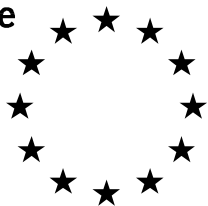


Council of Europe
Conseil de l'Europe



Strasbourg, 28/08/98

CAHDI (98) 12

AD HOC COMMITTEE OF LEGAL ADVISERS
ON PUBLIC INTERNATIONAL LAW
(CAHDI)

16th Meeting
Paris, 17-18 September 1998

DECISIONS OF THE COMMITTEE OF MINISTERS CONCERNING THE CAHDI

Secretariat memorandum
Prepared by the Directorate of Legal Affairs

Foreword

At the 631st meeting of the Ministers' Deputies (Strasbourg, 12 May 1998) the Committee of Ministers considered the report of the 15th meeting of the CAHDI (Strasbourg, 3-4 March 1998). The decisions taken by the Committee of Ministers in this respect are the subject of Appendix I.

The Committee of Ministers took note of the interim opinion adopted by the CAHDI concerning the proposals by the delegation of the Russian Federation on the CAHDI.

It further took note in particular of the CAHDI's proposal according to which conventional, steering or analogous committees should undertake evaluation of all the Council of Europe Conventions, and agreed to come back to this question at one of their forthcoming meetings, in the light of the conclusions of the Committee of Wise Persons.

In this connection, some delegations in the Committee of Ministers called upon the CAHDI to define further its proposal. It was noted that certain priorities would have to be established in order to limit the scope of the exercise and that the evaluation should be of a general nature and not based only on usefulness of the conventions (this last remark concerned particularly the French version of the interim opinion where the term "utilité" is used).

The Committee of Ministers took note of the acceptance of the United States of Mexico as an observer to the CAHDI for the whole duration of the Committee and of the report of the 15th meeting of the CAHDI as a whole.

A. Follow-up to the Interim Opinion adopted by the CAHDI at its 15th meeting on the proposals presented by the Delegation of the Russian Federation on the CAHDI

At its 15th meeting, the CAHDI held an exchange of views on the proposals of the Russian Federation to the Committee of Ministers, dated 16 December 1997, to modify the activities of the CAHDI in the light of the Final Declaration of the Heads of State and Government at the Second Summit of the Council of Europe, and work already under way in the Organisation, in particular by the Wise Persons Committee.

The above-mentioned Russian proposals included: 1) the preparation of a report on topical issues of international public law in Europe for the attention of the Committee of Ministers by the CAHDI twice a year; and 2) the preparation of an inventory of all Council of Europe conventions.

At the close of discussions the Secretariat was asked to prepare a draft preliminary interim opinion and to circulate it to the members of the CAHDI for approval by written procedure (see report of the meeting, document CAHDI (98) 9, para. 32-33). The Secretariat circulated the draft interim opinion by letter dated 12 March 1998. Once approved the interim opinion was transmitted to the Committee of Ministers together with the report of the 15th meeting. The interim opinion is the subject of Appendix II.

The interim opinion stated the following:

"Concerning the first proposal, the CAHDI considers that its terms of reference as they stand today, allow the CAHDI to report to the Committee of Ministers on topical issues of public international law whenever necessary. This can be done by means of the CAHDI reports which are submitted to the Committee of Ministers regularly after each meeting and possibly, by means of specific opinions of the CAHDI.

The CAHDI is by its very nature a flexible framework for discussion and exchange of views. The inclusion in its terms of reference of the duty to prepare a report on topical issues of public international law for the attention of the Committee of Ministers on a regular basis would bring

in an element of rigidity which is not desirable”.

In addition, the CAHDI informed the Committee of Ministers that it required to pursue further the examination of its terms of reference in order to determine whether they need to be amended or not. It concluded that it would be able to take a position on this issue at its 16th meeting.

The Secretariat has prepared a draft final opinion (see Appendix III) on the basis of the interim opinion and discussions which took place at the 15th meeting of the CAHDI.

The draft final opinion includes two alternatives regarding the terms of reference of the CAHDI depending on whether the CAHDI will decide to amend them or not. The decision that the CAHDI will take in this respect will be reflected in the draft-specific terms of reference that the CAHDI will be called upon to approve and transmit to the Committee of Ministers for adoption (see section below).

