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CAHDI (97) 14

COMMITTEE OF LEGAL ADVISERS
ON PUBLIC INTERNATIONAL LAW

14th meeting

(Strasbourg, 9-10 September 1997)

MEETING REPORT

Secretariat memorandum
prepared by the
Directorate of Legal Affairs

I. Introduction (Items 1-3 of the Agenda)

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 14th meeting on 9 and 10 September 1997 in Strasbourg. The meeting was chaired by the Chairman of the CAHDI, Ambassador G. SZENASI (Hungary) who thanked Professor CAFLISCH (Switzerland) for chairing the 13th meeting.

2. The Chairman stressed the significant importance of the CAHDI as the only pan-European forum where a number of high level representatives of the Ministries of Foreign Affairs can exchange information and discuss items of common interest in the field of public international law.

3. The list of participants forms Appendix I and the agenda was adopted as it appears in Appendix II.

4. The Director of Legal Affairs, Mr Guy DE VEL, provided the Committee with some information concerning significant recent developments. No changes have occurred concerning membership applications with the Council of Europe. Therefore, at present five countries have lodged their membership applications with the Council of Europe, namely: Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina and Georgia. Moreover, these countries enjoy special guest status with the Parliamentary Assembly except Belarus whose special guest status is suspended. In addition, three countries have observer status with the Council of Europe: Canada, Japan and the United States.

5. The main focus of the Organisation is now put on the preparation of the Second Summit of Heads of State and Government of the Council of Europe which will take place in Strasbourg, 10-11 October 1997, at the invitation of President Jacques CHIRAC. A draft declaration of the Summit is currently in preparation which includes among other items: the entry into force of the Additional Protocol No. 11 to the Convention for the protection of human rights and fundamental freedoms, restructuring the machinery established by this Convention (the reform of the present structure and replacement of the existing Commission and Court with a single permanent Court will be in place before end of 1998); the setting up of a European Ombudsman for the protection of human rights; the restructuring of the activities of the Council of Europe in the social field, namely, the social development fund; and a number of concrete actions in the legal field, including the preparation of an additional Protocol concerning cloning to the Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine of 1997 and the Guiding principles for the fight against corruption.

6. Monitoring of the undertakings of certain member States when they became members of the Council of Europe is pursued at the level of the Committee of Ministers and the Parliamentary Assembly. The next issue which will be the object of monitoring by the Committee of Ministers concerns the functioning of the judicial power. The Parliamentary Assembly for its part has recently addressed recommendations to Romania and Estonia concerning compliance with their obligations under Council of Europe's legal instruments.

7. Relations between the Council of Europe and the European Union continue to increase and consolidate. A high level meeting bringing together the Secretary General of the Council of Europe, the President of the European Commission, the President of the European Parliament and the President in turn of the European Union (at present Luxembourg) is scheduled for 15 September 1997 in order to discuss issues of common concern.

8. Concerning the programmes of co-operation with Central and Eastern European countries there are at present 22 such countries who are beneficiaries of the assistance provided in the framework of the Demo-droit (expertise) and Themis (training of legal professions) programmes of the Council of Europe. Moreover, there are a number of joint programmes with the European Union which cover Albania, Russia and Ukraine and which should shortly be extended to Moldova and the Caucasian Republics; as well as the Octopus Project for the fight against corruption and organised crime which currently covers 17 member States of the Council of Europe. The Venice Commission for its part, pursues its work in support and assistance for the introduction and consolidation of constitutional systems in member States of Central and Eastern Europe.

9. Mr DE VEL further refers to a number of conventions of particular significance which have recently been adopted by the Committee of Ministers, namely: the Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine (ETS 164) opened for signature on 4 April 1997 and which to date has been signed by 22 member States; the European Convention on nationality adopted by the Committee of Ministers at its 592nd meeting (14 May 1997) which will be opened for signature on 6 November 1997 in Strasbourg, and the Convention on the Protection of the Environment through Criminal Law.

10. At their 595th meeting held in Strasbourg, 12-13 June 1997, the Committee of Ministers of the Council of Europe examined the report of the 13th meeting of the CAHDI held in Strasbourg, 3-5 March 1997. They took note of the CAHDI points of view and adopted the Recommendation No. R (97) 10 on debts of diplomatic missions, permanent missions and diplomatic missions with "double accreditation", as well as those of their members, and Recommendation No. R (97) 11 on the amended model plan for the classification of documents concerning State practice in the field of public international law approved by the CAHDI at its 13th meeting.

11. In addition, at the CAHDI's request, the Secretary General of the Council of Europe, Mr Daniel TARSCHYS, forwarded these recommendations to the Secretary General of the United Nations, Mr Kofi ANNAN, as part of the Council of Europe's contribution to the United Nations decade of international law.

12. Finally, Mr DE VEL informed members of the CAHDI that, following a recent restructuring of the Directorate of Legal Affairs Secretariat, Secretariat responsibilities for the CAHDI have been transferred from Division I (Private Law) to Division II (Public and International Law). He thanked Mrs KILLERBY, Head of the Division for Private Law and Mrs REQUENA, former Secretary of the CAHDI, for their valuable contribution to the CAHDI's work and welcomed Mr KOZHEMYAKOV, Head of the Division for Public and International Law and Mr BENITEZ, Secretary of the CAHDI, in their new assignment.

