the International Public Law Section, International Law Department, Ministry of Foreign Affairs

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

ESTONIA/ESTONIE: Mrs Marina KALJURAND, Deputy Under-Secretary of the Legal Department, Ministry of Foreign Affairs

FINLAND/FINLANDE: Mr Pertti HARVOLA, Ambassador, Deputy director general for Legal Affairs, Ministry of Foreign Affairs

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

GEORGIA/GEORGIE: Mr Mamuka JGENTI, Deputy Director of International Law Department, Ministry of Foreign Affairs

GERMANY/ALLEMAGNE: Dr Michael SCHAEFER, Ambassador, Legal Adviser, Director General for Legal Affairs, Federal Foreign Office

Mrs. Suzanne WASUM-REINER, Head of Division of Public International Law, Ministry of Foreign Affairs

GREECE/GRECE: M. Constantin ECONOMIDES, Ministry of Foreign Affairs

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

Mme Barbara TOSZEGI, Legal Officer, Ministry of Foreign Affairs

ICELAND/ISLANDE: Apologised/Excusé

IRELAND/IRLANDE: Mr Declan SMYTH, Legal Division, Department of Foreign Affairs

ITALY/ITALIE: Mrs Rosa Maria CHICCO FERRARO, Ministry of Foreign Affairs)

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

LIECHTENSTEIN: Apologised/Excusé

LITHUANIA/LITUANIE: Apologised/Excusé

MALTA/MALTE: Mr Lawrence QUINTANO, Senior Counsel for the Republic

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

NORWAY/NORVEGE: Mr Jan BUGGE-MAHRT, Deputy Director General, Section for International Law, Department for Legal Affairs, Royal Ministry of Foreign Affairs

Mrs Larissa FALKENBERG KOSANOVIC, Higher Executive Office, Section for International Law, 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 Cristina FAUSTINO, Legal Adviser, Legal Affairs Department, Ministry of Foreign Affairs

ROMANIA/ROUMANIE: M. Bogdan AURESCU, Director General for Legal Affairs, Ministry of Foreign Affairs

Mlle Irina-Elena DONCIU, Head of Service, International Law and Treaties Division, Ministry of Foreign Affairs

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)**

Mr Drahoslav ŠTEFÁNEK, Director, International Law Department, Hlboka cesta 2, 833 36 BRATISLAVA (Tel: 421 2 59783711 – Fax: 421 2 59783729 – E-mail: drahoslav_stefanek@foreign.gov.sk)

Mr Robert LINDENTHAL, Vice-Director, International Law Department

Mrs Cecilia KANDRACOVA, International Law Department

SLOVENIA/SLOVENIE: Mr Borut MAHNIČ, Ambassador, Ministry of Foreign Affairs

SPAIN/ESPAGNE: Mme Cristina FRAILE, Département du droit international, Ministère des Affaires étrangères

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

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

SWITZERLAND/SUISSE: M. Nicolas MICHEL, Ambassadeur, Directeur de la Direction du Droit International Public, Département fédéral des Affaires Etrangères **(Vice-Chairman/Vice Président)**

M. Claude SCHENKER, Collaborateur personnel du Directeur de la Direction du droit international public, Département fédéral des Affaires étrangères

TURKEY/TURQUIE: Mme Selma YURTERI, Conseillère juridique, Ministère des Affaires étrangères

UKRAINE: Mr Vitalij MOSKALENKO, Counsellor, Permanent Representation of Ukraine in Bratislava

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

Mr Andrew CANNON, Assistant Legal Adviser, Foreign and Commonwealth Office

SPECIAL GUESTS/INVITES SPECIAUX

Professor Bruno SIMMA, member of the International Law Commission of the United Nations - GERMANY

Professor Gerhard HAFNER, President of the Working Group of the General Assembly of the United Nations – AUSTRIA

EUROPEAN COMMUNITY/COMMUNAUTE EUROPEENNE

EUROPEAN COMMISSION/COMMISSION EUROPEENNE: M. Esa PAASIVIRTA

OBSERVERS/ OBSERVATEURS

JAPAN/JAPON: Mr Chusei YAMADA, Special assistant to the Minister for Foreign Affairs, Member of the ILC

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

MEXICO/MEXIQUE: Apologised/Excusé

ISRAEL/ISRAËL: Mme Esther EFRAT-SMILG, Directrice du Département Juridique et des Conventions, Ministère des Affaires Etrangères