B. Draft-specific terms of reference of the CAHDI for 1999-2000

The specific terms of reference of the CAHDI expire 31 December 1998. The Secretariat has prepared draft-specific terms of reference for the period 1 January 1999-31 December 2000 (see Appendix IV). Changes in relation to the current specific terms of reference appear in bold, namely: the inclusion of the United States of Mexico, in accordance with the decision taken by the CAHDI at its 15th meeting, and of the United Nations and its specialised bodies.

As mentioned above, two alternatives are envisaged regarding the terms of reference of the CAHDI depending on whether the CAHDI wishes to amend them or not.

C. Draft-specific terms of reference of the Group of Rapporteurs on reservations to international treaties

During its second meeting, to be held in Paris, 14-16 September 1998, the Group of Specialists on Reservations to International Treaties (DI-S-RIT) will be considering the practical implications of the functioning of the CAHDI as an observatory of reservations to international treaties. It will also be considering the observation procedure as such, including the possible operation of a Group of Rapporteurs on Reservations to International Treaties (also called DI-S-RIT).

Subject to the outcome of discussions at the second meeting of the DI-S-RIT, the Secretariat has prepared preliminary draft-specific terms of reference for the Group of Rapporteurs (see Appendix V). They have been prepared on the basis of the specific terms of reference of the Group of Specialists on Reservations to International Treaties, which are the subject of Appendix VI.

Action required

Members of the CAHDI are called upon to:

- a) Define further its proposal to the Committee of Ministers according to which conventional, steering or analogous committees should undertake evaluation of all the Council of Europe Conventions;
- b) Examine and approve the final opinion to the Committee of Ministers;
- c) Examine and approve the draft-specific terms of reference for the CAHDI (1999-2000) and for the Group of Rapporteurs on Reservations to International Treaties (DI-S-RIT, 1999);
- d) Instruct the Secretariat to transmit the texts in b) and c) to the Committee of Ministers for action.

APPENDIX I**DECISION TAKEN BY THE COMMITTEE OF MINISTERS CONCERNING THE CAHDI**

631st meeting – 12 May 1998

Item 10.1

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

(CM/Del/Dec(98)615/10.2, CM(98)64)

Decisions

The Deputies

1. Took note of the interim opinion adopted by the CAHDI in connection with the Russian Federation's proposals concerning it, as set out in Appendix III to document CM(98)64;
2. Took note of the CAHDI's proposal according to which conventional, steering or analogous committees should undertake evaluation of all the Council of Europe Conventions, and agreed to come back to this question at one of their forthcoming meetings, in the light of the conclusions of the Committee of Wise Persons;
3. Noted that the United States of Mexico had been accepted as an observer to the CAHDI for the duration of its work;
4. Took note of the agenda for the 16th meeting of the CAHDI, as set out in Appendix IV to document CM(98)64;
5. Took note of the abridged report of the 15th meeting of the CAHDI in its entirety, as set out in document CM(98)64.

APPENDIX II

INTERIM OPINION OF THE AD HOC COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI) CONCERNING THE RUSSIAN FEDERATION'S PROPOSALS ABOUT THE CAHDI

Foreword

The *Ad Hoc* Committee of Legal Advisers on Public International Law (CAHDI) held its 15th meeting in Strasbourg on 3-4 March 1998. The agenda included an item on "Decisions of the Committee of Ministers concerning the CAHDI". In the framework of this item, members of the CAHDI were invited to hold an exchange of views on the proposals of the Russian Federation to the Committee of Ministers, dated 16 December 1997, to modify the activities of the CAHDI in the light of the Final Declaration of the Heads of State and Government at the Second Summit of the Council of Europe, and work already under way in the Organisation, in particular by the Wise Persons Committee.

The above-mentioned Russian proposals include: 1) the preparation of a report on topical issues of international public law in Europe for the attention of the Committee of Ministers by the CAHDI twice a year; and 2) the preparation of an inventory of all Council of Europe conventions. The Russian delegate in the CAHDI presented these proposals to the members of the CAHDI

INTERIM OPINION

The CAHDI wishes to thank the Russian delegation for the interesting proposals submitted for its consideration. These proposals have led to a thorough and useful exchange of views and they have initiated an ongoing process of self-examination aimed at improving the efficiency and suitability of the CAHDI in responding to the needs and demands of member States and the Committee of Ministers.

Members of the CAHDI unanimously wish to stress that the CAHDI is a unique forum where legal advisers of the Ministers of Foreign Affairs of the member States of the Council of Europe can exchange and possibly co-ordinate their views in matters of public international law to the application and development of which they contribute. From this point of view, the CAHDI is irreplaceable and it is the only truly pan-European framework for such activities. Thus, the CAHDI should not only be preserved but also consolidated and its role increased in the future.

