COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW
(CAHDI)

21st meeting
Strasbourg, 6 and 7 March 2001

MEETING REPORT

Secretariat memorandum
prepared by the Directorate General of Legal Affairs

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A. INTRODUCTION

1. Opening of the meeting

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 21st meeting in Strasbourg on 6 and 7 March 2001. The meeting was chaired by Ambassador Tomka (Slovak Republic), Chairman of the CAHDI. The list of participants is set out in Appendix I.

2. The Chair welcomed the legal advisers attending the CAHDI meetings for the first time, and in particular Mr Guillaume, President of the International Court of Justice.

2. Adoption of the agenda

3. The Chair asked for comments on the draft agenda.

4. The Turkish and Ukrainian delegations observed that it was a very full agenda which included a number of very important questions. They suggested that future agendas should be less full.

5. The Ukrainian delegation also suggested that an order of business be drawn up for each meeting of the committee.

6. The agenda, as set out in Appendix II, was unanimously adopted. The committee also approved the draft report of the previous meeting (document CAHDI (2000) 21).

3. Communication by the Secretariat

7. Mr Guy De Vel, Director General of Legal Affairs, addressed the committee. The text of his communication is reproduced in Appendix III.

8. At the request of the Finnish delegation, he informed the committee of progress in the preparations for a convention on cyber crime. He stressed the importance of the instrument currently in preparation which had led the European Union to suspend its own work on the matter. He also stressed the importance of the contribution from Council of Europe non-member states to this work.

B. ONGOING ACTIVITIES OF THE CAHDI

4. Decisions by the Committee of Ministers concerning the CAHDI

9. The Secretariat referred to decisions concerning the CAHDI taken by the Committee of Ministers at the 742nd meeting of the Ministers' Deputies (Strasbourg, 15 February 2001, see document CAHDI (2001) Inf. 1), including the adoption of the CAHDI's specific terms of reference for 2001-2002 and the fact that they had taken note of the CAHDI opinion on Parliamentary Assembly Recommendation 1458 (2000) *towards a uniform interpretation of Council of Europe conventions: creation of a general judicial authority*.

10. The committee was also informed that an opinion on the same recommendation had been requested of the Venice Commission and that the latter had adopted its opinion at its 45th plenary meeting (Venice, 15 and 16 December 2000).

11. Lastly, the CAHDI was informed of the follow-up which the Committee of Ministers had decided, at its 735th meeting (Strasbourg, 20 December 2000), to give to Resolution (2000) 2 on the Council of Europe's information strategy, the new policy for which had come into effect on 1 January 2001, and the report by the Committee of Ministers' Rapporteur on Information Policy (RAP-INF(2000)3 revised, 8, 9, 10, 11 and 14).

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

12. 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 (2001) 2).

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

14. The committee first of all considered the outstanding declarations and reservations relating to treaties concluded outside the Council of Europe.

15. With regard to Saudi Arabia's reservation of 7 September 2000 to the Convention on the Elimination of All Forms of Discrimination Against Women (New York, 18 December 1979)[1], the Italian, French, Netherlands, Swedish, Finnish and Norwegian delegations said that their respective governments would be raising an objection to this reservation as it was impossible to determine the extent of Saudi Arabia's commitment in the light of its reservation.

16. In this connection, the Irish delegate said that the first paragraph of the reservation was not specific and gave prevalence to Islamic law. Her government would therefore be objecting. However, the second paragraph was specific in that it referred to Article 9.2 and Article 29.1. Her government would, nevertheless, be objecting to the reservation concerning Article 9, whereas the reservation to Article 29 was authorised by the treaty.

17. The German delegation concurred with the Irish position and said that the German government had already objected to this reservation.

18. The Israeli observer called on the members of the committee to show more understanding for this type of reservation.

19. With reference to the previous statement, the Finnish delegation said that it was a reservation which was not sufficiently precise and that the aims of the treaty in question could not be achieved by countries which had no will to comply with it. What was at issue was not obliging a state to become party to a given treaty but ensuring that a state which had decided to become a party honoured a minimum number of commitments deriving from the treaty in question.

20. With regard to the Kiribati reservation or declaration of 7 September 2000 concerning the 1997 Kyoto Protocol to the United Nations Framework Convention on Climate Change (Kyoto, 11 December 1997)[2], the Netherlands delegation said that it was currently studying whether this was an interpretive declaration or a reservation.

21. The Swedish delegation said that its government would not be objecting.

22. The French delegation detected some ambiguity in the text and said that in the event of any contradiction between the interpretative declaration and the framework convention,

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[1] *In case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention.*

The Kingdom does not consider itself bound by paragraph 2 of article 9 of the Convention and paragraph 1 of article 29 of the Convention.

[2] *Declaration:*

The Government of the Republic of Kiribati declares its understanding that accession to the Kyoto Protocol shall in no way constitute a renunciation of any rights under international law concerning State responsibility for the adverse effects of the climate change and that no provision in the Protocol can be interpreted as derogating from principles of general international law.

the latter would be considered as *lex specialis* and the declaration in question as a reservation.

23. With regard to Botswana's reservation of 8 September 2000 to the International Covenant on Civil and Political Rights (New York, 16 December 1966)[3], the Swedish delegation said that it had contacted the authorities in that country to obtain further information given that the reservation referred to domestic legislation. As it had not received a satisfactory reply, the Swedish government was intending to object to this reservation.

24. With regard to Peru's reservation of 14 September 2000 to the Convention on the Law of Treaties (Vienna, 23 May 1969)[4], the Swedish delegation said that it was currently studying the text in question and that the references to the Constitution required close consideration.

25. In this connection, the Chair stressed that reservations which refer to domestic legislation, including the Constitution, could give rise to problems in that even a country's constitution could be subject to subsequent amendments.

26. The Netherlands delegation noted that there was a general problem with references in reservations to domestic legislation, as such legislation was contrary to the principle of transparency which was essential in international relations. Accordingly, the Netherlands government was always tempted to object to reservations of this type even though they acknowledged that in some cases, such an objection could be perceived as reflecting a degree of hostility towards the country in question.

27. With regard to San Marino's reservation or declaration of 10 October concerning the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances (Vienna, 20 December 1988)[5], the Swedish delegation said that an approach had been made to the San Marino authorities to obtain clarification on the text in question. A preliminary examination of the text had led them to consider it as a reservation which, moreover, referred to domestic legislation. As it had not received a satisfactory reply, the Swedish government was considering the possibility of raising an objection.

28. With regard to Costa Rica's reservation of 17 October 2000 to the Convention on the safety of United Nations and associated personnel (New York, 9 December 1994)[6], the

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[3] *Reservations made upon signature and confirmed upon ratification:*

The Government of the Republic of Botswana considers itself bound by:

a) Article 7 of the Covenant to the extent that "torture, cruel, inhuman or degrading treatment" means torture inhuman or degrading punishment or other treatment prohibited by Section 7 of the Constitution of the Republic of Botswana.

b) Article 12 paragraph 3 of the Covenant to the extent that the provisions are compatible with Section 14 of the Constitution of the Republic of Botswana relating to the imposition of restrictions reasonably required in certain exceptional instances.

[4] *Reservation:*

For the Government of Peru, the application of articles 11, 12 and 25 of the Convention must be understood in accordance with, and subject to, the process of treaty signature, approval, ratification, accession and entry into force stipulated by its constitutional provisions.

[5] *Declaration:*

The Republic of San Marino declares that any confiscation activity under article 5 is subject to the fact that the crime is considered as such also by the San Marino legal system.

Moreover, it declares that the establishment of "joint teams" and "liaison officers", under article 9, item 1, letter c) and d), as well as "controlled delivery" under article 11 of the [...] Convention, are not provided for by the San Marino legal system.

[6] *Reservation:*

The Government of the Republic enters a reservation to article 2, paragraph 2, of the Convention, to the effect that limiting the scope of application of the Convention is contrary to the pacifist thinking of our country and, accordingly, that, in the event of conflicts with the application of the Convention, Costa Rica will, where necessary, give precedence to humanitarian law.

Netherlands delegation pointed out that this was not a reservation strictly speaking, but a declaration.

29. With regard to Algeria's reservation of 7 November 2000 to the Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents, (New York, 14 December 1973)[7], the Netherlands delegation said that this reservation should be acceptable in the light of the convention.

30. With regard to Pakistan's reservation or declaration of 12 September 2000 in respect of the Convention on the physical protection of nuclear material (Vienna, 26 October 1979)[8], the German delegation expressed its doubts as to the admissibility of this reservation on the grounds that it excluded the domestic use of nuclear material from the scope of the convention. Accordingly, the German government was considering objecting to this reservation, although it had not yet taken a final decision.

31. The Swedish and UK delegations shared the concern of the German delegation. Sweden intended to bring the matter before the competent body of the International Atomic Energy Agency as it was essential for there to be transparency in this field.

32. With regard to Guatemala's reservation of 28 November 2000 to the Convention relating to the status of stateless persons (New York, 28 September 1954)[9], the Swedish delegation commented that with this new reservation Guatemala had extended the scope of its original reservation made upon signature of the convention and wondered whether such a procedure was acceptable. However, the Swedish government did not intend to object.

33. In this connection, the French delegation said that this was an interpretative declaration rather than a reservation. As to whether it was possible to amend a reservation made upon signature of a treaty, this should not pose any real problem in that the reservation had no effect until the treaty was ratified.