FEDERAL REPUBLIC OF YUGOSLAVIA / REPUBLIQUE FEDERALE DE YOUGOSLAVIE: Apologised/Excusé

NATO/OTAN: Mr Baldwin DE VIDTS, Service juridique

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

SECRETARIAT GENERAL

M. Roberto LAMPONI, Director for Legal Co-operation/Directeur de la Coopération Juridique

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

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

INTERPRETES

Mme Irène CHEVALIER

Mme Brigitte HOEFERT

Mme Adrienne CLARK-OTT

Mlle Birgit STROLZ

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 23rd meeting (Strasbourg, 4-5 March 2002) **CAHDI (2002) OJ 2 rev 2**
CAHDI (2002) 8 prov
3. Communication by the Director for Legal Co-operation, Mr. Lamponi **CAHDI (2002) Inf 2**
SdC (2002) Concl

B. ONGOING ACTIVITIES OF THE CAHDI

4. Decisions by the Committee of Ministers concerning the CAHDI and requests for CAHDI's opinion **CDPC (2002) 15**
CAHDI (2002) 9 & corrigendum
CJ-NA GT (2002) 12
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 & addendum CAHDI (2002) 8 prov, paras. 21-30**
 - b. Consideration of reservations and declarations to international Treaties applicable to the fight against terrorism **CAHDI (2002) 11**
6. Pilot Project of the Council of Europe on State practice regarding State immunities **CAHDI (2002) 12**

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

7. 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 **UN doc A/57/22 & CAHDI (2002) 12**
 - b. Exchange of views with Professor B. Simma, Member of the ILC **CAHDI (2002) Inf 3 and 4**
8. Implementation of international instruments protecting the victims of armed conflicts
9. Developments concerning the International Criminal Court
10. Implementation and functioning of the Tribunals established by United Nations Security Council Resolutions 827 (1993) and 955 (1994)
11. Fight against Terrorism - Information about work undertaken in the Council of Europe and other international Fora **GMT (2002) 11** **H (2002) 4**

D. OTHER

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

13. Election of the Chair and Vice-Chair
14. Date, place and agenda of the 25th meeting of the CAHDI
15. Other business

CAHDI (2002) 15

Appendix III

**Opinion of the CAHDI concerning the possibility of partial denunciation of the
Convention on reduction of cases of multiple nationality and military obligations in
cases of multiple nationality (Strasbourg, 6.V.1963)**

At its 23rd meeting (Strasbourg, 3-4 March 2002), the Committee of Legal Advisers on Public International Law (CAHDI) was informed that at its 76th meeting (Strasbourg, 4 to 7 December 2001) following a proposal from the Committee of Experts on Nationality (CJ-NA), the European Committee on Legal Co-operation (CDCJ) requested the opinion of the CAHDI concerning the possibility of a partial denunciation of the 1963 Convention on the Reduction of cases of multiple nationality and military obligations in cases of multiple nationality (ETS 43) (hereinafter: *the Convention*).

The CAHDI was called upon in particular to give its opinion on whether a partial denunciation of the 1963 Convention (Chapter I only) would be possible and if, in the opinion of CAHDI, a partial denunciation is possible, the CJ-NA may consider CAHDI's opinion as a sufficient basis to allow the States concerned to proceed in such a manner.

The CAHDI held an exchange of views regarding this issue at its 23rd and 24th meetings, and at its 24th meeting (Bratislava, 9-10 September 2002) adopted the following

OPINION

The CAHDI understands the reasons which move the CJ-NA to consider the possibility of a partial denunciation of the Convention as an alternative to the drafting of an amending protocol to that convention which would be a more complex and time-consuming procedure.

However, the CAHDI considers that the Convention does not provide a legal basis for such a partial denunciation of the Convention. In such a case, according to the law of treaties as embodied in the Vienna Convention the Law of Treaties (in particular Article 44, para 1) the partial denunciation of the Convention will only be possible if agreed by all the States Parties to the Convention. The CAHDI is of the view that such an agreement is a *condition sine qua non* for a State to proceed to a partial denunciation of the Convention.

Nothing in this opinion shall be considered by the CJ-NA as a sufficient basis to allow the States concerned to proceed to partial denunciation of the Convention.