13. Mr DE VEL highlighted the particular importance of the CAHDI and expressed his desire for and hopes that the activities of the Council of Europe in the field of public international law should further develop.

14. The Chairman joined Mr DE VEL in his thanks to Mrs KILLERBY and Mrs REQUENA, and expressed his best wishes for the new team.

A. GENERAL QUESTIONS OF INTERNATIONAL LAW

II. State Succession (item 4 of the agenda)

15. The delegate of Spain informed members of the CAHDI that the Academy of International Law in The Hague will shortly be producing a publication on this subject.

16. The Chairman, observing that none of the delegations had submitted any comments on this item, concluded that it would remain on the agenda of the CAHDI's meetings so as to enable the Committee to take stock of any relevant developments.

III. The Role of the Depositaries of Treaties: Computerised Data on Treaties and Access via Internet (item 5 of the agenda)

a. Council of Europe

17. The Secretariat introduced a note concerning the Council of Europe's example on computerised data on treaties and access via Internet. Any user can have access to the Council of Europe Web site (<http://www.coe.fr>) to obtain information in English and in French on European Conventions and other legal texts prepared in the framework of the Council of Europe including the actual texts, reservations and declarations and the state of signatures and ratifications.

18. Further to that, the Secretariat introduced a document on recent developments concerning Council of Europe treaties. This document includes changes in the State of signatures and ratifications concerning Council of Europe treaties since the last meeting of the CAHDI. The Secretariat informed members of the Committee that it intended to regularly present members of the CAHDI with such a document as it can provide the Committee with comprehensive information on the state of Council of Europe treaties.

19. Members of the CAHDI welcomed the preparation of such a useful document and in particular the delegate of Croatia suggested adding, for each of the treaties appearing therein, the resulting total number of ratifications and the number of ratifications needed for entry into force of the treaty in question.

b. Other depositaries

20. The Chairman referred to the documents submitted by Greece and Italy concerning multilateral treaties for which they act as depositaries. To date, the CAHDI has taken into account the information about multilateral treaties for which the following countries or international organisations act as depositaries: Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Norway, Portugal, Romania, Federation of Russia, Slovenia, Sweden, Switzerland and United Kingdom as well as the OECD.

21. The delegate of the Slovak Republic informed members of the CAHDI that his Government had recently edited, for the first time, a list of multilateral treaties to which it is a party and stressed that the CAHDI's work in this field has been of great assistance. Referring to the document submitted by the Italian delegation, he pointed out that this document should refer to the Slovak Republic instead of Czechoslovakia.

22. In this respect, the delegate of Germany informed members of the CAHDI that its Government publishes every year a list of multilateral treaties for which Germany acts as depositary. In these lists former States such as the Soviet Union or the Federative Republic of

Yugoslavia are included even though marked with an asterisk (for the record) in view of possible State succession declarations.

IV. Implementation of International Instruments Protecting the Victims of Armed Conflicts (item 6 of the agenda)

23. The delegate of Switzerland informed members of the CAHDI about the state of preparation of the first of the regular meetings on the implementation of Recommendations adopted by the International Conference of the Red Cross concerning the implementation of international instruments protecting the victims of armed conflicts. At the meeting on 17 February 1997, between the Swiss authorities and members of the "Group of 24" the Swiss authorities and the International Committee of the Red Cross (ICRC) proposed four subjects to be included in the agenda of this first regular meeting. Two subjects were chosen: firstly, the respect and security of the humanitarian organisations' staff; and secondly, armed conflicts linked to the disintegration of State structures.

24. In October participants will be receiving the basic documents on both subjects and a report of the International Committee of the Red Cross (ICRC) together with a draft declaration. The Committee to prepare this first regular meeting will meet on 27-28 November 1997. The first regular meeting will take place on 19-23 January 1998 in the International Conference Centre in Geneva and delegations will be provided with practical information for the Conference. Moreover, a number of observers will be invited.

V. The Law and Practice relating to Reservations to Treaties: Objection, Inadmissibility and *Erga Omnes* Effect (item 7 of the agenda)

25. The Chairman reminded the CAHDI that its current work on this subject had originated from an initiative by Ambassador CEDE (document entitled "Considerations on an enhanced harmonisation of the measures taken by the member States of the Council of Europe regarding the inadmissibility of reservations" (CAHDI (97) 7)) which takes into account the work currently carried out by the International Law Commission (ILC). He also recalled that the Secretariat had provided a document on Council of Europe practice relating to reservations to treaties (CAHDI (96) 10).

26. The delegate of Finland stressed the importance of following up the work currently carried out by the ILC. He informed members of the CAHDI that the report prepared by Mr PELLET, Rapporteur of the ILC for this matter, was discussed at their last meeting (49th session, Geneva, 12 May - 18 July 1997). At that meeting, members of the ILC agreed that objections to reservations are a matter for states to decide. In his view, the ILC has nevertheless not taken into account some practical aspects concerning reservations, and that is where the interest of setting up a working party of the CAHDI to deal with this issue lies. The ILC should be kept informed of the activities of this working party, and the CAHDI could, in this way, exert a positive influence on this very difficult subject.