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[7] *Reservation:*

The Government of the People's Democratic Republic of Algeria does not consider itself bound by the provisions of article 13, paragraph 1, of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.

The Government of the People's Democratic Republic of Algeria states that in each individual case, a dispute may be submitted to arbitration or referred to the International Court of Justice only with the consent of all parties to the dispute.

[8] *1. The Government of the Islamic Republic of Pakistan does not consider itself bound by paragraph 2 of Article 2, as it regards the question of domestic use, storage and transport of nuclear material beyond the scope of the said Convention.*

2. The Government of the Islamic Republic of Pakistan does not consider itself bound by either of the dispute settlement procedures provided for in paragraph 2 of Article 17 of the said Convention.

[9] *Upon signature:*

Reservation:

Guatemala signs the present Convention with the reservation that the expression "treatment as favourable as possible", referred to in those of its provisions to which reservations may be made, must not be understood to include the special treatment which has been or may be granted to the nationals of, Spain, the Latin American countries in general, and in particular to the countries which constituted the United Provinces of Central America and now form the Organization of Central American States.

Upon ratification:

Confirmation of the reservation made upon signature, as modified:

Reservation:

Guatemala ratifies the present Convention with the reservation that the expression "treatment as favourable as possible", referred to in those of its provisions to which reservations may be made, shall not be understood to include the special treatment which Guatemala has granted or may grant to nationals of Spain, the Latin American countries in general, and in particular the countries which constitute the Central American Integration System (SICA), which are those countries which constituted the United Provinces of Central America, plus the Republic of Panama.

34. Lastly, the Netherlands delegation pointed out that the convention in question did not authorise reservations to certain articles, but the latter did not include those referring to "treatment as favourable as possible". The reservation should, therefore, be admissible.

35. With regard to Belize's reservation or declaration of 30 November 2000 concerning the Convention on Consular Relations (Vienna, 24 April 1963)[10], the Finnish delegation commented that the effect of the reservation in question was to change the provision of the treaty in question, which was unacceptable, regardless of whether or not it was contrary to the aims of the convention.

36. With regard to the communication of the Republic of Moldova dated 19 September 2000 concerning the Protocol on prohibitions or restrictions on the use of mines, booby-traps and other devices as amended on 3 May 1996 (Protocol II as amended on 3 May 1996) annexed to the Convention on prohibitions or restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects (Geneva, 3 May 1996)[11], the Swedish delegation expressed its doubts as to the method used and that to achieve the aim in question, the treaty should be denounced.

37. The Moldova delegation took note of these remarks and said that it would try to provide information to the committee at its next meeting.

38. The Chair thanked the Moldova delegation for its efforts to clarify the procedure adopted which did not appear to reflect international practice relative to expression of consent by states to be bound by a treaty.

39. The CAHDI then considered the outstanding reservations and declarations concerning Council of Europe conventions.

40. With regard to Ukraine's reservation of 10 July 2000 to the Convention for the protection of human rights and fundamental freedoms (ETS No. 005) (4 November 1950)[12],

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[10] Declaration:

The Government of Belize will interpret the exemption accorded to members of a consular post by paragraph 3 of Article 44 from liability to give evidence concerning matters connected with the exercise of their functions as relating only to acts in respect of which consular officers and consular employees enjoy immunity from the jurisdiction of the judicial or administrative authorities of the receiving State in accordance with the provisions of Article 43 of the Convention. The Government of Belize further declares that it will interpret Chapter II of the Convention as applying to all career consular employees, including those employed at a consular post headed by an honorary consular officer.

[11] Consent to be bound (reissued):

This communication, depositary notification C.N.864.2000.TREATIES-10 of 19 September 2000 relating to the consent to be bound by the Republic of Moldova to the Protocol, is hereby withdrawn.

Therefore, this communication should be considered null and void.

[12] Letter from the Director of Legal Co-operation to the member States of the Council of Europe on 27 July 2000:

I have the honour to refer to the reservation made by Ukraine with respect to Article 5, paragraph 3, of the Convention for the Protection of Human Rights and Fundamental Freedoms which was notified to the member States on 21 November 1997 (letter JJ3898C):

"The provisions of Article 5, paragraph 3, of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 shall apply in the part that does not contradict paragraphs 50, 51, 52 and 53 of the Interim Disciplinary Statute of the Armed Forces of Ukraine approved by the Decree No 431 of the President of Ukraine dated 7 October 1993, concerning the imposition of arrest as a disciplinary sanction."

The notification also contained the text of paragraphs 50, 51, 52 and 53 of the Interim Disciplinary Statute of the Armed Forces as they had been communicated by Ukraine.

By a letter dated 3 July 2000 and registered in the Secretariat on 10 July 2000, the Permanent Representative of Ukraine to the Council of Europe, Mr Olexandre KUPCHYSHYN, informed the Secretary General that the text communicated in 1997 by the Ukrainian authorities did not correspond to the provisions of Articles 50, 51, 52 and 53 of the Interim Disciplinary Statute of the Armed Forces, but to the provisions of Articles 50, 51, 52 and 53 of the Interim Statute of Internal Service of the Armed Forces of Ukraine.

The Permanent Representative of Ukraine also informed the Secretary General that the Law "On the Disciplinary

the Ukrainian delegation explained that this was a change to a previous reservation resulting from very rapid developments in domestic legislation which meant that the references to legislation in the original reservation had become obsolete.

41. With regard to Georgia's reservation or declaration of 20 June concerning the European Convention for the prevention of torture and inhuman or degrading treatment or punishment (ETS No. 126) (26 November 1987)[13], the French delegation said that further information would be required.

42. In this connection, the Chair pointed out that at the previous meeting (see meeting report, document CAHDI (2000) 21, para. 57), the Committee had agreed that it would be useful to engage in a dialogue with the Georgian authorities on this matter.

43. The Georgian delegation pointed out that the government could not guarantee the rule of law in areas not under its control and that the declaration had been made in response to this fact.

44. The Ukrainian delegation supported Georgia's position.

45. With regard to Andorra's declaration of 4 November 2000 concerning the European Social Charter (revised) (ETS No. 163), (3 May 1996)[14], the Andorran delegation explained that this declaration had been made in response to the difficulty encountered in bringing domestic legislation in the social and labour law field into line with the Charter and was based on a similar declaration made by Austria. The declaration had been worded in a spirit of transparency.

46. Similarly, with regard to Bulgaria's declaration of 7 June 2000 to the same instrument[15], the Bulgarian delegation said that its authorities were exerting considerable effort to solve the problems in the social sector and that major reforms had been initiated.

Statute of the Armed Forces of Ukraine" of 24 March 1999 had introduced amendments to Article 3 of the Law of Ukraine "On the Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, First Protocol and Protocols Nos. 2, 4 and 11 thereto" which is now worded as follows:

"The provisions of Article 5, paragraph 3, of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 shall apply in the part that does not contradict Articles 48, 49, 50 and 51 of the Disciplinary Statute of the Armed Forces of Ukraine concerning the imposition of arrest as a disciplinary sanction".

The amendments entered into force on 24 March 1999. The Permanent Representative of Ukraine emphasised that the changes were purely formal and consisted mainly in a renumbering of certain provisions of the Interim Disciplinary Statute (Articles 50, 51, 52 and 53 became Articles 48, 49, 50 and 51).

The texts of both the original Articles 50, 51, 52 and 53 of the Interim Disciplinary Statute of the Armed Forces of Ukraine and Articles 48, 49, 50 and 51 of the Disciplinary Statute of the Armed Forces of Ukraine are attached, respectively, as Appendices I and II. (appendices not reproduced, as they appear in document CAHDI (2001) 2).

[13] *Georgia declares that it will not be responsible for violations of the provisions of the Convention and the safety of the members of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment on the territories of Abkhazia and the Tskhinval region until the territorial integrity of Georgia is restored and full and effective control over these territories is exercised by the legitimate authorities.*

[14] *The Government of the Principality of Andorra wishes this act of signature to be interpreted as a sign in favour of European solidarity. With the signature of the European Social Charter (revised), the Principality of Andorra joins the majority of member States of the Council of Europe which have recognised the Charter's principles. Nevertheless, the particular structure of the Andorran society and economy commit the Principality of Andorra to protect the essential elements of its specificity, and in this view, some articles of the European Social Charter (revised) seem to present difficulties for an immediate ratification.*

[15] *In accordance with Part III, Article A, paragraph 1, of the Charter, the Republic of Bulgaria declares the following :*

1. The Republic of Bulgaria considers Part I of this Charter as a declaration of the aims which it will pursue by all appropriate means both national and international in character, as stated in the introductory paragraph of that Part.

2. The Republic of Bulgaria considers itself bound by the following Articles of Part II of the Charter:

Article 1

Article 2, paragraphs 2, 4-7

Article 3

Article 4, paragraphs 2-5

47. With regard to Italy's reservation of 6 November 2000 to the Convention for the protection of the environment through criminal law (ETS No. 172), 4 November 1998[16], the Italian delegation explained that this reservation had been made as the notion of criminal corporate liability was unknown in the Italian legal system.

6. Expression of consent by states to be bound by a treaty

48. The CAHDI considered a revised version of the report on "Expression of consent by states to be bound by a treaty", comprising the contributions submitted by states and an analytical report drawn up by the British Institute of International and Comparative Law based on the contributions from delegations (see document CAHDI (2001) 3).