Concerning the first proposal, the CAHDI considers that its terms of reference as they stand today, allow the CAHDI to report to the Committee of Ministers on topical issues of public international law whenever necessary. This can be done by means of the CAHDI reports which are submitted to the Committee of Ministers regularly after each meeting and possibly, by means of specific opinions of the CAHDI.

The CAHDI is by its very nature a flexible framework for discussion and exchange of views. The inclusion in its terms of reference of the duty to prepare a report on topical issues of public international law for the attention of the Committee of Ministers on a regular basis would bring in an element of rigidity which is not desirable.

However, the CAHDI, inspired by the Russian proposal, has now decided that at all its future meetings it will hold a substantial discussion on one or two topical issues of public international law as a central part of its agenda. Some topical issues suggested include the following:

reservations to multilateral treaties, the role of the depositaries and the use of new information technologies, the European Convention on State Immunity, in the light of developments on the draft articles on the same subject produced by the International Law Commission, etc. On the other hand, a number of items that have become a routine and have lost their purpose will be taken out of the agenda.

Concerning the second proposal, the CAHDI considers that it is not in a position to undertake the evaluation of all the conventions of the Council of Europe for technical and political reasons. Members of the CAHDI do not have the necessary expertise to go into every field of activity of the Council of Europe and in this respect, conventional or steering committees are in a better position to undertake this exercise regarding the conventions falling under the sector of activity for which they are competent. Moreover, assessing the suitability of Council of Europe instruments involves definition of national priorities what can only be done by member States of the Council of Europe themselves.

Accordingly, the CAHDI wishes to propose to the Committee of Ministers that it considers the possibility of instructing steering and analogous committees of the Council of Europe to carry out such an exercise in relation to the conventions under their scope of responsibility.

In this connection, the CAHDI considers that it would be a useful exercise to assess the current suitability of the conventions falling under its area of competence, namely: European Convention for the Peaceful Settlement of Disputes (1957, ETS 23), European Convention on Consular Functions (1967, ETS 61), European Convention on the Abolition of Legalisation of Documents Executed by Diplomatic Agents or by Consular Officers (1968, ETS 63), European Convention on State Immunity (1972, ETS 74) and its Protocol (1972, ETS 74A).

Finally, the CAHDI considers that it requires to pursue further the examination of its terms of reference in order to determine whether they need to be amended or not. The CAHDI will be able to take a position on this issue at its 16th meeting, 16-17 September 1998.

APPENDIX III

FINAL OPINION OF THE AD HOC COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI) CONCERNING THE RUSSIAN FEDERATION'S PROPOSALS ABOUT THE CAHDI

Foreword

The *Ad Hoc* Committee of Legal Advisers on Public International Law (CAHDI) held its 16th meeting in Paris on 17-18 September 1998. The agenda included an item on "Decisions of the Committee of Ministers concerning the CAHDI". In the framework of this item, members of the CAHDI were invited to consider the terms of reference of the CAHDI in the light of the exchange of views which took place at the 15th meeting of the CAHDI (Strasbourg, 3-4 March 1998) and the ensuing *Interim Opinion of the CAHDI* on the proposals of the Russian Federation to the Committee of Ministers concerning the role of the CAHDI.

The above-mentioned Russian proposals included: 1) the preparation of a report on topical issues of international public law in Europe for the attention of the Committee of Ministers by the CAHDI twice a year; and 2) the preparation of an inventory of all Council of Europe conventions. At its 15th meeting the CAHDI had been asked to consider them and their possible influence in the terms of reference of the Committee in the light of the Final Declaration of the Heads of State and Government at the Second Summit of the Council of Europe, and work already under way in the Organisation, in particular by the Wise Persons Committee.

FINAL OPINION

The CAHDI wishes to thank the Russian delegation for the interesting proposals submitted for its consideration. These proposals have led to a thorough and useful exchange of views and they have initiated an ongoing process of self-examination aimed at improving the efficiency and suitability of the CAHDI in responding to the needs and demands of member States and the Committee of Ministers.

Members of the CAHDI unanimously wish to stress that the CAHDI is a unique forum where legal advisers of the Ministers of Foreign Affairs of the member States of the Council of Europe can exchange and possibly co-ordinate their views in matters of public international law to the application and development of which they contribute. From this point of view, the CAHDI is irreplaceable and it is the only truly pan-European framework for such activities. Thus, the CAHDI should not only be preserved but also consolidated and its role increased in the future.