Appendix IV

Statement by Professor G. Hafner regarding Jurisdictional Immunities of States and their property

Since the last discussion in the CAHDI on this issue a certain development regarding this topic has taken place:

A. As you certainly are aware of, this issue has a long tradition in the UN. Originally dealt with by the ILC, this organ submitted a set of draft articles to the UN in 1992. Subsequently, a discussion took place in the 6th committee for several years, which focused on those items, which were deemed to constitute the salient points where most of the controversies among States existed. These points encompassed the definition of States, of commercial acts, the matter of State owned companies, some service contracts and, finally, the question of enforcement. These consultations and negotiations remained without result so that the GA decided to postpone further work on this item. When it was taken up again, not only the States were again requested to submit their commentaries, but also the ILC was again informally invited to embark on this issue. The ILC established a working group, which submitted a report together with certain suggestions on these five points to the GA. In the GA first a working group embarked on a reading of the various proposals on these points and had already a first exchange of views on the form, which the final instrument should take. Finally, in 2000 it was decided to convene in 2002 an ad hoc committee, which conducted its work from 4 to 15 February of this year. The Ad hoc Committee on Jurisdictional Immunities of States and their Property, established by the General Assembly in its resolution 55/150 of 12 December 2000, was convened in accordance with paragraph 1 of Assembly Resolution 56/78 of 12 December 2001. The Ad hoc Committee met at Headquarters from 4 to 13 February 2002. The Committee made good progress and worked efficiently, and completed its work ahead of the scheduled date of 15 February.

For the first time since ever, this committee undertook a complete review of the whole text of the draft articles presented by the ILC in 1992. This discussion took into account also those proposals and suggestions which had been made during the first round of discussions as well as the second round. It was interesting to notice that the States participating in this committee were prepared to accept most of the existing formulations. Only around seven formulations remained where no agreement could be reached. But even on these issues the views of the States are not that wide apart that a commonly acceptable solution seems to be out of reach.

These still divisive issues are:

1. The definition of commercial activities: several solutions have already been discussed; none has so far achieved general support. One solution which was discussed during the February meeting was the old formulation proposed by the ILC in 1991

In determining whether a contract or transaction is a “commercial transaction” under paragraph 1(c), reference should be made primarily to the nature of the contract or transaction, but its purpose should also be taken into account if, in the practice of the State which is a party to it, that purpose is relevant to determining the non-commercial character of the contract or transaction.

Another was the simple suppression of this definition for the simple reason that different domestic courts used then most different criteria. The third would read:

In determining whether a contract or transaction is a “commercial transaction” under paragraph 1(c), reference should be made primarily to the nature of the contract or transaction; its purpose, i.e. whether or not it relates to the carrying out of a public service mission, should also be taken into account if the parties to the contract or transaction have so agreed or, in the absence of such agreement, the lex fori so provides.

The difference between them is quite clear: the third alternative refers also to the agreement of the parties to the contract or to the *lex fori*; in any case this formulation ensures that the parties to the contract already know before proceedings are started which criteria would be applied. Further, it also defines the purpose by referring to public service missions.

Of course, this reduction of the number of alternatives to only two, resp. three with the suggested one, does not rule out any other imaginative proposal, such as using a negative definition, an enumeration of types of commercial acts or any other solution.

2. Certain clarity is still needed with respect to the issues of State owned companies in article 10. Although this issue seems not to raise particular conceptual difficulties, the views were nevertheless divided concerning the formulation. This is particularly due to the fact that this issue underwent a certain development in the course of these negotiations so that different circumstances became relevant to them. One possibility consists in the original version:

3. The immunity from jurisdiction enjoyed by a State shall not be affected with regard to a proceeding which relates to a commercial transaction engaged in by a State enterprise or other entity established by the State which has an independent legal personality and is capable of:

- (a) Suing or being sued; and*
- (b) Acquiring, owning or possessing and disposing of property, including property which the State has authorized it to operate or manage.*

The other is the simple deletion.

3. The next issue relates to the service contracts of personnel of foreign missions of different kinds. The divergences voiced in this regard relate to the question whether non-diplomatic personnel of a mission should also be exempted from the jurisdiction of the receiving States. The desire to protect the secrecy of a mission was confronted with the wish to give the individual a possibility to seek his or her rights before a local court. Hence the issue is whether all members of a mission, or only those enjoying diplomatic status should be envisaged.
4. The fourth issue is that whether absence of immunity should be granted only to the determination of certain rights of ownership or to all questions relating to ownership and similar matters. Articles 14 and 15.
5. A certain progress has been achieved in matters of the enforcement of judgments; so e.g. the distinction between pre- and post-judgment measures. Nevertheless, one question still remained open, namely which property could be targeted for enforcement. So far the alternatives are divided insofar as in one the relevant property which could be used for enforcement must be connected with the claim and the other does not provide such restriction.

It has been established that the property is specifically in use or intended for use by the State or other than government non-commercial purposes and is in

the territory of the State of the forum [and has a connection with the claim that is the object of the proceeding or with the agency or instrumentally against which the proceeding was directed].