49. The Secretariat said that further to contacts with Kluwer Law International, an agreement had been reached to publish this work. It also noted that as a result of enlargement of the Council of Europe, a number of changes would have to be made to the text to take account of the accession by Armenia and Azerbaijan.

50. Several delegations wished to make a number of factual changes.

51. The CAHDI agreed that the report should be published. It could then be presented to the Secretary General of the Council of Europe at the committee's next meeting. It then decided that factual amendments should be forwarded by 9 March 2001.

7. Discussion on future activities

52. The Chair raised the question of new activities which CAHDI could initiate and proposed a new activity aimed at gathering details of state practices concerning state immunities, and in particular immunity from legal proceedings. This could be dealt with by means of a questionnaire and could focus on recent jurisdictional practice.

53. In this connection, the Swiss delegation referred to the possibility of also looking at immunities of heads of state and government, although it was in two minds about the urgency of addressing the issue of immunities and the need for it. It therefore suggested more thought be given to whether this was a suitable theme for the CAHDI to explore and what the time frame should be, and to resume consideration of the matter at the next meeting. The Swiss delegation also offered to draft a preliminary document on the subject.

54. The Austrian delegation supported the proposed activity to look at state immunities and said that the emphasis should be placed on practical questions rather than codification.

55. The Croatian, United Kingdom, German and French delegations also felt this was an activity worth pursuing, provided that the emphasis was placed on recent practice.

Articles 5, 6, 7, 8, 11
Article 12, paragraphs 1 and 3
Article 13, paragraphs 1-3
Articles 14, 16
Article 17, paragraph 2
Article 18, paragraph 4,
Articles 20, 21, 22, 24, 25, 26
Article 27, paragraphs 2 and 3
Articles 28 and 29.

3. In accordance with Part IV, Article D, paragraph 2, of the Charter, the Republic of Bulgaria accepts the supervision of its obligations under this Charter following the procedure provided in the Additional Protocol to the European Social Charter providing for a system of collective complaints of 9 November 1995.

[16] *Italy reserves itself the right not to apply Article 9, paragraph 1, in the part providing for the adoption of measures to impose criminal sanctions and measures on legal persons on whose behalf an offence referred to in Articles 2 or 3 has been committed by their organs or by members thereof or by another representative.*

56. The Chair therefore concluded that the CAHDI was agreed on launching a new activity in the field of state immunities and instructed the Secretariat to prepare a document containing proposals to be considered at the committee's next meeting.

57. The CAHDI also agreed to hold a preliminary exchange of views at its next meeting, drawing on the document to be prepared by the Swiss delegation on the immunities enjoyed by certain categories of senior public officials, acting on behalf of the state, and in particular heads of state and government and foreign ministers, in order to identify the key questions and put forward proposals for follow-up action.

58. Other delegations made proposals for future CAHDI activities. These included the relationship between binding legal instruments and non-binding instruments (soft law), given the increase in the number of the latter, the question of immunities and privileges, peaceful settlement of disputes and the final clauses of treaties.

59. With reference to the committee's next meeting, the United Kingdom delegation suggested there be a detailed discussion on state responsibility, a subject which had been on the ILC's agenda for several years now, and proposed inviting the ILC's special rapporteur on this subject.

60. The CAHDI agreed to this proposal and instructed the Secretariat to send an invitation to Professor James Crawford, the ILC's special rapporteur on state responsibility.

61. The Finnish delegation proposed that Professor Bruno Simma, a member of the ILC, be invited to the committee's next meeting.

62. The Italian delegation proposed that the Chairs of the ILC and the Venice Commission be invited to hold an exchange of views with members of the CAHDI. It also proposed that the President and the Secretary-General of the Curatorium of the Hague Academy of International Law be invited to take part in an exchange of views with members of the committee on the topics to be covered by the Academy's future courses. Several delegations supported this proposal.

63. The Chair thanked delegations for these proposals and said that they could be considered for future meetings.

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

8. Communication and exchange of views with the President of the International Court of Justice, Mr Guillaume

64. The Chair welcomed Mr Guillaume and thanked him for agreeing to attend the meeting. He stressed the importance of the International Court of Justice (ICJ) and what it represented for international law and the peaceful settlement of disputes.

65. Mr Guillaume thanked the Chair for the invitation and said how honoured he was to attend. He gave an outline of recent developments concerning the ICJ and commented that the court was currently very busy. Twenty-four cases were being dealt with at present, some of which related to classic cases such as the treatment of nationals or territorial disputes, which were sensitive matters for which the ICJ could provide a valuable service to such states. Other outstanding cases had greater political implications which had sometimes led to the intervention of other bodies of the UN, for example the Lockerbie case (Libya against the US and the UK), the dispute between the Federal Republic of Yugoslavia and the NATO member countries on Kosovo, the dispute between Iran and the US concerning operations carried out during the first Gulf War, and the cases concerning genocide between the Federal Republic of Yugoslavia and, respectively, Bosnia-Herzegovina and Croatia. Mr Guillaume gave a résumé of the cases pending and noted that there had been an increase in the number of cases from Africa.

66. He then referred to the problems which the ICJ would be faced with in the future.

These were of a budgetary and procedural nature. The ICJ had a small budget and it would be unable to continue to work satisfactorily if the budget was not increased, particularly in the light of the large number of pending cases. He added that, in view of the shortage of resources, the ICJ ran the risk of having to choose which cases it would deal with. With regard to procedural problems, the ICJ would have to make every effort, in conjunction with parties, to simplify procedures, for example by limiting the number of memorials which could be submitted and the volume of case-files, by improving the method adopted for deliberations, etc. Lastly, he said that it would be useful for the ICJ to have auxiliary judges as was the case in the Court of Justice of the European Communities, which had proved a very effective approach.

67. Mr Guillaume then spoke of the problem of the large number of international courts. There were of course advantages to this, but there was also the danger of *forum-shopping* which was hardly conducive to legal advancement, and of inconsistent case-law in a system without a hierarchy of courts. In this connection, he said that it would be helpful to have a mechanism for reference of a preliminary question to the ICJ similar to the one provided for in Community law under former Article 177 of the Treaty on the European Union. This would offset some of the disadvantages mentioned above and could be brought about by means of a consultative opinion. From the point of view of the statute, the system could be set up by a resolution of the UN General Assembly.

68. The Chair thanked Mr Guillaume for his presentation on the ICJ's pending cases and on the future challenges facing the Court.

69. The Finnish delegation spoke of the danger of fragmentation in the interpretation of international law and the possible setting up of a system of references on preliminary questions to the ICJ, and referred to a proposal from Bahrain in the Preparatory Commission for the International Criminal Court whereby in the agreement between the ICC and the UN provision should be made for the ICC to request directly from the ICJ opinions on the interpretation of the Rome Statute of the ICC; hitherto this could only be done through the General Assembly. This proposal had received a favourable response within the Preparatory Commission and corresponded to what Mr Guillaume had been saying.

70. The French delegation noted that in the EU context, the possibility of making references on preliminary questions was provided for in a specific treaty and a similar possibility for the ICJ should also be provided for in a treaty or an international agreement, which seemed unlikely, or in the statute of other bodies, or by other means such as a resolution by the UN General Assembly. The outstanding issue concerned reconciling the optional nature of the mechanism and the need to have a formal, treaty-based foundation.

71. Mr Guillaume agreed with the Finnish delegation that the Bahraini proposal was worth pursuing; it did not raise any particular statutory problems and there were also precedents. He considered that such a possibility would be welcome. In response to the comments of the French delegation with regard to a legal basis for submitting references on preliminary questions, he noted that for the UN organs and the specialised agencies, this could be found in Article 96.2 of the Charter of the United Nations; the General Assembly could therefore grant general authorisation to these organs and institutions. Article 96.1 was the relevant provision for organs and institutions other than those in the UN system and the General Assembly was able to request opinions of the ICJ not only of its own motion but also at the request of other parties and, accordingly, the General Assembly could put this possibility into effect. Moreover, in the rigour of the law consultative opinions would not be obligatory.

72. The Swiss delegation referred to the question of immunities, particularly of heads of state and government and pointed out that this was a sensitive issue for legal advisers in the light of new rules in international criminal law and developments in the recognition of universal jurisdiction. The case between the Congo and Belgium was of major significance. There was still a problem concerning recognition of privileges among states with regard to

the admission of certain foreign delegations on national territory, and the situation was becoming increasingly more uncertain and unpredictable. There was a need to strike a fair balance and the Swiss delegation wondered whether it was possible to reach a consensus among states. Clearly, this was essential, at least on certain principal issues.

73. Mr Guillaume said that there was an urgent need to settle this problem at the international level, either by means of ICJ decisions, or via codification; otherwise there was a danger that different countries would resolve it in different ways. In reply to a question about the relations between the ICJ and the Security Council, he referred to the question of possible review by the ICJ of the lawful nature of Security Council decisions and pointed out that this had been rejected by means of legal proceedings during the discussion on the Charter of the United Nations. It remained to be seen whether it would be possible as a defence or objection. It should be noted that the Security Council could always seek the ICJ's opinion on the lawfulness of the measures it intended to adopt, although this procedure was not always easy to use as the Security Council usually had to take urgent action.

74. The Finnish and German delegations supported Mr Guillaume's request for the ICJ to be given the necessary resources and felt that there was a certain lack of consistency on the part of states in that on the one hand they wanted to be able to refer to the ICJ more frequently to settle their disputes and on the other they were not prepared to grant the necessary sources for it to carry out its tasks. Both delegations therefore appealed to members of the CAHDI to lend their support to the ICJ's request.