Concerning the first proposal, the CAHDI considers that its terms of reference as they stand today, allow the CAHDI to report to the Committee of Ministers on topical issues of public international law whenever necessary. This can be done by means of the CAHDI reports which are submitted to the Committee of Ministers regularly after each meeting and possibly, by means of specific opinions of the CAHDI.

The CAHDI is by its very nature a flexible framework for discussion and exchange of views. The inclusion in its terms of reference of the duty to prepare a report on topical issues of public international law for the attention of the Committee of Ministers on a regular basis would bring in an element of rigidity which is not desirable.

However, the CAHDI, inspired by the Russian proposal, decided that at its future meetings it will hold a substantial discussion on one or two topical issues of public international law as a central part of its agenda. Some topical issues suggested include the following: reservations to multilateral treaties, the role of the depositaries and the use of new information technologies, the European Convention on State Immunity, in the light of developments on the draft articles on the same subject produced by the International Law Commission, etc. On the other hand, a number of items that have become a routine and have lost their purpose will be taken out of the agenda.

Concerning the second proposal, the CAHDI considers that it is not in a position to undertake the evaluation of all the conventions of the Council of Europe for technical and political reasons. Members of the CAHDI do not have the necessary expertise to go into every field of activity of the Council of Europe and in this respect, conventional or steering committees are in a better position to undertake this exercise regarding the conventions falling under the sector of activity for which they are competent. Moreover, assessing the suitability of Council of Europe instruments involves definition of national priorities what can only be done by member States of the Council of Europe themselves.

Accordingly, the CAHDI wishes to propose to the Committee of Ministers that it considers the possibility of instructing steering and analogous committees of the Council of Europe to carry out such an exercise in relation to the conventions under their scope of responsibility. The Committee of Ministers may wish to define the criteria which shall guide this exercise.

In this connection, the CAHDI considers that it would be a useful exercise to assess the current suitability of the conventions falling under its field of competence, namely: European Convention for the Peaceful Settlement of Disputes (1957, ETS 23), European Convention on Consular Functions (1967, ETS 61) and its protocols (61A, 61B), European Convention on the Abolition of Legalisation of Documents Executed by Diplomatic Agents or by Consular Officers (1968, ETS 63), European Convention on State Immunity (1972, ETS 74) and its Protocol (1972, ETS 74A).

Finally, as regards the terms of reference of the CAHDI, the CAHDI considers that in their current formulation (...)

Alternative 1 – No amendment of the specific terms of reference of the CAHDI

(...) they allow the CAHDI to carry out the tasks entrusted to it, namely to exchange views and to examine questions of public international law, at the request of the Committee of Ministers, the European Committee on Legal Co-operation (CDCJ) and at its own initiative.

Therefore, the CAHDI does not consider it necessary to amend its specific terms of reference.

Alternative 2 – Amendment of the specific terms of reference of the CAHDI

(...) they allow the CAHDI to carry out the tasks entrusted to it. However it agrees that it would be appropriate to reformulate them in view of reflecting more precisely the unique role of the CAHDI, where legal advisers of the Ministers of Foreign Affairs of the member States of the Council of Europe can exchange and possibly co-ordinate their views in matters of public international law to the application and development of which they contribute.

Therefore, the CAHDI wishes to propose to the Committee of Ministers that its specific terms of reference be amended along the lines that are mentioned in the paragraph above.

APPENDIX IV

DRAFT SPECIFIC TERMS OF REFERENCE

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

Under the authority of the Committee of Ministers, the Committee is instructed (...)

Alternative 1 – No amendment of the specific terms of reference of the CAHDI

(...) to exchange views and to examine questions of public international law (...)

Alternative 2 – Amendment of the specific terms of reference of the CAHDI

(...) to examine questions of public international law, to exchange and possibly to co-ordinate the views of member States (...)

(...) at the request of the Committee of Ministers, Steering Committees and Ad Hoc Committees and at its own initiative (current terms).

