

Strasbourg, 12 March 2002

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

23rd meeting, Strasbourg, 4-5 March 2002

List of items discussed and decisions taken

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 23rd meeting in Strasbourg, on 5 and 6 March 2002. The meeting was chaired by Ambassador Tomka (Slovak Republic), Chairman of the CAHDI. The list of participants can be consulted in the meeting report (document CAHDI (2002) 8 prov) and the agenda appears in Appendix I.
2. The CAHDI was informed by the Director General of Legal Affairs, Mr De Vel, about recent developments concerning the Council of Europe.
3. The CAHDI was informed of the decisions taken by the Committee of Ministers concerning the Committee and requests for CAHDI's opinion. In this connection, the CAHDI adopted an opinion about Parliamentary Assembly Recommendation No. 1523 (2001) on domestic slavery and decided to transmit it to the Committee of Ministers in pursuance of the specific terms of reference received (see Appendix II). The CAHDI also held an exchange of views regarding the possibility of partial renunciation of the Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality (European Treaty Series No. 043) and asked the Secretariat to prepare a preliminary draft opinion on the basis of the views expressed by delegations and to circulate it to delegations by end of May 2002.
4. In the context of its operation as *European Observatory of Reservations to International Treaties*, the CAHDI considered a list of outstanding declarations and reservations to international treaties and several delegations advised the Committee about the follow-up they envisaged to give to certain of the reservations and declarations considered.
5. The CAHDI was informed about the implementation of the Pilot-Project on State practice regarding State immunities and delegates not having yet done so were kindly invited to appoint a national coordinator as soon as possible.
6. The CAHDI pursued considerations of aspects connected with immunities of heads of State and of Government as well as the ministers for foreign affairs, on the basis of the documents submitted by the Swiss and Swedish delegations bearing in mind the International Court of Justice's judgement of 14 February 2002 concerning the case Democratic Republic of Congo v. Belgium.
7. The CAHDI held a fruitful exchange of views with Mrs Burdeau, Secretary General of

the Hague Academy of International Law regarding the activities of the Academy.

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

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

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

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

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

APPENDIX I**AGENDA****A. INTRODUCTION**

1. Opening of the meeting by the Chairman, Ambassador Peter Tomka
2. Adoption of the agenda and approval of the report of the 22nd meeting (Strasbourg, 11-12 September 2001)
3. Communication by the Director general of Legal Affairs, Mr. De Vel

B. ONGOING ACTIVITIES OF THE CAHDI

4. Decisions by the Committee of Ministers concerning the CAHDI and requests for CAHDI's opinion
5. The law and practice relating to reservations and interpretative declarations concerning international treaties : European Observatory of Reservations to international Treaties
6. Pilot Project of the Council of Europe on State practice regarding State immunities
7. Immunities of Heads of State and government and of certain categories of top civil servants

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

8. Exchange of views with the Secretary General of the Hague Academy of International Law, Mrs Geneviève Burdeau
9. Implementation of international instruments protecting the victims of armed conflicts
10. Developments concerning the International Criminal Court
11. Implementation and functioning of the Tribunals established by United Nations Security Council Resolutions 827 (1993) and 955 (1994)
12. Law of the Sea: Protection of Sub aquatic Cultural Heritage
13. Fight against Terrorism - Information about work undertaken in the Council of Europe and other international Fora

D. OTHER

14. Request by the Federal Republic of Yugoslavia for observer status
15. Date, place and agenda of the 24th meeting of the CAHDI
16. Other business

APPENDIX II**OPINION OF THE CAHDI ON PARLIAMENTARY ASSEMBLY
RECOMMENDATION 1523 (2001) ON DOMESTIC SLAVERY**

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 22nd and 23rd meetings in Strasbourg respectively on 11-12 September 2001 and on 4-5 March 2002. The agenda of both meetings included an item on "Decisions of the Committee of Ministers concerning the CAHDI".
2. In the framework of this item, pursuant to the Council of Ministers' decision at their 762nd meeting (Strasbourg, 5 September 2001), the CAHDI examined Parliamentary Assembly Recommendation 1523 (2001) on Domestic Slavery and, in accordance with its terms of reference and its role in the Council of Europe intergovernmental structure, concentrated on what it understood to be the public international law issues connected with the Recommendation, and adopted the following