75. The Croatian delegation commented that the International Criminal Tribunal for the former Yugoslavia (ICTY) had many more resources than the ICJ, whereas the former seemed to deal with cases which were less important for the development of international law. It also said that with the entry into force of the Rome Statute of the ICC, there was a significant risk of duplication, as it existed alongside the ICTY. It was perhaps time to review the future of this latter tribunal.

76. The United Kingdom delegation expressed its concern at the growing uncertainty at the level of international law and thought that this topic could be a future CAHDI activity. It also referred to the dangers of *forum-shopping* and divergences in case-law. These were potential problems but it remained to be seen whether they would actually materialise. Lastly, it was a little sceptical about the introduction of a system of consultative opinions or references on preliminary questions as a means of solving these problems, particularly as regards the risk of *forum-shopping* in that such a system would come up against problems linked to the time-frames of the various procedures and added costs. On the other hand, it was imperative for the various international legal bodies to be rooted in the context of general international law. Regular meetings and exchanges of views and ideas between the members of the international judicial community could help achieve this aim. Finally, it was not in favour of introducing auxiliary judges at the ICJ because of the danger of setting up a parallel court. Instead, it was more in favour of strengthening the ICJ's legal service.

77. Mr Guillaume commented that the two approaches, ie introducing auxiliary judges and strengthening the ICJ legal service, were feasible together and both would help make the ICJ more effective. He tended towards the first option as it would facilitate more directly the research and analysis work carried out by judges who could build a personal relationship of trust with auxiliary judges.

78. With regard to the comments on the possible introduction of ICJ consultation procedures as a means of avoiding divergent interpretations of international law, Mr Guillaume said that thus far there had been no official reaction to his proposals. He acknowledged that such a procedure had a number of disadvantages, already referred to, but it was the only realistic proposal made to date as States did not appear to be ready to turn the ICJ into some sort of supreme court in relation to all the other international judicial bodies. Meetings between members of the international judicial community were helpful but they were not enough to offset the growing risks of divergences in case-law. Lastly, Mr

Guillaume agreed on the importance of general international law as a legal basis for the settlement of disputes and the necessity of avoiding excessive specialisation in international law.

79. The Austrian delegation noted a growing tendency not to go down the path of codifying international law standards and asked Mr Guillaume for his opinion on this trend.

80. Mr Guillaume replied that this was a matter for states rather than the ICJ. Nonetheless, it was clear that codification raised a growing number of difficulties and an attempt was being made to overcome these by more and more use of non-binding norms (soft law), with the hope that these could become custom and ultimately regarded by the courts as part of international law. All the same, this caused problems to the extent that states are not always sufficiently precise vis-à-vis the international "soft" law standards on which they agreed.

81. Turning back to ICJ procedures, the Chair referred to the questions raised by provisional measures, the intervention of third States and the trend on the part of certain countries to request extension of excessive time limits to prepare memorials. He added that in some cases this could be a means for some defendants of delaying the settlement of the dispute.

82. With regard to provisional measures, the Bulgarian delegation commented that the international community as a whole advocated an updating of the entire ICJ system, and in particular provisional measures.

83. Mr Guillaume said that it was not infrequent for plaintiffs to ask for protective measures to be adopted and sometimes these appeared to carry greater importance than the case itself. The main problem as far as the ICJ was concerned was the fact that such requests increased its workload in that the ICJ had to examine them under urgent procedure and this interfered with its other work. All the same, in certain cases such measures were necessary. The cardinal principle for the ICJ's action had therefore to be the need to avoid excessively long timeframes in settling cases.

84. With regard to the intervention of third States, Mr Guillaume said that the ICJ system had been designed as a bilateral system of cases between two opposing parties. However, insofar as states had increasingly closer links in complex relations, often third States intervened in cases affecting other countries, thereby making the procedure longer and the settlement of the dispute in question more complex, but at the same time more broadly accepted.

85. The Bulgarian delegation asked whether the ICJ judges had an opinion on acceptance of the Court's jurisdiction.

86. Mr Guillaume replied that the jurisdiction of the ICJ was consensus-based and therefore required the consent of states.

87. The Chair thanked Mr Guillaume for his extremely interesting contribution which had given rise to a very useful exchange of views. He concluded this agenda item by calling on states to support the role of the ICJ in the peaceful settlement of disputes.

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

88. The Swiss delegation referred to developments concerning the 4th Geneva Convention for the protection of civilian persons in time of war.

89. A conference of states parties to the 4th Convention had been held in Geneva on 15 July 1999 following a resolution of the UN General Assembly. This conference turned out to be a very brief one. After the Chair had read a declaration, considered as reflecting the common perception of the states represented, the session was adjourned.

90. Following the resumption of violence in autumn 2000, the GA had issued a new resolution which among other things invited the depository to consult the states parties to ascertain their opinion on developments in the humanitarian situation on the ground.

91. At the request of a large number of states parties, the deadline for comments to be forwarded to the depository had been extended to 15 February 2001. As of that date, the depository had received a little over 50 replies.

92. The Swiss delegation said that the depository was currently analysing the comments made. It was already clear that a large number of states wanted the conference to resume; indeed some were quite insistent. However, there was no real consensus on this point. Other states had said, with varying degrees of firmness, that they were not in favour of a resumption. Some had said they were about to forward their view.

93. With regard to Switzerland, a distinction had to be made between its different roles.

94. As a state party to the Geneva Conventions and other international human rights instruments it had made its position clear, in particular to the UN Commission on Human Rights.

95. As depository for the Geneva Conventions, it had a duty to perform its corresponding tasks with the requisite objectivity and taking into account the overriding interest of the international community, in order to avoid a polarisation of international humanitarian law.

96. Once the results of the consultation exercise had been analysed, the depository would be informing the states parties in good time and would submit to them a number of appropriate comments.

97. The Israeli observer raised the question of emblems and the draft 3rd protocol.

98. The Swiss delegation noted that, in view of the circumstances, a diplomatic conference would be very unlikely to succeed. It would therefore be preferable to pursue contacts and discussions to identify a more favourable time to hold the conference. The ultimate objective remained the universality of international humanitarian law. It was still wished to settle the question of the emblems but, at the moment, no solution seemed to be at hand. The depository would remain attentive to this issue.

99. The Chair thanked Switzerland for its efforts as depository of the Geneva Conventions.

100. The Hungarian delegation said that a second European meeting of national commissions and other bodies on international humanitarian law had been held in Budapest on 2 and 3 February 2001. This meeting, organised by the International Committee of the Red Cross, the Hungarian National Advisory Committee on International Humanitarian Law in association with the Hungarian Ministry of Foreign Affairs and Ministry of Defence, had followed on from a first meeting in Brussels in April 1999. Its aim had been to encourage exchanges between governmental experts on some 25 national commissions or other bodies in western and eastern Europe, Canada and a number of central Asian republics, and representatives of various other countries and interested organisations invited as observers. At the meeting, a proposed system for international information exchange and an international procedure for the voluntary presentation of reports on international humanitarian law had been discussed. Participants had agreed on the role which national commissions should play in the proposed and current procedures. They had also agreed that the steady development and codification of new international rules in the field of humanitarian law required the setting up of national commissions in order to adopt a dynamic approach. They had reiterated the importance of co-operation and dialogue between representatives of national commissions at regional and sub-regional level. They had also agreed on the need for national commissions to develop and strengthen their partnership with national authorities, by helping formulate an official position on the part of their respective governments in international fora, while at the same time promoting the use of existing machinery for the application of international

humanitarian law rather than devising new machinery. Participants had stressed the fact that the Rome Statute complemented international humanitarian law and had agreed on the role of national commissions in order to adapt domestic legislation relating to the punishment of war crimes and other violations of the requirements deriving from the Statute and other existing relevant humanitarian law instruments.

101. The Finnish delegation thanked Hungary for having organised the meeting, which had been extremely useful. It referred to the conclusions adopted at the meeting and, in particular, the appeal to national commissions for the protection of international humanitarian law to identify objectives, one of which would be the implementation of the Action Plan adopted at the international conference of the Red Cross and Red Crescent. It pointed out that the UN Secretary General had, in September 1999, prepared a report at the request of the Security Council, which contained 40 specific recommendations to the Security Council in order to ensure the protection of civilians in armed conflicts. Further to this report, on 19 April last, the Security Council had adopted a resolution calling on the Secretary General to submit a new report on the protection of civilians in armed conflicts. To date, the UN had taken a back seat in the field of international humanitarian law, but it now appeared that the Secretary General believed that the Security Council had a key role to play here.

10. Developments concerning the International Criminal Court

102. The Secretariat said that the Council of Europe was planning to hold a second informal multilateral consultation meeting on the implications of the ratification of the Rome Statute for an International Criminal Court on the domestic legal system of Council of Europe member states, as a follow-up to the meeting held in May 2000, following a joint initiative of the CAHDI and the CDPC (European Committee on Crime Problems). The meeting could be held in September, immediately following the CAHDI meeting.

103. The Chair welcomed this initiative, bearing in mind the interest in and usefulness of the first meeting held by the Council of Europe.