27. The delegate of Germany introduced a report prepared by the German member of the ILC, Professor SIMMA. This report concerns the 49th session of the ILC and concludes that, on the matter of admissibility of reservations to international treaties, the principle of state consent governs all treaties, including human rights treaties. In this respect, there is a certain divergence between the views of the ILC (the treaty is based on consent) and the "Strasbourg approach" to international treaties (human rights perspective) in that the normal consequences of an unacceptable reservation is that the State concerned remains bound by the Convention in the whole, without the benefit of the respective reservations.

28. The delegates of Romania and Belgium also supported the setting up of a working party on reservations and suggested that the paper prepared by the delegate of Austria, Ambassador CEDE, should be taken up from the particular perspective of the Council of Europe.

29. The delegate of the United Kingdom stated that the Vienna Convention on the Law of Treaties is not satisfactory nor clear on the subject of reservations. For that reason, it is important that the ILC looks into the matter. He also expressed concern about some reservations which are made by some States concerning in particular human rights treaties. However, he did not consider it realistic to think that any kind of harmonisation of state views in this field is possible, given that reactions to reservations include a significant political component and different traditions exist in each member State. In his view what really is important is that all States have the opportunity to object to any given reservation. It is important that Council of Europe States should inform the ILC about their practice on reservations in order to influence the ILC's discussions in this field.

30. The delegate of Denmark stressed that much had happened since the CAHDI first started discussing reservations. It can be said that some kind of harmonisation has taken place already, which concerns State "awareness". Since the CAHDI undertook the study of reservations, a number of those unacceptable kind of reservations had been made, and members of the Council of Europe have reacted to some extent in a similar way, following some sort of non-formal common approach. There is a common understanding about objecting to some particular kind of reservations. This has resulted in an increasing number of objections. For these reasons, the delegate of Denmark expressed some disappointment about the ILC's work. He underlined a number of specific problems with Mr PELLET's preliminary draft conclusions: a) the distinction between regional and universal practices is somehow artificial; b) the conclusions drawn by the Rapporteur concerning normative multilateral treaties are too light and require further consideration; c) the final conclusion that the principle of unilateral State behaviour is confirmed is not in line with the practice of States, or at least some of them, which in the face of some kind of reservations (which "cannot be made" because they are prohibited by international law) to multilateral treaties tend to react in a joint way. Therefore the delegate of Denmark endorsed the setting up of a working party to deal with this issue in the framework of the CAHDI as a possible way of showing this common approach when facing the same kind of reservations and influencing the work of the ILC.

31. The delegate of Sweden agreed with the delegate of Denmark that the ILC preliminary draft conclusions did not shed any light on this problem, and therefore he supported the setting up of a working party highlighting the importance of reacting to this increasing practice.

32. Similar views were expressed by the delegates of Italy and France which, while acknowledging that bringing closer the views of States in this field would take time, agreed that it was important that it took place if the European States wanted to exert any influence on the development of international law. Moreover, this would be in conformity with the Council of Europe's role.

33. Along these lines, the delegate of Germany stated that, even within the European Union, States diverge when confronted with reservations. He would however support the study of a common approach.

34. The Chairman concluded that a majority of delegations were in favour of setting up an informal working party and proposed that Ambassador CEDE be entrusted with the task of

co-ordinating the activities of this working party. The Committee agreed to this proposal. Ambassador CEDE thanked members of the CAHDI for their trust and explained how he would envisage the work of the Group of Specialists. In his view, the Group should meet immediately before the CAHDI meeting. The Group will be called upon to take a closer look at the preliminary conclusions of Mr PELLET and to exchange views in order to make a contribution to the ILC study.

35. The CAHDI adopted draft specific terms of reference for a Group of Specialists on Reservations to International Treaties (DI-S-RIT) which form appendix III to this report.

36. The delegate of Poland informed members of the CAHDI that the Government of Poland had recently withdrawn reservations concerning: a) the compulsory jurisdiction of the International Code of Justice, b) arbitration in relation to 26 international treaties, c) the Convention on the Elimination of all Forms of Discrimination against Women of 1979 and d) the International Convention on the elimination of All Forms of Racial Discrimination of 1965. Therefore, at present Poland does not have any such kind of reservation in place.

B. UNITED NATIONS

VI. Draft Statute of a Permanent International Criminal Court (PICC) (item 8 of the agenda)

37. The delegate of the Netherlands informed members of the Committee of recent developments concerning this matter in particular the work carried out by the Preparatory Committee during the first two weeks of August. A number of issues were discussed: a) acceptance of the PICC's jurisdiction by recognition of inherent jurisdiction or by declaration, b) the role of the Security Council and its relations with the PICC, in particular whether the Security Council should be entitled to refer any matters to the PICC, see the problem of complementarity. Moreover, significant progress has been made concerning articles on procedural questions and work is pursued in a very constructive atmosphere.

38. The delegate of Italy referred to the preparation of the diplomatic Conference to discuss the draft Statute of the PICC. This Conference will take place in Rome, in the building of the UN Food and Agriculture Organisation (FAO), in summer of 1998 and will last for five to seven weeks. The Conference includes a plenary, a general committee with two working parties and a drafting committee. A meeting at Ministerial level is envisaged at the opening of the Conference. The issue of the non-governmental organisations' participation is still under examination.