5. Membership of the Committee:
 - a. The Committee is composed of experts by member States, preferably chosen among the Legal Advisers to the Ministries of Foreign Affairs. Travel and subsistence expenses of one expert per member State (two for the State assuming the Chair of the Committee) are borne by the Council of Europe budget.
 - b. The European Commission may send representatives, without the right to vote or to a refund of expenses, to meetings of the Committee.
 - c. The following States having observer status with the Council of Europe may send a representative without the right to vote or to a refund of expenses to meetings of the Committee: Canada, Japan, United States of America.
 - d. The following non-member States or organisations may send a representative, without the right to vote or to a refund of expenses (1), to meetings of the Committee:
 - The Holy See
 - * Armenia (1)
 - * Azerbaijan (1)
 - Australia
 - * Bosnia and Herzegovina (2)
 - * Georgia (2)
 - United States of Mexico (4)**
 - New Zealand
 - The Hague Conference on Private International Law
 - NATO (3)
 - The Organisation for Economic Co-operation and Development
 - The United Nations and its specialised agencies**

6. Structures and working methods: None

7. Duration: The present terms of reference will expire
31 December 2000.

(1) Except in the case of special provisions application to States marked with *. Adopted: see CM/Del/Concl(91)455/24, Appendix 5, Revised: (1) see CM/Del/Dec(96)557, item 2.1

(2) Subject to their request

(3) see CM/Del/Dec/Act(93)488/29 and CM/Del/Concl(92)480/3

(4) Admitted as observer "for the whole duration of the Committee" by the CAHDI, 15th meeting, Strasbourg 3-4 March 1998

APPENDIX V

PRELIMINARY DRAFT SPECIFIC TERMS OF REFERENCE

1. Name of committee: GROUP OF RAPPORTEURS OF THE EUROPEAN OBSERVATORY ON RESERVATIONS TO INTERNATIONAL TREATIES (DI-S-RIT)
2. Type of committee: Group of Specialists
3. Source of terms of reference: *Ad Hoc* Committee of Legal Advisers on Public International Law (CAHDI)
4. Terms of reference:

In the framework of the operation of the CAHDI as a European observatory of reservations to multilateral treaties of significant importance to the international community and of reactions by Council of Europe member States Parties to these instruments, the Group of Rapporteurs is called upon to:

- a. assist the CAHDI in carrying out the observation procedure;
- b. examine reservations and interpretative declaration to multilateral treaties of significant importance to the international community;
- c. bring to the attention of the members of the CAHDI those reservations and interpretative declarations which raise issues as to their admissibility from the point of view of international law and in particular from the human rights perspective;
- d. prepare reports concerning the admissibility of the above-mentioned international reservations and interpretative declarations for the attention of the members of the CAHDI; and
- e. contribute in any other related manners to the activity of the CAHDI as an European observatory of reservations to international treaties.

5. Membership of the committee:

- a. The Group is made of 7 rapporteurs, 5 of which are specifically appointed by the CAHDI. It includes a co-ordinator (see 6,a below) and possibly the Chair or Vice-Chair person of the CAHDI. [Of the 5 elective members 1 shall be a national of a Nordic member State country, 2 of the member States from Central and Eastern Europe and 2 from the member States of Western Europe].*

- b. The Council of Europe bears the travel and subsistence expenses of all the members of the Group of Rapporteurs.

6. Working structures and methods:

- a. The Group of Rapporteurs is co-ordinated by the Ambassador Franz CEDE, delegate of Austria in the CAHDI.

* The text in brackets could be an election deal and does not necessarily have to appear in the specific terms of reference.

b. In carrying out its terms of reference, the Group of Rapporteurs may obtain the opinion of other specialists.

7. Duration: These terms of reference expire on 31 December 1999.

APPENDIX VI

SPECIFIC TERMS OF REFERENCE (*)

1. Name of committee: GROUP OF SPECIALISTS ON RESERVATIONS TO INTERNATIONAL TREATIES (DI-S-RIT)
2. Type of committee: Committee of Experts
3. Source of terms of reference: *Ad hoc* Committee of Legal Advisers on Public International Law (CAHDI)
4. Terms of reference:

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

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

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

5. Membership of the committee:

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

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

c. The Commission of the European Community may appoint a representative without reimbursement of expenses nor right to vote.

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

- The Hague Conference on Private International Law
- Organisation for Economic Co-operation and Development
- North Atlantic Treaty Organisation
- Armenia
- Australia
- Azerbaijan
- Canada
- Holy See
- Japan

- New Zealand
- United States of America
- United States of Mexico (**).

6. Working structures and methods:

- a. The Group is co-ordinated by the Representative of Austria, Ambassador Franz CEDE.
- b. In carrying out its terms of reference, the group of specialists may have recourse to consultants.

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

(*) Adopted at the 612th meeting of the Committee of Ministers (Deputies level), 16 December 1997, Decision 97/1076;
(**) Admitted as observer by the CAHDI (15th meeting, Strasbourg, 3-4 March 1998);