104. The Italian delegation reported on the recent meetings of the UN preparatory commission. The bulk of the work had been completed and the commission was now focusing on technical questions. However, one major political question remained: the definition of the term “aggression” as an international crime. There was a very favourable climate within the commission but regrettably the US delegation was not as active as it had previously been. The Italian delegation appealed to CAHDI members to do all they could to bring about the entry into force of the Rome Statute as soon as possible, pointing out that half the number of ratifications required had already been obtained. Lastly, it stressed the importance of pressing ahead with the adaptation of domestic legislation and welcomed the initiatives taken in this connection by the Council of Europe, which were of interest to not only the Council’s member states but also other countries.

105. The Canadian observer and the Portuguese delegation said that their countries had organised meetings in order to promote the entry into force of the Rome Statute as soon as possible.

106. The Russian delegation said that “aggression” was indeed an international crime and was one of the key issues for the planned ICC. The Russian Federation was convinced of the need to include it before ratification, as the success of the ICC depended on it.

107. The Danish delegation said that Denmark had supported the inclusion of the crime of aggression but stressed that it would be regrettable if the ratification process were to be slowed down if the proposal were ultimately rejected.

108. The Ukraine delegation drew attention to three major questions: definition of international crimes, punishments and the mechanisms for judging these crimes. It welcomed the fact that a large number of states had signed the Rome Statute and that the number of ratifications was rising, and stressed the importance of preparing the instruments

which were necessary for the ICC to be truly effective. Lastly, with regard to the adaptation of domestic legislation, it pointed out that Ukraine was faced with serious problems for ratifying the Rome Statute, which concerned constitutional provisions relating to minorities, the prohibition on extraditing nationals, and the compatibility of these provisions with the Statute.

109. Similar difficulties concerning ratification of the Statute, particularly with regard to immunities and the prohibition on extraditing nationals, were referred to by the Slovakian delegation.

110. In this connection, the Swiss delegation referred to the constitutional debate currently taking place in Switzerland, as in other countries. The main question was how to reconcile a constitutional obligation not to extradite nationals with the Statute-based requirements of sending nationals to the ICC. It was essential to distinguish between extraditing a national to a third country and sending a national to an international court, given that the setting up of such a court would depend on the will of the state in question which would be involved in defining the rules of procedure and organisational matters. Consequently, it may prove not to be necessary to change the constitution in order to ratify the Statute. This was the view of an eminent specialist in constitutional law, and parliament might take the same line.

111. The Italian delegation agreed with this approach. As far as Italy was concerned, sending someone to an international court would not be the same as extradition.

112. The Croatian delegation said that Croatia had almost completed the domestic steps necessary for ratification of the Statute, which should take place very shortly. This could make Croatia the first country in the region to have ratified the Statute[17]. To this end, a constitutional law on co-operation with the ICC would be passed. Lastly, the Croatian delegation thanked the Council of Europe and Canada for their efforts to bring about the entry into force of the Statute as soon as possible.

113. The Hungarian delegation said that a bill on the ICC was currently being drafted and it was hoped that it would be finalised in the coming months.

114. The Irish delegation said that a change to the constitution of Ireland would be required before the Statute could be ratified. Accordingly, a referendum on this issue would be held in the coming months. The need for an amendment to the constitution was not because of a prohibition on extraditing nationals or because of immunity-related questions, but because, under the Constitution, sovereignty in judicial matters lies with the Irish courts and becoming party to the Rome Statute would entail a derogation from this sovereignty in that, for example, the ICC will have the competence to decide that the legal system in Ireland has broken down.

115. The Finnish delegation said that Finland had ratified the Statute at the end of the year 2000 and that the Constitution had been amended at the same time.

116. The Chair concluded this agenda item by inviting Council of Europe member states to ratify the Statute and facilitate its entry into force as soon as possible.

11. Implementation and functioning of the Tribunals set up by United Nations Security Council Resolutions 827 (1993) and 955 (1994)

117. The Croatian delegation raised the subject of the International Criminal Tribunal for the former Yugoslavia. While stressing the political will of the Croatian government to co-operate with this tribunal, it pointed out that the tribunal had gone through a variety of stages and that in the light of other developments in the field of international criminal justice, in particular the forthcoming entry into force of the Rome Statute, now was the time for it to be reviewed.

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[17] The law on ratification of the Statute was passed on 28 March 2001 and would come into effect on 7 May 2001, after which date the instrument of ratification would be deposited with the UN Secretary General.

118. The Chair pointed out that the General Assembly would shortly be electing the members of the ICTY. There were eight candidates from Council of Europe member states and it was planned to create a new category of judges.

119. The Italian delegation confirmed that there was an Italian candidate and that Italy was in favour of the new category of judges. The Italian government had also concluded two co-operation agreements with the ICTY concerning the enforcement of decisions and the transfer of staff. In addition, co-operation agreements with the International Criminal Tribunal for Rwanda were currently in preparation.

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

120. The Italian delegation reported on recent developments concerning the preparation of a UNESCO convention and said that it seemed likely that the convention would be finalised at the next meeting of the Preparatory Committee. The question of regional agreements still had to be addressed, and the Italian delegation was more in favour of a convention approach, although it pointed out that certain delegations showed a preference for a framework agreement.

121. The Israeli observer referred to several problems raised by the current draft convention, in particular the settlement of disputes provided for in Article 19 of the draft which should not be a mandatory procedure, the question of reservations and exceptions provided for under Article 21 which should remain open since there had not been agreement on the proposed text, and the possibility of amending the convention, provided for under Article 24, which should not be subject to an automatic agreement procedure.

122. The German, Spanish, UK, Netherlands and Norwegian delegations stressed the need to reach a general agreement among states, even if it meant failing to keep to the deadline set by the UNESCO Director General for the adoption of the convention. If no such agreement were reached, states would not subsequently accede to it, thereby rendering it worthless. As this was a very important matter, the result should be in line with existing international law and, in particular, the law of the sea.

123. The UK delegation observed that the key issue concerned recognition of a new coastal jurisdiction, which was not currently provided for under existing law of the sea. As this was a very sensitive issue, it was essential for legal advisers in the field of international law to work alongside experts in the cultural field.

13. Developments concerning the preparation of a Charter of Fundamental Rights in the European Union: exchange of views with Mr Krüger, Deputy Secretary General of the Council of Europe and Mr Fischbach, judge at the European Court of Human Rights

124. The Chair thanked Mr Krüger and Mr Fischbach, the Council of Europe representatives on the Convention responsible for drafting the EU Charter of Fundamental Rights, for having agreed to attend the meeting and to report on recent developments on that text.

125. Mr Krüger and Mr Fischbach thanked the Chair for the invitation and for giving them the opportunity to hold an exchange of views with members of the committee.

126. Mr Fischbach said that the final text emerging from the Convention's work was fully up to the expectations of the Cologne European Council and that both he and Mr Krüger, as Council of Europe representatives, had stressed that above and beyond the subject matter of the Charter, a key issue would be how it would fit into the other existing systems. They had given their agreement to the text as both the horizontal provisions and the preamble setting out the necessary conditions for harmonious co-existence between the Charter and the European Convention on Human Rights were satisfactory. However, practical application of the Charter was likely to raise a number of problems, and he mentioned some of the outstanding questions such as the status of the explanatory report which had not been

drafted by the Convention nor published in the Official Journal of the European Communities; the extent to which, in the light of Article 6 of the Treaty on the European Union, the Charter reflected the values of the member states, a question which the Court of Justice of the European Communities (ECJ) would be required to answer; and appreciation of the various limitation regimes in the light of Article 52 of the Charter. He also referred to the danger of diverging interpretations, in particular for provisions of the Charter which have a joint EU/Council of Europe source, such as Article 8 on the protection of personal data and the need to ensure a minimum level of protection.

127. Over and above its moral and political value, the Charter would raise a number of problems as far as its very nature was concerned. A debate was currently under way and this question would be considered at the next intergovernmental conference scheduled for 2004. This debate would be focusing on certain issues on which the European Court of Human Rights (ECHR) had not yet taken a position, which would increase the risk that certain positions adopted by the Court of Justice would be challenged by the ECHR. This was a serious risk in that it was unlikely that countries which were members of both the EU and the Council of Europe would comply with decisions of the ECJ which ran counter to the case-law of the ECHR. Moreover, the ECHR had already stated that the mere fact that a country had transposed into domestic law a Community directive did not absolve it from its responsibilities deriving from the European Convention on Human Rights.

128. In the light of the above, there were two main questions concerning the position of EU member states and the fact that the Community bodies were unable to defend themselves before the ECHR, particularly since some of those decisions could incur the responsibility of member states.

129. Mr Fischbach concluded his introduction by saying that the time had come to consider new approaches to co-operation between the EU and the Council of Europe in the field of human rights to prepare for the future, particularly with the prospect of EU enlargement.

130. Mr Krüger said that main outstanding task was to find the ways and means of ensuring harmonious co-existence between the Charter and the European Convention on Human Rights. He was convinced that the Charter would develop independently of the status given to it, even if it were given no legal status. Accordingly, the Council of Europe's aim must be to ensure the integrity and efficiency of the European Convention on Human Rights system as we knew it today. The Council of Europe had not opposed the drafting of the Charter; rather it had supported such a move, but had been careful to protect the integrity of its own human rights protection system, which should be complemented by the Charter. Nevertheless, a number of problems could still emerge in the application of the Charter. Accession by the European Community and then by the EU was the best way of overcoming this potential problem. Clearly, this decision fell solely to the EU member states but it also had a direct effect on other states parties to the European Convention on Human Rights, who quite rightly had their word to say on such accession and the conditions under which it could take place. He concluded by saying that at present relations between the ECJ and the ECHR were excellent.