39. The delegate of Austria raised the issue of the rules of procedure for the International Conference leading to the setting up of the PICC. The Sixth Committee will be called upon to deal with the issue of the PICC during its October session and the General Assembly will take a decision on the duration of the International Conference and will submit its decisions to the Fifth Committee. Nevertheless, the question remains as to the rules of procedure, including decision making, which traditionally are decided on by the International Conference itself and not by the General Assembly.

40. The delegate of the Netherlands clarified this matter by informing the Committee that the resolution referred to by the delegate of Austria has a purely administrative nature and concerns practical arrangements for the Conference.

VII. Implementation and Functioning of the Tribunals established by UN Security Council Resolutions 827 (1993) and 955 (1994) (item 9 of the agenda)

41. The delegates of Hungary and Italy informed members of the CAHDI that their Governments are closely co-operating with the tribunal set up by the UN Security Council Resolution 827 (1993), hereafter referred to as the Tribunal for the former Yugoslavia. Moreover, at the request of the Italian delegation, the Secretariat distributed the "Agreement between the Government of the Italian Republic and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for the Former Yugoslavia".

42. The delegate of Croatia informed members of the CAHDI about recent developments in this field. A person had given an interview to a Croatian newspaper where he depicted himself as responsible for the killing of 86 Serbian nationals. Moreover, he admitted personally killing 72 of them. This happened in the period between 1991 and 1992. The day following the publication of the interview in the newspaper the person in question was arrested together with some other persons he had incriminated and an investigation is under way. The International Tribunal of Justice has asked the Croatian authorities about the authenticity of the statements made. For the moment, several high officials at the time of these events are commenting the statements of this person, including his former Commander.

43. The delegate of Germany informed members of the CAHDI that his Government is also co-operating with the Tribunal for the former Yugoslavia. In this connection, he informed members of the CAHDI that in relation to some cases, governments have been asked by the Tribunal to submit "amicus curia" briefs. These briefs are a particular feature of the American criminal procedural system. The issue is whether they are relevant. There is at present, a second round for the submission of these briefs and the Government of Germany will not support this exercise inasmuch as it can influence the Tribunal.

44. In this respect, the delegate of France stated that the functioning of a Tribunal for the former Yugoslavia would present some practical and concrete problems for the setting up of international criminal courts. A first issue concerns the role of State decision in regard to the resolutions of the Tribunal. There is a general obligation to comply with the decisions of a tribunal set up by the United Nations. This obligation results from the United Nations resolutions. However, compliance is difficult and raises the problem of complementarity. Moreover, an action before a national criminal court of former Yugoslavia would not exclude actions before the international Tribunal. Secondly, there are significant problems of procedure: a) prosecutors are granted very wide powers which are not in line with the continental law systems of many countries, b) injunctions *sous peine* represent the power to ask for co-operation on the threat of sanctions, however, the application to State institutions poses serious problems, and in this respect c) power of the international tribunal in relation to States; the question here is whether the Security Council's powers have been devolved to the Tribunal which could exert them in a specific case. This is however new and if tribunals could go so far in relation to the United Nations' member States, further clarification would be necessary in relation to the powers that have been transferred and the power of the Tribunal to interpret them. This is particularly relevant in view of the possible setting up of the PICC which should be part of a system integrating the various legal traditions. The PICC will enjoy very wide powers affecting the sovereignty of States. This is an altogether new element and State consensus is essential if the convention for the setting up of the PICC is to be approved universally.

45. The delegate of the Netherlands stressed that there is growing experience on combining criminal systems into one single international body, such as the two tribunals set up by the UN resolutions. These two examples and the experience resulting therefrom are being used

for the preparatory work for the setting up of the PICC. On the issue of *amicus curia*, these are also unknown to the Dutch legal system, however, there may be an acceptable way to "influence" the tribunal precisely because this is an altogether new area.

46. The delegate of Finland provided members of the CAHDI with some factual information concerning their co-operation with the tribunals set up by the UN resolutions and, at his request, the Secretariat distributed to participants the "Agreement between the International Criminal Tribunal for the Former Yugoslavia and the Government of Finland on the Enforcement of Sentences of the International Tribunal". At present, in Finland 22 persons have been taken into custody. There are problems of courtroom space which oblige the tribunal to take case-sessions in turn. It is expected that the situation will improve in the near future. Moreover, there are significant difficulties in collecting evidence and in bringing witnesses to the Bar.

47. The delegate of Norway informed members of the Committee that its Government is about to sign a memorandum of understanding with the Tribunal of the former Yugoslavia on the issue of witnesses. There will be no general commitment on re-location of witnesses, but cases will be decided on an individual basis. There is also a willingness to receive convicted criminals. The Government of Norway is considering the request for submission of *amicus curia* briefs with an open mind and under certain circumstances they could be acceptable.