OPINION

3. The CAHDI welcomes the adoption by the Parliamentary Assembly of Recommendation 1523 (2001) which acknowledges the seriousness of the issue of domestic slavery and the need to deal with it appropriately in order to prevent this phenomenon and to protect the victims' rights.
4. In certain circumstances, States may have a positive obligation in relation to such matters by virtue of Articles 3 and 4 of the European Convention on Human Rights. The CAHDI points out that the European Court of Human Rights has recently held that domestic legislation providing for State immunity in respect of disputes between a diplomatic mission and the members of staff of the mission does not infringe Article 6(1).
5. With regard to *paragraphs 8 and 10, iv* concerning the possible amendment of the Vienna Convention on Diplomatic Relations of 1961 (VC), since the VC is a universal multilateral treaty, member States of the Council of Europe cannot undertake any amendments thereof.
6. The CAHDI stresses that the VC is a key element for the stability of diplomatic relations. Any question of amendment thereto is therefore a sensitive matter and would have to be carefully considered.
7. Excluding immunity for *all* offences committed by diplomats in the sphere of their private life as suggested by the Parliamentary Assembly would amount in practice to reduce the scope of immunities granted under international law to functional immunity and thus put at stake the legitimate interest of the international community in facilitating international relations between States.

8. In any event, the CAHDI notes that the VC does not grant immunity to international civil servants although they do enjoy some degree of immunity by virtue of other instruments, e.g. headquarters agreements, specific conventions on privileges and immunities, etc.
9. The CAHDI recognises that diplomatic immunities may represent an obstacle for the prosecution of the authors of offences connected with domestic slavery. However, such immunities do not exempt the persons enjoying them from the duty to respect the laws and regulations of the receiving State and could not be considered incompatible with the provisions of the ECHR.
10. Moreover, the CAHDI notes that under the VC the receiving State may request the sending State to waive the immunity of a diplomat or any other member of the staff of the mission to allow them to be prosecuted where appropriate and, if such waiver is not granted, may declare the individual concerned *persona non grata* or not acceptable and expel him or her.
11. Further, the CAHDI wishes to recall that the VC does not exclude the authorities of receiving State from exerting other methods of control over diplomats and other staff of missions in their territory and dealing with abuses in a way which is fully compatible with the VC. Such methods could include, for instance, devising procedures for the exchange of information between Ministries of Foreign Affairs regarding mistreatment of domestic employees and abuses of immunities and privileges in relation thereto so that, where necessary, the diplomat concerned could be declared *persona non grata* as provided by the VC, or a residence permit for the domestic servant could be withheld (e.g. on applying for entry).
12. The CAHDI would like to stress furthermore that according to the VC, the immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State and, therefore, States should be encouraged to exercise such jurisdiction to prosecute offences connected with domestic slavery.
13. In view of the above, the CAHDI concludes that in order to tackle the problem of domestic slavery, amending the VC is not a realistic solution nor is it advisable on policy grounds, and that the focus should be put on making use of the possibilities that the VC and international co-operation mechanisms offer.

APPENDIX III**PRELIMINARY DRAFT 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)
3. Communication by the Director general of Legal Affairs, Mr. De Vel

B. ONGOING ACTIVITIES OF THE CAHDI

4. Decisions by the Committee of Ministers concerning the CAHDI and requests for CAHDI's opinion
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
 - b. Consideration of reservations and declarations to international Treaties applicable to the fight against terrorism
6. Pilot Project of the Council of Europe on State practice regarding State immunities

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 Ad Hoc Committee of the United Nations on State Immunities and their Property
 - b. Exchange of views with Professor B. Simma, Member of the ILC
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

D. OTHER

12. Draft specific terms of reference of the CAHDI for 2003 – 2004
13. Election of the Chair and Vice-Chair
14. Date, place and agenda of the 25th meeting of the CAHDI
15. Other business