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

**31st meeting
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**EXPLANATORY NOTE ON THE DECLARATION SUBMITTED BY THE MINISTER OF
FOREIGN AFFAIRS OF THE REPUBLIC OF POLAND TO THE SECRETARY GENERAL OF
THE COUNCIL OF EUROPE WHEN SIGNING PROTOCOL NO. 14 TO THE CONVENTION FOR
THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, ON 10
NOVEMBER 2004**

(Cf. paras. 35-36 of the draft Meeting Report CAHDI(2005)19 prov.)

Document submitted by the delegation of Poland

Explanatory note on the Declaration submitted by the Minister of Foreign Affairs of the Republic of Poland to the Secretary General of the Council of Europe when signing the Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, on 10 November 2004.

(Cf. paras. 35-36 of the draft Meeting Report CAHDI(2005)19prov.)

The Declaration in question provides as follows:

“The Government of the Republic of Poland declares that it interprets the amendments introduced by Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention, in accordance with the provisions of Article 59, paragraph 3, of the said Convention, following the general principle of non-retroactivity of treaties, contained in Article 28 of the Vienna Convention on the Law of Treaties of 23 May 1969.”

Article 59, paragraph 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms establishes a following rule on the entry into force of the Convention for any State ratifying it after the deposit of the first ten ratifications required for its initial entry into force:¹

“As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.”

Poland signed the Convention on November 26, 1991, ratified it on December 15, 1992 and deposited the document of its ratification on January 19, 1993. Thus, the Convention entered into force for Poland on January 19, 1993.

Declarations on the recognition of competences of the European Commission of Human Rights and of the jurisdiction of the European Court of Human Rights based on then Articles 25 and 46 of the Convention were deposited by Poland on March 19, 1993, to become effective on May 1, 1993. The first of these declarations clearly limited admissible applications brought against Poland to applications relating to the acts, decisions and facts occurring after April 30, 1993.

The general principle of non-retroactivity of treaties, clearly applicable to the Convention for the Protection of Fundamental Human Rights and Freedoms, is expressed in Article 28 of the Vienna Convention on the Law of Treaties of 23 May 1969 as follows:

“Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.”

The Convention for the Protection of Human Rights and Fundamental Freedoms does not provide a clear guidance regarding its application *ratione temporis*, especially as it concerns a starting point of this application. Since neither a different intention appears from the Convention itself, nor is otherwise established, the principle of non-retroactivity - a generally accepted customary rule of the law of treaties as expressed in a quoted above Article 28 of the Vienna Convention - mandates that the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms do not bind Poland in relation to any act or fact which took place or any situation which ceased to exist before May 1, 1993.

The Declaration **handed over by the Minister of Foreign Affairs of Poland to the Secretary General of the Council of Europe at the time of signature of the Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms**, while recalling the principle of non-retroactivity, did not intend to change in any way the existing extent of application

¹ As required by Article 59 paragraph 2.

of the Convention towards Poland. In fact, the Declaration only reiterated the position taken by Poland in 1993 in its initial declarations on the recognition of the competence *ratione temporis* of the Commission and the Court.

Since then, significant changes took place in the structural and substantial system of protection of human rights and fundamental freedoms governed by the European Convention. The entry into force of the Protocol No. 14 will result in creating a new arrangement, potentially causing problems with its application and interpretation. It is the intention of Poland to use this Declaration as an appropriate and useful measure to prevent possible difficulties in this field.

Taking into account, however, the practice of the European Court of Human Rights, as well as that of the European Commission of Human Rights, Poland recognizes a possibility of considering as admissible some of the complaints which originated in the past, before the Convention entered into force for a particular State. That exception may apply only in cases when the norms of internal law, being adopted by a State already bound by the European Convention on Human Rights, are directly relating to these events or to legal or factual situations deriving from them. Otherwise, a general principle of non-retroactivity should unquestionably prevail.