B. This list of divergences gives the impression as if it were very easy to find a final wording. However, I'm not convinced that it will be so easy and still some hard work is needed. One further issue which divided the States was the question of whether this instrument should take the form of a convention, or the form of a non-binding instrument, such as a soft law in the form of a model law, a resolution etc. It could be argued that the non-binding form could facilitate a solution on the substance not only because of the absence of legal stringency but also insofar as it does not need legally precise formulations. However, other views were that such instrument has to be applied by domestic courts which needs binding commitments. The discussion has not yet come to an end on this issue; but sooner or later it must be decided. An interim solution could consist in a non-binding instrument for the time being which after a certain time will be reviewed in order to find out whether it is ripe for a conversion into a treaty text.

Here we stand. The ad hoc committee recommended the GA:

For this reason and in the light of the trends which emerged in the discussions, the Committee urged States to make every effort to resolve the remaining outstanding issues in the interest of arriving at an agreement. For this purpose and in the interest of continuing these deliberations, the Committee also decided to recommend to the Sixth Committee that it should provide the appropriate opportunity to resolve the outstanding issues at the fifty-seventh session of the General Assembly, including the possibility of convening an open-ended working group.

C. What can be expected from the 6th committee of the GA is that for the beginning of the next year such a group is convened with the form mandate to bring the matter to an end.

When the discussions will be started in this group States must be aware that this will be the last opportunity to find a commonly acceptable text. If this opportunity is not used, there will hardly be any further opportunity in the forthcoming years.

Appendix V

Draft specific terms of reference of the CAHDI for 2003-2004

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

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

5. Membership of the Committee:
 - a. The Committee is composed of experts by member States, preferably chosen among the Legal Advisers to the Ministries of Foreign Affairs. Travel and subsistence expenses of one expert per member State (two for the State assuming the Chair of the Committee) are borne by the Council of Europe budget.
 - b. The European Community may send representatives, without the right to vote or to a refund of expenses, to meetings of the Committee.
 - c. The following observers with the Council of Europe may send a representative to meetings without the right to vote or to a refund of expenses:
 - Canada
 - Holy See
 - Japan
 - Mexico
 - United States of America
 - d. The following observers with the Committee may send representatives to meetings of the Committee, without the right to vote or to a refund of expenses:
 - Federal Republic of Yugoslavia¹⁵
 - Australia
 - Israel¹⁶
 - New Zealand
 - The Hague Conference on Private International Law
 - NATO¹⁷
 - The Organisation for Economic Co-operation and Development
 - The United Nations and its specialised agencies¹⁸

¹⁵ See CM/Del/Dec(2000)735, item 2.1a, para. 4 and SG/Inf(2000)48, para. 34. and CM/Del/Dec(2001)742, item 10.1, Appendix 8.

¹⁶ Admitted as observer "for the whole duration of the Committee" by the CAHDI, March 1998. The same is valid for subordinated committees. Decision confirmed by the Committee of Ministers (CM/Del/Dec(99)670, item 10.2 and CM(99)57, para. D15).

¹⁷ See CM/Del/Dec/Act(93)488/29 and CM/Del/Concl(92)480/3.

6. Structures and working methods:

The CAHDI may set up working parties and have recourse to consultant experts.

7. Duration: The present terms of reference expire on 31 December 2004

¹⁸ For specific items at the request of the Committee.

Appendix VI

**Preliminary draft agenda of the 25th meeting of the CAHDI
(Strasbourg, 17-18 March 2003)**

A. INTRODUCTION

1. Opening of the meeting by the Chairman, Ambassador Michel
2. Adoption of the agenda and approval of the report of the 24th meeting
(Bratislava, 9-10 September 2002) **CAHDI (2003) OJ1 & CAHDI (2002) 16 prov**
3. Communication by the Director for Legal Cooperation, Mr. Lamponi **CAHDI (2003) Inf 1**

B. ONGOING ACTIVITIES OF THE CAHDI

4. Decisions by the Committee of Ministers concerning the CAHDI and requests for
CAHDI's opinion **CAHDI (2003) 4**
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 (2003) 2 & CAHDI (2002) 16 prov**
 - b. Consideration of reservations and declarations to international Treaties applicable
to the fight against terrorism **CAHDI (2002) 11 rev**
6. Pilot Project of the Council of Europe on State practice regarding State immunities of
States and that property **CAHDI (2003) 3**

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

7. Exchange of views with Mr Gil-Robles, Commissioner of Human Rights of the Council
of Europe **CAHDI (2003) Inf 2**
8. Exchange of views with Mr Mikulka, Director of the Codification Division at the UN
Secretariat General **CAHDI (2003) Inf 4**
9. Implementation of international instruments protecting the victims of armed conflicts
10. Developments concerning the International Criminal Court **CAHDI (2003) Inf 3**
11. Implementation and functioning of the Tribunals established by United Nations
Security Council Resolutions 827 (1993) and 955 (1994)
12. Fight against Terrorism - Information about work undertaken in the Council of Europe
and other international Fora