VIII. The Work of the General Assembly of the United Nations and Activities and Working Methods of the Sixth Committee and the International Law Commission (ILC) (item 10 of the agenda)

a. Working Methods

48. The delegate of Austria informed members of the CAHDI that a Seminar will take place at the United Nations Headquarters, 28 October 1997, shortly before the report about the activities and the working methods of the ILC will be discussed by the General Assembly. This Seminar will be devoted to clarifying and simplifying working methods within the framework of the United Nations activities. The Austrian delegation will focus at this session of the General Assembly, on the reform of the structure of debates and proceedings of the Sixth Committee. In the past there was an effort to reform the ILC working methods. Now, efforts should be directed to the improvement of the Sixth Committee's working methods. The Austrian delegation will be proposing a new working method which includes an oral presentation, of a more political nature and shorter extent, and a written statement of a more technical nature and more comprehensive. The Austrian delegation also proposed that, in addition to plenary meetings, informal meetings and/or contacts should be held with a view to allowing a more fruitful exchange among members of the Sixth Committee. A final aspect to be tackled concerns the interaction between the ILC and the Sixth Committee's members. It would appear that the ILC would be recovering its central role in the international codification process.

49. The delegates of Spain and Finland supported the Austrian proposal. On the contrary, the delegate of Greece wondered whether possibilities for dialogue would not be reduced since it is in fact more difficult to react to political statements than to technical ones.

50. The delegate of Germany also agreed that there is a need for a more flexible dialogue to take place in the framework of the Sixth Committee while acknowledging the risks of bringing too many members of the ILC to meetings of the Sixth Committee, where they could monopolise the debates. He nevertheless concluded that some progress had taken place concerning the working methods of the Sixth Committee.

51. The delegate of France suggested that if the situation is to be improved, the role of the ILC and the Sixth Committee might have to be reaffirmed; the ILC is made up of experts, but it is at the service of the States which take the final decision in the framework of the Sixth Committee. In this respect, the practice of asking the ILC experts to come to the help of the sixth Commission when the debate is confusing might have to be changed. A final problem concerns the topics which are chosen for examination and debate.

52. In this connection, the delegate of the United Kingdom referred to the Vienna Conference on the succession of States where the ILC was not sufficiently informed about the Governments' views which resulted in many States voting against the draft prepared by the ILC. In his view, this showed that the success of any Conference requires a necessary degree of consensus among States and this is a matter which concerns the Sixth Committee. The CAHDI for its part is an informal gathering where States can discuss common issues and be better informed about each other's position, after which, it is for States to decide on their own position.

b. Links between the ILC and the CAHDI

53. In the framework of this item, the Chairman referred to the possible links between the ILC and the CAHDI. In this respect, the Chairman asked Ms. REQUENA to report to members of the CAHDI on her recent participation in the 49th meeting of the ILC.

54. Ms. REQUENA informed members of the CAHDI about this matter and concluded that a majority of the ILC members would be in favour of establishing some form of institutional co-operation with the CAHDI.

55. In this connection, the delegate of Sweden proposed that the Chairman of the ILC be invited to participate in the next meeting of the CAHDI. In his view, the CAHDI would benefit from the participation of ILC's experts concerning specific issues. This would be facilitated by the fact that the CAHDI represents a forum to informally discuss issues of common concern.

56. The delegates of Germany and Romania supported the Swedish proposal and further suggested that the topics which the ILC will be dealing with will be systematically included in the CAHDI agenda and that the Chairman and experts of the ILC be invited to participate in CAHDI meetings on an individual and specific basis. In turn, the ILC should be kept informed about the activities carried out by the CAHDI.

57. The Chairman concluded that there was a general agreement on the need to strengthen the links between the CAHDI and the ILC, and suggested that the method to achieve such a result would be to invite ILC experts on an individual and specific basis. The Chairman was therefore authorised by the CAHDI to issue such invitations.

58. The delegate of Italy raised the issue of reporting on the meetings of the ILC. Until recently, this task was ensured by Mr EIRIKSSON who was member of both the CAHDI and the ILC. In this respect, the delegate of Germany recalled that Mr EIRIKSSON, before leaving the CAHDI, suggested that someone could continue with that work and tradition for it was so useful. He further referred to Professor SIMMA's report on the 49th session of the International Law Commission and conveyed Professor SIMMA's willingness to draw up such a report on a regular basis.

59. The members of the CAHDI stressed the very valuable contribution of Mr EIRIKSSON to the CAHDI. His reports provided members of the CAHDI with very comprehensive information and insights about ILC meetings. The Committee further expressed its satisfaction that Professor SIMMA could take on this task.

c. Activities of the ILC

60. Further to that, the delegate of Germany presented Professor SIMMA's report. The 49th session of the ILC dealt with two topics: nationality in relation to the succession of States and reservations to treaties. Concerning the first, the ILC adopted in first reading a draft declaration with commentaries. Concerning the latter, the ILC adopted a document in the form of preliminary conclusions. For its part, the Working Groups of the ILC dealt with four topics: International Liability for Injurious Consequences Arising Out of Acts Not Prohibited by International Law, State Responsibility, Unilateral Acts of States and Diplomatic Protection. Finally, a Planning Group deliberated on the programme, procedures and working methods of the ILC and its documentation.