131. The Finnish and Swedish delegations referred to the Council of Europe's major contribution to the work of the Convention and supported the accession by the European Communities to the European Convention on Human Rights, given that for the most part the Charter was supposed to replicate and update in line with the current context the rights already enshrined in the European Convention on Human Rights, and given that it had no external control system. The starting point for the application of the Charter was that the EU should not depart from the case-law of the ECHR, and this had been stipulated in the explanatory report, which contained clear guidelines on the correspondence between the provisions of the EU Charter and the ECHR.

132. The Swedish delegation asked whether the Steering Committee for Human Rights had been given terms of reference to look at the possible accession by the EU to the European Convention on Human Rights.

133. Mr Krüger said that the Committee of Ministers' Rapporteur Group on the EU had decided to carry out a study of this question.

134. The United Kingdom delegation did not think that this was a matter for the CAHDI, but rather it was for the CDDH to take care of. With regard to EU accession to the European Convention on Human Rights, it believed one must proceed with caution and thought that at present such an accession was neither essential nor desirable in that the ECJ already applied the European Convention on Human Rights. The Council of Europe's role in this context should be one of analysis not of decision-making.

135. The French delegation also had some hesitation about EU accession to the European Convention on Human Rights. It was optimistic about the relationship between the two systems and thought the risk of diverging interpretations was slight, given that harmonisation between Community law and the European Convention on Human Rights had never been better. The Community system was one which provided optimum protection of human rights and the ECJ had incorporated the rules of the European Convention on Human Rights and the case-law of the ECHR into its own case-law. However, there was a risk of divergence for questions on which the ECHR had not taken a position insofar as any interpretation made by the ECJ could be called into question by the subsequent case-law of the ECHR.

136. The Swiss delegation was concerned about maintaining the unity of the system set up by the European Convention on Human Rights, although it accepted that the EU initiative was a logical development as fundamental rights were an integral part of the political project which the EU represented. In contrast, when developments specific to the EU had consequences for other Council of Europe member states, those countries which were not EU members had the right to speak out. It welcomed and supported the attitude of those EU member states which advocated accession by the European Community to the European Convention on Human Rights and stressed the need for consultation and co-ordination between the ECJ and the ECHR at institutional level until the European Community became a party to the European Convention on Human Rights in order to avoid any divergence and guarantee uniform standards and application.

137. Mr Fischbach said that relations between the ECJ and the ECHR had been stepped up but that exchanges were on an informal basis, although the Council of Europe observers had asked the Presidium of the Convention to look into the possibility of instituting a more formal mechanism. This would, however, require not only the will of both courts, but in particular that of the member states. Thought therefore had to be given to reviewing the division of responsibilities between the two courts. He stressed that the ECHR did not take action on ECJ cases because the European Community was not part of the system. However, occasionally a number of sensitive issues arose and since 1995 applications against the individual member states or all 15 as a whole had been brought before the ECHR. This raised a number of problems since it had to be ascertained whether the EU member states always had to be the scapegoats of the EU institutions. By way of example, he quoted the *Cantoni* case in which the member states had defended themselves saying they had been obliged to transpose secondary Community provisions. He pointed out that the Council of Europe member states had placed their confidence in the ECHR by ratifying the Convention and submitting to an external control system in order to ensure a minimum level of protection and wondered why citizens had to place their trust in community bodies. Moreover, he had been unable to find any reasonable arguments against the EU's accession to the European Convention on Human Rights. He concluded by staying that a fundamental right could not be subject to another objective and stressed the need to prepare for the future, in particular in the light of the debate on the nature of the Charter.

138. The Chair thanked Mr Krüger and Mr Fischbach for the fruitful exchange of views with the members of the CAHDI and in conclusion stressed that there should not be two concurrent systems for the protection of human rights in Europe and that it was essential to protect the integrity of the system of the European Convention on Human Rights.

D. OTHER

14. Date, place and agenda of the 22nd meeting of the CAHDI

139. The CAHDI decided to hold its next meeting in September 2001 and instructed the Secretariat to inform it, following consultation with the Chair, of the exact date and venue, in accordance with the decisions taken with regard to the meeting referred to in item 10[18], and adopted the preliminary agenda set out in Appendix V.

15. Other business

140. The Spanish delegate informed the committee that Professor Pellet wished to organise a colloquy in Paris on international civil society.

16. Closing

141. The Chair thanked delegations for their contribution to the success of the meeting and declared the meeting closed.

[18] As at the date this report was prepared, it had been decided that the 22nd meeting of the CAHDI would be held in Strasbourg on 11 and 12 September 2001 and that it would be immediately followed by the second consultation meeting on the implications of the Rome Statue of the International Criminal Court, in Strasbourg on 13 and 14 September 2001.

APPENDIX I

LIST OF PARTICIPANTS

ALBANIA/ALBANIE: Apologised/Excusé

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

ARMENIA/ARMENIE: Mme Satenik ABGARYAN, Ministère des Affaires Etrangères

AUSTRIA/AUTRICHE: Mr Hans WINKLER, Ambassador, Legal Adviser, Ministry for Foreign Affairs

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

BELGIUM/BELGIQUE: M. Jan DEVADDER, Directeur Général, Jurisconsulte, Ministère des Affaires Etrangères, du Commerce extérieur et de la Coopération internationale

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

BULGARIA/BULGARIE: Mrs Katia TODOROVA, Director, Human Rights Directorate, Ministry of Foreign Affairs

CROATIA/CROATIE: Ms Ljerka ALAJBEG, Ambassador, Legal Adviser, International Law Department, Ministry of Foreign Affairs

CYPRUS/CHYPRE: Mrs Evie GEORGIOU-ANTONIOU, Counsel of the Republic, Attorney General's Office

CZECH REPUBLIC/REPUBLIQUE TCHEQUE: Mr Jaroslav HORAK, Legal Director, Ministry of Foreign Affairs

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

ESTONIA/ESTONIE: Mrs Marina KALJURAND, Director General of the Legal Department, Ministry of Foreign Affairs

FINLAND/FINLANDE: Mr Holger ROTKIRCH, Ambassador, Director General for Legal Affairs, Ministry for Foreign Affairs

FRANCE: M. Ronny ABRAHAM, Directeur des Affaires Juridiques, Ministère des Affaires étrangères, Direction des Affaires Juridiques

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

Mme Frédérique COULEE, Ministère des Affaires étrangères, Direction des Affaires Juridiques, sous-direction du droit international public

GEORGIA/GEORGIE: Mr Paata BUCHUKURI, Counsellor, Council of Europe and Human Rights Division, International Law Department, Ministry of Foreign Affairs

GERMANY/ALLEMAGNE: Dr Gerd WESTDICKENBERG, Legal Adviser, Director General for Legal Affairs, Federal Foreign Office

GREECE/GRECE: Mr Alexandros KOLLIOPOULOS, Rapporteur of the Legal Department, Ministry of Foreign Affairs

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

ICELAND/ISLANDE: Mr Tomas H. HEIDAR, Legal Adviser, Ministry for Foreign Affairs

ITALY/ITALIE: M. Umberto LEANZA, Chef du Service du Contentieux Diplomatique, Ministère des Affaires étrangères

Mme Francesca GRAZIANI, Consultant Juridique du Service du Contentieux Diplomatique, Ministère des Affaires étrangères

IRELAND/IRLANDE: Dr. Alpha CONNELLY, Legal Adviser, Legal Division, Department of Foreign Affairs

LATVIA/LETTONIE: Mrs Irina MANGULE, Head of Treaties Division, Legal Department, Ministry of Foreign Affairs

LIECHTENSTEIN: M. Daniel OSPELT, Vice-Directeur de l'Office pour les Affaires étrangères

LITHUANIA/LITUANIE: Mrs Sigute JAKŠTONYTĖ, Minister Counsellor, Deputy Director of Legal and International Treaties Department, Ministry of Foreign Affairs

LUXEMBOURG: -

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

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

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

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

Ms Martina ØSTERHUS, Higher Executive Officer, section for International Law, Legal Department, Ministry of Foreign Affairs

POLAND/POLOGNE: Apologised/Excusé

PORTUGAL: Mrs Margarida REI, Director of the Legal Department, Ministry of Foreign Affairs

ROMANIA/ROUMANIE: M. Bogdan Lucian AURESCU, Directeur, Direction du droit international et des Traités, Ministère des Affaires Etrangères

Mlle Irina-Elena DONCIU, Attachée, Direction du droit international et des Traités, Ministère des Affaires Etrangères

RUSSIAN FEDERATION/FEDERATION DE RUSSIE: Mr Ilya ROGACHEV, Head of Division of the Legal Department, Ministry of Foreign Affairs

SAN MARINO/SAINT MARIN: -

SLOVAK REPUBLIC/REPUBLIQUE SLOVAQUE: Mr Peter TOMKA, Ambassador, Permanent Representative to the UN, Permanent Mission of Slovakia to the United Nations (**Chairman/Président)**

M. Jan VARŠO, Directeur Général de la Section du droit international et Consulaire, Jurisconsulte du Ministère des Affaires étrangères

SLOVENIA/SLOVENIE: Apologised/Excusé

SPAIN/ESPAGNE: Mr Aurelio PEREZ GIRALDA, Ambassadeur, Directeur du Département de Droit International, Ministère des Affaires Extérieures