D. OTHER

13. Election of the Vice-Chair for 2003 **CAHDI (2002) 15**
14. Date, place and agenda of the 26th meeting of the CAHDI
15. Other business

Appendix VII

**Abridged report of the 24th meeting of the CAHDI
(Bratislava, 9-10 September 2002)**

1. Following the kind invitation of the Slovak authorities, the Committee of Legal Advisers on Public International Law (CAHDI) held its 24th meeting in Bratislava, on 9 and 10 September 2002. The meeting was chaired by Ambassador Peter Tomka (Slovak Republic), Chairman of the CAHDI. The list of participants can be consulted in the draft meeting report (document CAHDI (2002) 16 prov.) and the agenda appears in Appendix I.
2. The CAHDI approved the report of its 23rd meeting (Strasbourg, 10-11 March 2002) and authorised its publication on the CAHDI's web site (www.coe.int/cahdi).
3. The CAHDI was informed by the Director for Legal Co-operation, Mr. Roberto Lamponi, about recent developments concerning the Council of Europe including those relating to the European Treaties Series.
4. Following the request by the European Committee on Legal Co-operation (CDCJ) at the initiative of the Committee of Experts on Nationality (CJ-NA), the CAHDI adopted an opinion concerning the possibility of a partial denunciation of the 1963 Convention on the reduction of cases of multiple nationality and military obligations in cases of multiple nationality (ETS 43) as it appears in Appendix II.
5. The CAHDI was informed of the decisions relevant to the CAHDI taken by the European Committee on Crime Problems (CDPC) and submitted to the Committee of Ministers, in particular the adoption of draft specific terms of reference for the setting up of a Group of Experts for consultation on the International Criminal Court (PC-S-ICC), which is to include a representative of the CAHDI, and the opinion adopted by the CDPC concerning Recommendation 1523 (2001) of the Parliamentary Assembly on domestic slavery.
6. Subject to approval by the Committee of Ministers of the specific terms of reference for the PC-S-ICC, the CAHDI entrusted its Chairman with the task of representing the CAHDI at meetings of that Group of experts. Moreover, the CAHDI took note of the CDPC's opinion on the Recommendation of the Parliamentary Assembly.
7. 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. Moreover, following the decision taken by the CAHDI at its previous meeting, the CAHDI considered reservations to certain international treaties applicable to the fight against terrorism.
8. In the context of the Council of Europe's Pilot Project on State practice regarding Immunities of States, the CAHDI was informed about the contributions provided to date by States and the Chairman invited those delegations not having yet done so to submit their contribution before 31 December 2002. The CAHDI agreed to decide on the follow-up to the Pilot Project at its next meeting in March 2003.
9. The CAHDI held a fruitful exchange of views with Professor Gerhard Hafner, Chairman of the UN Ad Hoc Committee on Jurisdictional Immunities of States and their Property regarding this UN's activity and the ongoing Pilot Project of the Council of Europe which could represent a practical contribution to the UN's work.

10. The CAHDI also held a productive exchange of views with Professor Bruno Simma, member of the UN International Law Commission (ILC), regarding the 54th Session of the ILC (Geneva, 29 April-7 June and 22 July-16 August 2002) on the basis of the summary report prepared by Professor Simma for the attention of the members of the CAHDI.

11. The CAHDI was informed about developments concerning the implementation of international instruments protecting the victims of armed conflicts as well as the functioning of the Tribunals established by UN Security Council Resolutions 927 (1993) and 955 (1994), and the work under way in the fight against terrorism by international organisations.

12. The CAHDI held an exchange of views on developments concerning the International Criminal Court, in particular those relating to the non-surrender bilateral agreements being negotiated and concluded in the light of Article 98 of the Rome Statute.

13. The CAHDI approved its draft specific terms of reference for 2003-2004 as they appear in Appendix III and decided to submit them to the Committee of Ministers for adoption. In addition, the CAHDI elected Ambassador Nicolas Michel (Switzerland) Chair of the CAHDI for 2003 and postponed election of its Vice-Chair to the 25th meeting of the Committee (see item below).

14. The CAHDI decided to hold its 25th meeting in Strasbourg, from 17 to 18 March 2003, agreed to invite Mr Alvaro Gil-Robles, Commissioner of Human Rights of the Council of Europe and Mr Vaclav Mikulka, Director of the Codification Division at the UN Secretariat General as special guests and adopted the preliminary draft agenda in Appendix IV.