61. The delegate of Norway asked the delegate of Germany to convey his gratitude to Professor SIMMA for his report which is in line with the reports prepared by Mr EIRIKSSON. He suggested that in the future, Professor SIMMA's reports be distributed in advance so that members of the CAHDI will have the necessary insight on the prior ILC meeting before meeting in the CAHDI. Concerning the ILC conclusions on reservations to treaties, while acknowledging that this matter is covered by the Vienna Convention on International Treaties of 1969, the delegate of Norway stressed that the relevant provisions of this Convention (articles 19-23) do not provide sufficient guidance on the consequences of objections to particular reservations, namely those to treaties with a human rights content. In this regard he informed members of the CAHDI that his Government adopted the "Strasbourg approach" not only for European, but also for universal human rights standards. Therefore, the Government of Norway systematically objected to reservations which are in any respect contrary to the very nature of the treaty in terms of human rights standards, eg. reservations of a religious nature.

62. The delegate of Finland joined the delegate of Norway in his gratitude to Professor SIMMA. In his view, the ILC worked very efficiently and rapidly on the matter of State succession, where the ILC goes beyond State practice and therefore beyond pure codification into development of international law. He nevertheless found a problem concerning residents in territories of States which become independent. This matter is dealt with in a satisfactory way in Article 21 of the European Convention on Nationality of 1997 of the Council of Europe. A similar provision is not included in the ILC's draft which represents a significant shortcoming in this text. He further suggested that this issue should be raised in the next session of the sixth Commission. On the issue of reservations, the delegate of Finland expressed his wishes that the ILC would pay particular attention to current State practice because to date, in his view, the ILC conclusions were too theoretical.

63. The delegate of Sweden thanked Professor SIMMA for his work, and referring to the issue of reservations, stressed, along the lines of the Finnish delegate, that too much focus is put on theories by the ILC while the "Strasbourg approach", which is currently followed by a number of countries, is not even considered. In this respect, while the ILC conclusions suggest a conduct for States to follow when facing objections, in practice this is rarely done.

64. The delegate of France agreed with the above and stressed the importance of explaining the content of the "Strasbourg approach" in the field of reservations and supported pursuance of this approach because it represents a higher standard which is specifically European.

Thus, the delegate of France suggested that the Council of Europe member States let their views be known and regarding item 7 of the ILC conclusions which indicate a course of action, Council of Europe member States could appear united with a single common approach in the framework of the United Nations. On the matter of State responsibilities, the delegate of France stressed that the ILC draft was a difficult text and States would therefore be called on to indicate their views for guidance of the ILC's work. The ILC has a new composition which makes it a more active body. States should therefore let their priorities be known because academic subjects may not coincide with States' priorities.

65. Concerning the ILC draft on state responsibility, the delegate of Denmark informed members of the CAHDI that his Government intended to submit comments regarding this draft, possibly in common agreement with all the Scandinavian countries.

IX. The United Nations Decade of Public International Law, from 1990 to 1999 (item 11 of the agenda)

66. Concerning the transfer to another body of the documents on the pilot project on the collection and dissemination of documentation on State practice relating to State succession and issues of recognition, the Committee was informed by the German and Dutch delegates about the willingness of the Max Planck Institute and the Asser Institute respectively in keeping the documentation provided by States. Further consultations were required concerning possible publications.

67. The delegate of the United Kingdom stressed the importance of producing concrete results concerning this very interesting activity carried out by the CAHDI as soon as possible.

68. With the Committee's agreement, the chairman asked the Secretariat to undertake the necessary contacts with the various scientific and academic institutions in order to produce an analytical report prepared on the basis of the information gathered, and to publish the material provided by member States¹.

69. Moreover, it should be noted that this activity constitutes the remaining part of the Council of Europe's contribution to the United Nations Decade of Public International Law.

X. Centennial of the First International Peace Conference and Closure of the United Nations Decade of International Law (item 12 of the agenda)

70. The delegates of the Netherlands and the Russian Federation provided members of the CAHDI with some information on the preparation of the activities for the Centennial of the first International Peace Conference and the closing of the United Nations Decade of International Law.

71. The three topics of discussion at the first International Peace Conference will again be the subject of discussion at an International Commemorative Conference in the Netherlands in 1999. Discussions will be based on six reports prepared by experts. Further to that, a commemorative meeting will be held in St. Petersburg in December 1999. In addition to that, the 27th session of the International Red Cross will be held in Geneva in 1999. Both delegates stressed that the world has changed considerably since the Decade of International Law began in

1. To date the Secretariat has received contributions from the following States: Austria, Belgium, Finland, France, Czech Republic, Denmark, Germany, Italy, Netherlands, Norway, Sweden, Slovak Republic, Turkey, United Kingdom. Moreover, the Secretariat has established preliminary contacts with the Max Planck and the Asser Institute in order to explore a possible co-operation agreement for the preparation of a publication on this subject.

1989. These centennial conferences will be an occasion to agree on the challenges that the international community will be facing in the next century. Moreover, they will be complemented by a number of regional discussions to take place in regional international fora (eg. Council of Europe, organisation of American States, etc..)

C. EUROPE

XII. Recent Developments in International Law in Europe (item 13 of the Agenda)

a. The Council of Europe and the countries of Central and Eastern Europe

72. At the request of the Chairman, the Secretariat introduced the Council of Europe's annual report on co-operation and assistance programmes with countries of Central and Eastern Europe which form part of activities for assistance with the development and consolidation of democratic security. In this report most activities come under the two long standing programmes, Demosthenes for member States and Demosthenes-bis for candidate countries which cover practically all fields of activity of the Council of Europe. Some activities are carried out in the framework of other programmes, e.g.: Themis Programme, for the training of legal professionals, and LODE Programme for the development of local democracy and the training of local authorities' elected representatives and officials. Other activities are organised within the framework of the joint programmes of the European Commission and the Council of Europe (for Albania, Estonia, Latvia, Lithuania, Russia and Ukraine) and the OCTOPUS programme for the fight against organised crime.