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

SWEDEN/SUEDE: Mr Lars MAGNUSON, Ambassador, Director General for Legal Affairs, Ministry for Foreign Affairs

SWITZERLAND/SUISSE: M. l'Ambassadeur Nicolas MICHEL, Jurisconsulte, Directeur de la Direction du Droit international public, Département fédéral des affaires étrangères **(Vice-Chairman/Vice-Président)**

M. Emmanuel BICHET, Collaborateur personnel du directeur de la Direction du Droit International Public, Direction du Droit International Public, Département fédéral des Affaires Etrangères

"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"/"L'EX-REPUBLIQUE YOUGOSLAVE DE MACEDOINE": -

TURKEY/TURQUIE: M. Yasar ŐZBEK, Conseiller Juridique, Ministère des Affaires étrangères, Section juridique

UKRAINE: Mr Olexandre KUPCHYSHYN, Director General, Legal and Treaty Department, Ministry for Foreign Affairs

UNITED KINGDOM/ROYAUME-UNI: Mr Michael WOOD CMG, Legal Adviser, Foreign and Commonwealth Office

Mr Dominic RAAB, Assistant Legal Adviser, Foreign and Commenwealth Office

SPECIAL GUESTS/INVITES SPECIAUX

M. Gilbert GUILLAUME, Président de la Cour internationale de Justice, PAYS-BAS

M. Hans Christian KRÜGER, Deputy Secretary General of the Council of Europe/Secrétaire Général adjoint du Conseil de l'Europe

M. Marc FISCHBACH, Judge/Juge, European Court of Human Rights/Cour européenne des droits de l'homme

EUROPEAN COMMUNITY/COMMUNAUTE EUROPEENNE

EUROPEAN COMMISSION/COMMISSION EUROPEENNE: Apologised/Excusé

OBSERVERS/ OBSERVATEURS

CANADA: Mr Alain TELLIER, 1er Secrétaire, Mission Permanente du Canada auprès de l'Office des Nations Unies à Genève, GENEVE

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

JAPAN/JAPON: M. Yoshihide ASAKURA, Consul, Consulat Général du Japon, STRASBOURG

M. Pierre DREYFUS, Assistant, Consulat Général du Japon, STRASBOURG

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

MEXICO/MEXIQUE: Apologised/Excusé

AUSTRALIA/AUSTRALIE: -

ISRAEL: Mrs Hemda GOLAN, Deputy Legal Adviser, Director of the Treaties Division, Ministry of Foreign Affairs

NEW ZELAND/NOUVELLE ZELANDE: -

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

NORTH ATLANTIC TREATY ORGANISATION/ORGANISATION DU TRAITE DE L'ATLANTIQUE NORD: Apologised/Excusé

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

BOSNIA AND HERZEGOVINA/BOSNIE-HERZEGOVINE: Mrs Jasmina KURBASIC, Department for the International Legal Affairs, Ministry of Foreign Affairs

SECRETARIAT GENERAL

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

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

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

M. Jörg POLAKIEWICZ, Deputy Head of Legal Advice Department and Treaty Office/Adjoint au Chef du Service du Conseil Juridique et Bureau des Traités

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

INTERPRETERS/INTERPRETES

Mlle Rebecca EDGINGTON
Mme Angela BREWER
Mme Marianne HUMMEL
Mme Marie-José HALT
Mme Pascale MICHLIN
M. André BERNHARD

APPENDIX II

AGENDA

A. INTRODUCTION

1. Opening of the meeting by the Chairman, Ambassador Mr Tomka — CAHDI (2001) 1

   - Report of the 20th meeting (Strasbourg, 12-13 September 2000) — CAHDI (2000) 21

2. Adoption of the agenda — CAHDI (2001) OJ 1

3. Communication by the Director general of Legal Affairs, Mr. De Vel — CAHDI (2001) Inf 2

B. ONGOING ACTIVITIES OF THE CAHDI

4. Decisions by the Committee of Ministers concerning the CAHDI — CAHDI (2001) Inf 1

5. The law and practice relating to reservations and interpretative declarations concerning international treaties : European Observatory of Reservations to international Treaties — CAHDI (2001) 2

6. Expression of consent by States to be bound by a treaty — CAHDI (2001) 3

7. Discussion on future activities

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

8. Communication and Exchange of views with the President of the International Court of Justice, Mr Guillaume

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. Developments concerning the preparation of a Charter of Fundamental Rights in the European Union: Exchange of views with Mr. H.C. Krüger, Deputy Secretary General of the Council of Europe and Mr Fischbach, Judge at the European Court of Human Rights — DGII (2001) 02

D. OTHER

14. Date, place and agenda of the 22nd meeting of the CAHDI

15. Other business

16. Closing

APPENDIX III

STATEMENT BY MR DE VEL, DIRECTOR GENERAL OF LEGAL AFFAIRS OF THE COUNCIL OF EUROPE

Mr Chair,
Ladies and Gentlemen,

It is a great pleasure for me to attend the 21st meeting of the CAHDI even if only for the second day of your work. Other commitments unfortunately kept me in Paris yesterday.

I would first of all like to congratulate you, Ambassador Tomka, on your election as chair of the committee. I am sure that under your guidance, the committee will pursue its excellent work. Similarly, I would like to pay tribute to the work of the outgoing chair, Ambassador Hilger, whose chairmanship enabled the CAHDI to hold an exceptional meeting at the Federal Ministry of Foreign Affairs in Berlin, and to consolidate its fundamental role within the intergovernmental structure of the Council of Europe. This is a role which is widely acknowledged both within and outside the Council.

The participation, yesterday, of the President of the International Court of Justice, Mr Guillaume, and our Deputy Secretary-General, Mr Krüger, and Judge Fischbach, both of whom are the Council of Europe representatives for the work being carried out to draft and adopt a European Union Charter of Fundamental Rights, followed on from the participation at your previous meetings of other eminent figures such as Mr SCHWIMMER, Mr WILDHABER, Mr BLIX, Mr PINTO, Mr BADINTER, Mr GENSCHER and, in the academic field, Professor GREENWOOD, and more recently, Professor MERON.

The importance attached to the work of your committee is therefore a source of great satisfaction to me.

If I may, I would like to extend the warmest welcome to the representatives of those delegations taking part in the work of the committee for the first time.

Before touching on developments of relevance to the Council of Europe since your last meeting, I would like to dwell awhile on the activities of your committee.

The CAHDI is continuing to look closely at the question of reservations to international treaties, in particular as European Observatory on Reservations to International Treaties. This activity enables states to monitor closely the reservations to international treaties concluded inside and outside the Council of Europe, and this has made and continues to make it possible to initiate a very useful dialogue with a country which has made a reservation, providing the opportunity to understand the reasons why such a reservation has been made. In turn, this can in certain cases, avoid an objection being submitted or indeed can lead to a modification or withdrawal of the reservation in question. This search for dialogue between states can also be seen in the work of the special rapporteur of the International Law Commission, Professor Pellet, who has attended several meetings of the committee, including the last one. The Observatory has proved to be an extremely useful instrument and as such has become a very important part of the CAHDI's work. It is an activity which should continue in the future.

Mr Chair, your committee has shown its wish, through this activity, to make a practical contribution to the work currently underway in the ICL, and it has been a very successful venture because it has been closely monitored not only by the ICL itself, and its special rapporteur, but also by many researchers; several articles on your work in this field have appeared in scientific journals.

This activity has also made it possible to consolidate the already excellent links you have with the ICL. Given that you, Mr Chair, are also a member of this prestigious institution, these links can only become closer.

The CAHDI should therefore continue along this route and identify new topical questions in the field of public international law which are relevant from the political point of view, likely to produce practical results and which could also be dealt with as an intergovernmental activity for our organisation; the CAHDI should avail itself of its essential role in order to implement pioneering activities such as those you have carried out to date, while at the same time continuing to hold exchanges of views on developments in other international bodies.

The growing number of systems for settling disputes and the subsequent danger of fragmentation, the position of sub-national entities in international law and in particular in the law of treaties, the link between human rights and international humanitarian law and international criminal law, state responsibility, and immunity from legal proceedings are just a few examples of topical questions which could become an activity for the CAHDI and for some of which information on state practices could be collected.

I would also like to refer to the activity which you have been carrying out since late 1999 on the expression of consent by states to be bound by a treaty. The initial part of this work will soon be coming to an end with the publication of a report detailing the situation in 43 States, of which 37 are members of the Council of Europe, and an analysis carried out, under your supervision, by the British Institute of International and Comparative Law. We hope that this will shortly be published and that it will be presented to the Secretary General at your next meeting.

I would also like to refer to developments concerning the Rome Statute of the International Criminal Court, which are regularly monitored by the CAHDI. Following your joint initiative with the European Committee on Crime Problems (CDPC), the Council of Europe last May organised a multilateral consultation exercise on the implications of ratification of the Statute on the domestic legal system in Council of Europe member states. This consultation exercise brought together a very large number of national delegations and observer states and international organisations and resulted in the adoption of a number of key conclusions. It was therefore a very useful opportunity for our member states not only to exchange information but also to coordinate their positions vis-à-vis the discussions on this topic underway in the UN. This is why I am happy to tell you that following the joint initiative of the Liechtenstein and Spanish authorities, a second meeting of this type could be organised in autumn this year in an attempt to bring about the entry into force of the Statute as soon as possible. In this regard, the Council of Europe member states have a very important role to play. More precise details will be forwarded to you shortly.

I would also like to tell you of the efforts taken by the Secretariat to fulfil its role as clearing house for the circulation of information on national developments concerning the signature and ratification of the Rome Statute.

To conclude this part of my presentation, we cannot therefore but hope that the CAHDI will pursue its excellent work for the benefit not only of Council of Europe member states and observers, but also for the whole international and scientific community.

With regard to recent developments in the Council of Europe, I am happy to tell you that our organisation now has 43 member states following the recent accession of Armenia and Azerbaijan and I extend a warm welcome to their representatives here today.

The three countries which are candidates for accession: Belarus, Monaco and Bosnia-

Herzegovina have been joined by the Federal Republic of Yugoslavia, following the recent events of which we are all aware. The latter two states also enjoy special guest status with the Parliamentary Assembly, while, as you know, Belarus's special guest status has been suspended since March 1998.

Four countries have observer status with the Council of Europe: Canada, the United States of America, Japan and Mexico. Observer status has also been granted to the Holy See, which takes part in the Council's intergovernmental activities.

Monitoring the honouring of commitments undertaken by member states following their accession to the Council of Europe is continuing at the level of both the Committee of Ministers and the Parliamentary Assembly. This monitoring is currently focused on freedom of expression and information, the functioning and protection of democratic institutions, including questions concerning political parties and free elections, the functioning of the judicial system, local democracy, capital punishment, the police and security forces, the effectiveness of court appeal procedures, and non-discrimination, in particular the fight against racism and intolerance. The Committee of Ministers has set up a special monitoring group for Armenia and Azerbaijan.

With regard to the co-operation programme for strengthening the rule of law (ADACS), a fundamental pillar of the activities of the Council, we are continuing to exert considerable effort at both bilateral and multilateral level.

More particularly, the Council of Europe is currently assigning high priority to aid to Kosovo, in co-operation with the United Nations and the OSCE, and also to the Federal Republic of Yugoslavia. Some of these activities are part of the Council of Europe's contribution to the Stability Pact for South-Eastern Europe, for which our organisation is a key partner with very important responsibilities, commensurate with its expertise and experience.

As the time available is limited, I am unable to deal in any great length with the developments since the last CAHDI meeting concerning the European Treaties Series. Nevertheless, I would like to remind you that we have a website (conventions.coe.int) which provides all the relevant information on the Council of Europe conventions, including the state of signatures and ratifications, reservations and declarations, and the texts of the conventions and their explanatory memoranda. You should already have been given an extract of this site, along with details of recent changes.

Still on the topic of European conventions, I would like to point out that a turning point was reached on 28 February last in relations with the Federal Republic of Yugoslavia as on this date, as one of the successor states of the Socialist Federal Republic of Yugoslavia, it acceded by simple notification and without retroactive effect, to eleven conventions to which the Socialist Federal Republic of Yugoslavia had been a party.

I should also point out that upon accession to the Council of Europe, Armenia and Azerbaijan signed the European Convention on Human Rights and Protocols 1, 4, 6 and 7.

On 4 November, at the ministerial conference marking the 50th anniversary of the European Convention on Human Rights, for which, as you will recall, you made a contribution to the drafting of a report on the implications of this convention on the development of international law, 25 states signed Protocol No. 12 to the Convention.

As usual, I would also like to mention a number of other activities coming under the remit of the Directorate General of Legal Affairs.

With regard to the fight against corruption, the Group of States against corruption (GRECO),

an enlarged partial agreement (i.e. open to member states and non-member states on an equal footing), aimed at combating corruption in all its forms, came into being, the required number of 14 accessions easily having been reached. The Greco now has 28 members, two of which are non-member states: Bosnia-Herzegovina and the United States (for the first time a fully fledged member of a Council of Europe body). It has already held several meetings and carried out an initial evaluation cycle covering the period 2000 to 2001. In the year 2000, visits were made to 10 countries and three evaluation reports containing numerous recommendations to improve the effectiveness of these countries' response to corruption were adopted. A website (greco.coe.int) has been set up, detailing the Council's activities in this field.

With regard to international instruments in this area, the Criminal Law Convention on Corruption (ETS 173), opened for signature on 27 January 1999, has been signed by 30 states and ratified by 9, and the Civil Law Convention on Corruption (ETS 174) opened for signature on 4 November 1999, has been signed already by 23 states and ratified by three.

In the field of bioethics, the Convention for the protection of human rights and dignity of the human being with regard to applications of biology and medicine: Convention on Human Rights and Biomedicine (ETS. 164) has been signed by 22 member states and ratified by 7. Accordingly, it entered into force on 1 December last. Its protocol on the prohibition of cloning human beings (ETS 168) has been signed by 24 states and ratified by 5; accordingly, it entered into force last week on 1 March, as the required number of five ratifications (including four by member states) had been obtained.

Mr Chairman, ladies and gentlemen, the CAHDI is a very dynamic body as reflected in its activities and the large number of participants at its meetings.

This dynamism can also be seen in the growing number of opinions requested of the committee, bearing witness to the importance attached to the CAHDI by the Committee of Ministers, in view of its experience and expertise.

I would like to conclude my presentation by encouraging you to continue your excellent work by optimising your special position as the only committee where legal advisers of the Foreign Ministers of the Council of Europe member states and a large number of observer states and organisations can exchange and co-ordinate their views in the field of public international law, thereby contributing to its application and its development.

Thank you.

APPENDIX IV

LIST OF ITEMS DISCUSSED AND DECISIONS TAKEN

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 21st meeting in Strasbourg, on 6 and 7 March 2001. The meeting was chaired by Ambassador Tomka (Slovak Republic), Chairman of the CAHDI. The list of participants appears in Appendix I and the agenda appears in Appendix II.

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

3. 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.

4. The CAHDI examined a revised version of the report on “Expression of consent by States to be bound by a treaty” and authorised its publication by Kluwer Law International. Moreover, it decided to present this publication to the Secretary General of the Council of Europe at its next meeting.

5. The CAHDI decided to carry out an activity on State practice regarding State immunities and asked the Secretariat to prepare a draft questionnaire to be examined at its next meeting.

6. The CAHDI also decided to make a preliminary evaluation, at its next meeting, of aspects connected with an activity on immunities of certain categories of persons including the heads of State and of Government as well as the ministers for foreign affairs, on the basis of an introductory document to be prepared by the Swiss delegation with a view to deciding on the possible implementation of an activity on this subject.

7. The CAHDI held a fruitful exchange of views with Mr Guillaume, President of the International Court of Justice on the future of international justice.

8. The CAHDI also held a useful exchange of views with Mr Krüger, Deputy Secretary General of the Council of Europe and Mr Fischbach, Judge at the European Court of Human Rights, who are observers of the Council of Europe in the "Convention", the working group in charge of the preparation of a Charter of Fundamental Rights in the European Union, regarding developments concerning this Charter. The CAHDI agreed that there should be no competing human rights systems between the EU and the Council of Europe.

9. The CAHDI was informed about developments concerning the implementation of international instruments protecting the victims of armed conflicts as well as the implementation and the functioning of the Tribunals established by UN Security Council Resolutions 927 (1993) and 955 (1994).

10. The CAHDI held an exchange of views on developments concerning the International Criminal Court and was informed about the possible organisation by the Council of Europe of a second consultation meeting on the implications of the ratification of the Rome Statute of the International Criminal Court on the internal legal order of the member States of the Council of Europe, following the initiatives of the authorities of Liechtenstein and Spain.

11. The CAHDI held an exchange of views on developments concerning protection of sub aquatic cultural heritage and work under way within the framework of UNESCO and agreed on the importance of securing consensus of the delegations involved in this work.

12. The CAHDI decided to invite Professor James Crawford and Professor Bruno Simma, members of the International Law Commission (ILC) of the United Nations to its next meeting, in order to have an exchange of views respectively on the ILC activity on State responsibility, and on other ongoing activities of the ILC.

13. The CAHDI decided to hold its next meeting in September 2001 and instructed the Secretariat to inform delegations in consultation with the Chairman about the exact place and dates in the light of the decisions that will be taken regarding the meeting indicated under item 10., and adopted the preliminary draft agenda in Appendix III.

APPENDIX V

PRELIMINARY DRAFT AGENDA

A. INTRODUCTION

1. Opening of the meeting by the Chairman, Ambassador Mr Tomka
2. Adoption of the agenda
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
5. The law and practice relating to reservations and interpretative declarations concerning international treaties : European Observatory of Reservations to international Treaties
6. Expression of consent by States to be bound by a treaty: Presentation to the Secretary General of the Council of Europe of the report prepared under the aegis of the CAHDI
7. State practice regarding State immunities: adoption of a draft questionnaire
8. Immunities of certain categories of persons - preliminary consideration

D. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

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

   - Exchange of views with Professor James Crawford, Special Rapporteur of the United Nations on State Responsibility

10. Implementation of international instruments protecting the victims of armed conflicts
11. Developments concerning the International Criminal Court
12. Implementation and functioning of the Tribunals established by United Nations Security Council Resolutions 827 (1993) and 955 (1994)
13. Law of the Sea: Protection of Sub aquatic Cultural Heritage

D. OTHER

14. Election of the Chair and Vice-Chair
15. Date, place and agenda of the 22nd meeting of the CAHDI
16. Other business
17. Closing