73. The Council of Europe's contribution to the joint programme for Russia and Ukraine forms part of the *New Initiative* of the Secretary General which, moreover, includes supplementary programmes of co-operation with the countries of the Commonwealth of independent States. Finally, activities which are organised according to the Erdut and Dayton Agreements in Bosnia Herzegovina and Eastern Slavonia are organised under the package "urgent measures".

74. The Chairman referred to the state of signatures and ratifications of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the Machinery established by the Treaty. The delegate of Italy informed members of the Committee that a law on the ratification of this Protocol is ready and has been sent to the official journal for publication, after which it will be deposited with the Secretary General of the Council of Europe.

b. The OSCE

75. The delegate of Switzerland informed members of the CAHDI that her Government had recently approved the Seat Agreement concerning the Court on Conciliation and Arbitration within the OSCE. The remaining issue concerns the date of signature of this agreement which will be signed by Mr BANDITER, President of the Court, on behalf of the States Parties to the Convention on Conciliation and Arbitration within the OSCE, and by a representative of Switzerland.

76. The delegate of Germany stressed that the Court is fully operational, the German and French Governments want to ask OSCE member States to verify whether there are cases which could be submitted to the conciliation court. The delegate recalled that this court was a joint initiative by the President of the French Parliamentary Assembly and the German Government.

XIII. Election of the Chair and Vice-Chair of the CAHDI for one year as from the 15th meeting of the CAHDI (item 14 of the Agenda)

77. The delegate of Germany proposed that the current Chairman and Vice-Chairman be re-elected for one year with the understanding that, as had become practice in the CAHDI, the Vice-Chairman will, at the end of the new term, be appointed Chair and the CAHDI will be called upon to elect a new Vice-Chair.

78. In accordance with the provisions of article 17 of Appendix 2 to Resolution (76) 3 of the Committee of Ministers of the Council of Europe, the CAHDI re-elected Ambassador SZENASI and Ambassador CAFLISH, respectively Chariman and Vice-Chairman of the CAHDI for a one-year term to expire end 1998.

79. The Chairman thanked members of the CAHDI for their trust and reiterated his willingness to contribute, to the best of his capabilities, to the work of the CAHDI.

XIV. Date, Place and Agenda of the 15th Meeting of the CAHDI (item 15 of the Agenda)

80. The CAHDI decided to hold its 15th meeting in Strasbourg, 3-4 March 1998 and adopted the draft agenda that forms appendix IV.

XV. Other Business (item 16 of the Agenda)

81. The delegate of Austria informed members of the CAHDI that the Austrian Government will be presenting an initiative for combating smuggling of immigrants at the next meeting of the General Assembly of the United Nations. It will be proposed that in 1999 the U.N. Commission on Crime Prevention based in Vienna, will be called upon to deal with this issue.

82. The delegate of Italy informed members of the CAHDI that his Government is currently preparing a draft international agreement to combat illegal migration by sea. He stressed that this is not a criminal law agreement but an agreement drafted from the perspective of the law of the sea.

APPENDIX I

LIST OF PARTICIPANTS

Please contact the Secretariat : cahdi@coe.int

APPENDIX II

AGENDA

14th meeting

Strasbourg, 9-10 September 1997

1. Opening of the meeting

2. Adoption of the agenda

Working document:

- Report of the 13th meeting of CAHDI
Strasbourg, 4-5 March 1997

CAHDI (97) 5,
Appendix III

3. Statement by the Secretariat

- Adoption by the Committee of Ministers of the recommendations of the Committee of Ministers to member States submitted by the CAHDI

Documents for information

- Recommendation No R (97) 10 of the Committee of Ministers to member States *on debts of diplomatic missions, permanent missions, and diplomatic missions with "double accreditation" as well as those of their members*

R (97) 10

- Recommendation No R (97) 11 of the Committee of Ministers to member States *on the amended model plan for the classification of documents concerning state practice in the field of public international law*

R (97) 11

General questions of international law

4. State succession

Working document:

- Report of the 13th meeting of the CAHDI

CAHDI (97) 5, para. 4

5. The role of the depositaries of treaties: computerised data on treaties and access via Internet

a. Council of Europe

b. Other depositaries

Working documents:

- Report of the 13th meeting of the CAHDI CAHDI (97) 5, paras. 11-21
- Multilateral treaties deposited with the Government of Greece CAHDI (97) 6
- State of signature and ratification of multilateral treaties deposited with Italy CAHDI (97) 4

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

Working document:

- Report of the 13th meeting of the CAHDI CAHDI (97) 5, paras. 22-27

7. The law and practice relating to reservations to treaties: objection, inadmissibility and *erga omnes* effect

Working documents:

- Considerations on an enhanced harmonisation of the measures taken by the member States of the Council of Europe regarding the inadmissibility of reservations CAHDI (97) 7
- Issues concerning reservations (Meeting in Vienna, 6 June 1995) - Summary and suggestions by the delegation of Austria CAHDI (95) 24
- Council of Europe practice relating to reservations to treaties - Secretariat memorandum prepared by the Directorate of Legal Affairs CAHDI (96) 10
- Report of the 13th meeting of the CAHDI CAHDI (97) 5, paras. 28-35

United Nations

8. Draft Statute of a Permanent International Criminal Court (PICC)

Working document:

- Report of the 13th meeting of the CAHDI CAHDI (97) 5 paras. 40-50

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

Working document:

- Report of the 13th meeting of the CAHDI CAHDI (97) 5,
paras. 51-52

10. The work of the General Assembly of the United Nations: activities and working methods of the Sixth Commission and the International Law Commission (ILC)

Working document:

- Report of the 13th meeting of the CAHDI CAHDI (97) 5,
paras. 53-62

11. The United Nations Decade of International Law from 1990 to 1999

- Transfer to another body of the documents concerning the pilot project on the collection and dissemination of documentation on State practice relating to State succession and issues of recognition

Working document:

- Report of the 13th meeting of the CAHDI CAHDI (97) 5
paras. 68-74

12. Centennial of the first International Peace Conference and closure of the United Nations Decade of International Law

Europe

13. Recent developments in international law in Europe

a. The Council of Europe

- i. Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the Machinery established by the Treaty

Working document

- State of Signatures and Ratifications of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the Machinery established by the Treaty CAHDI (97) 8 bil

- ii. The Council of Europe and the countries of Central and Eastern Europe

Working documents

- Report of the 13th meeting of the CAHDI CAHDI (97) 5, par. 75

- Assistance to the development and consolidation of democratic security - Information and Documentation Centres on the Council of Europe - 1996 Annual Report
SG/INF (97) 1

b. The OSCE

Working document:

- Report of the 13th meeting of the CAHDI CAHDI (97) 5, paras. 76-77

14. Election of the Chair and of the Vice-Chair of the CAHDI for one year

Working document:

CAHDI (97) 9

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

16. Other business

APPENDIX III

DRAFT SPECIFIC TERMS OF REFERENCE

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

1. Name of committee: GROUP OF SPECIALISTS ON RESERVATIONS TO INTERNATIONAL TREATIES (DI-S-RIT)

2. Type of committee: Committee of Experts

3. Source of terms of reference: Ad hoc Committee of Legal Advisers on Public International Law (CAHDI)

4. Terms of reference:

In the framework of the examination of questions relating to reservations to international treaties, in particular from the human rights perspective, with a view to contributing to the work undertaken by the International Law Commission and bringing the views of member States in this field closer, the Group of specialists is called upon to:

a. examine and propose ways and means and, possibly, guidelines to assist member States in developing their practice regarding their response to reservations and interpretative declarations actually or potentially inadmissible under international law and

b. consider the possible role of the CAHDI as an observatory of reservations to multilateral treaties of significant importance to the international community raising issues as to their admissibility under international law, as well as of the reactions by Council of Europe member States Parties to these instruments.

5. Membership of the committee:

a. All member States may appoint specialists in the Group.

b. The Council of Europe bears the travel and subsistence expenses of 7 specialists, one from each of the following countries: Austria, Croatia, Finland, Netherlands, Romania, Russia and Spain.

c. Representatives of the following organisations and countries will be invited to take part as observers in the meetings of the group:

- Commission of the European Community
- The Hague Conference on Private International Law
- Organisation for Economic Co-operation and Development
- North Atlantic Treaty Organisation
- Armenia

- Australia
- Azerbaijan
- Canada
- Holy See
- Japan
- New Zealand
- United States of America.

6. Working structures and methods:

a.The Group is co-ordinated by the Representative of Austria, Ambassador Franz CEDE.

b.In carrying out its terms of reference, the group of specialists may have recourse to consultants.

7. Duration: These terms of reference expire on 31 December 1998.

APPENDIX IV

PRELIMINARY-DRAFT AGENDA

**15th meeting of the CAHDI
Strasbourg, 3-4 March 1998**

Introduction

1. Opening of the meeting
2. Adoption of the agenda
3. Statement by the Secretariat

A. General questions of international law

4. State succession
5. The role of the depositaries of treaties
 - a. Council of Europe
 - b. Other depositaries
6. Implementation of international instruments protecting the victims of armed conflicts
7. The law and practice relating to reservations to international treaties and interpretative declarations

B. United Nations

8. Draft Statute of a Permanent International Criminal Court (PICC)
9. Implementation and functioning of the Tribunals established by UN Security Council Resolutions 827 (1993) and 955 (1994)
10. The work of the General Assembly of the United Nations and working methods of the Sixth Committee and the International Law Commission (ILC)
11. The United Nations Decade of Public International Law from 1990 to 1999:
 - a. Pilot project on the collection and dissemination of documentation on State practice relating to State succession and issues of recognition
 - b. Centennial of the first International Peace Conference and closure of the United Nations Decade of International Law

C. Europe

12.Recent developments in international law in Europe

a.The Council of Europe and the countries of Central and Eastern Europe

b.The OSCE

D. Other

14.Date, place and agenda of the 16th meeting of the CAHDI

15.Other business