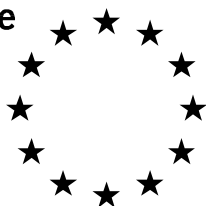


Council of Europe
Conseil de l'Europe



Strasbourg, 10/09/98

CAHDI (98) 12 Addendum

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

**OPINION OF THE CAHDI ON PARAGRAPH IV OF THE DECLARATION ON THE
OCCASION OF THE 50TH ANNIVERSARY OF THE UNIVERSAL DECLARATION OF
HUMAN RIGHTS**

Secretariat memorandum
Prepared by the Directorate of Legal Affairs

Foreword

1. In accordance with the decisions taken by the Ministers' Deputies at their 638th meeting (1-2 July 1998), the Preparatory committee for the Colloquy on the occasion of the 50th Anniversary of the Universal Declaration of Human Rights, at its meeting held in Strasbourg, 1 September 1998, prepared a preliminary-draft Declaration of the Council of Europe on the occasion of the 50th Anniversary of the Universal Declaration of Human Rights with a view to its submission to the Rapporteur Group on Human Rights (GR-H). The preliminary-draft Declaration appears in Appendix I.
2. It is recalled that the Ministers' Deputies have requested the GR-H to « consider and, if appropriate, further elaborate the preliminary draft declaration and present it to the Deputies for approval before 15 October 1998 with a view to adopting it formally at the [651st] meeting on 10 December 1998 ».
3. At its meeting on 3 September 1998, the GR-H agreed that the preliminary-draft Declaration should be transmitted to the *Ad hoc* Committee of Legal Advisers on Public International Law (CAHDI) for consultation on paragraph IV of the operative part of the text. The Preparatory Committee felt that this matter should definitely be addressed in the Declaration but that the CAHDI should be consulted as to the precise wording of this paragraph (see footnote to that paragraph of the preliminary-draft Declaration in Appendix I).
4. Paragraph IV of preliminary-draft Declaration states the member States of the Council of Europe's support of the General Comment No. 26 (61) adopted by the Human Rights Committee on 29 October 1997 affirming that the International Covenant on Civil and Political Rights is not subject to denunciation or withdrawal and calls upon all governments to refrain from taking or supporting such steps.
5. General Comment No. 26 (61) on Issues Relating to the Continuity of Obligations to the International Covenant on Civil and Political Rights was adopted by the Human Rights Committee under Article 40, paragraph 4, of the International Covenant on Civil and Political Rights (document UN Code : CCPR/C/21/Rev.1/Add.8/Rev.1, 8 December 1997). It appears in Appendix II.
6. Appendix III contains a draft opinion of the CAHDI on paragraph IV of the preliminary-draft Declaration. This draft opinion was prepared by the Secretariat on the basis of the common position adopted by member States of the European Union on the occasion of the denunciation by North Korea of the International Covenant on Civil and Political Rights by North.

Action required

Members of the CAHDI are invited to consider the preliminary-draft Declaration and in particular its paragraph IV ; the general comment No 26 (61) of the Human Rights Committee and the draft opinion prepared by the Secretariat with a view to adopting an opinion of the CAHDI on paragraph IV of the preliminary-draft Declaration for the attention of the Rapporteur Group of the Committee of Ministers on Human Rights (GR-H).

APPENDIX I**PRELIMINARY DRAFT DECLARATION ON THE OCCASION OF THE 50TH
ANNIVERSARY OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS**

(to be adopted by the Ministers' Deputies on 10 December 1998 at their 651st meeting)

The member States of the Council of Europe,

1. Considering that today marks the 50th Anniversary of the Universal Declaration of Human Rights to which the member States of the Council of Europe are deeply committed and whose continued importance they reaffirm ;
2. Recalling that the Universal Declaration has been the basis for the creation of human rights protection systems of the United Nations, the Council of Europe and other organisations in different regions of the world;
3. Recognising that the universal protection of human rights and fundamental freedoms is the foundation of justice and peace in the world, and an essential factor for the development and strengthening of pluralist democracy ;
4. Reaffirming their belief in the universal and indivisible character of human rights, civil, political, economic, social and cultural ;
5. Welcoming the progress made in the last 50 years in the universal acceptance and implementation of international human rights standards, including in Europe ;
6. Paying tribute to the work of the United Nations in this field at the global level and stressing the need to review critically progress made in the implementation of the Declaration and Programme of Action adopted at the World Conference on Human Rights (Vienna, 1993) ;
7. Recognising the indispensable contribution of non-governmental organisations as well as individuals defending human rights throughout the world;
8. Expressing satisfaction at the adoption, by the United Nations Diplomatic Conference on 17 July 1998 in Rome, of the Statute of the International Criminal Court, which constitutes a significant step towards the establishment of the rule of law at the international level and an important contribution to the international protection of human rights;
9. Strongly deploring the fact that, in spite of progress made, serious and large-scale violations of human rights continue to occur in many parts of the world, including Europe ;
10. Believing that further efforts are needed to ensure that human rights are effectively protected at the international, regional as well as national levels and aware that the protection of human rights is a continuing task which demands constant vigilance but also willingness to implement, consolidate and improve existing standards and systems of protection as well as the capacity to respond to new challenges that arise in society;
11. Reaffirming their attachment to the fundamental principles of the Council of Europe – pluralist democracy, respect for human rights, the rule of law ;
12. Recalling the historic changes in Europe which have made possible a significant increase in membership of the Council of Europe and which have made Europe today so much more united around common values of freedom and the rule of law than it was fifty years ago ;
13. Reaffirming the essential role at the European level of the Council of Europe in the

protection, promotion and further development of human rights;

14. Welcoming the entry into force of Protocol No. 11 to the European Convention on Human Rights on 1 November 1998 and the establishment of the new European Court of Human Rights ;

15. Expressing their continued support for the human rights conventions of the Council of Europe, notably the European Convention on Human Rights, the European Social Charter, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Framework Convention for the Protection of National Minorities as well as for the mechanisms for their implementation;

16. Stressing the need for an effective implementation of women's rights;

17. Reaffirming that the protection of media freedoms is an integral part of the international protection of human rights;

18. Recognising that more needs to be done, notably through human rights education and awareness-raising, to promote a real human rights culture in all sectors of society ;

19. Bearing in mind the results of the European regional colloquy « In Our Hands – The Effectiveness of Human Rights Protection 50 Years after the Universal Declaration », organised by the Council of Europe on 2-4 September 1998,

I. Call on all governments to become Party to the universal human rights instruments, wherever possible without reservations, to review existing reservations with a view to their withdrawal, and to ensure the effective implementation of those instruments at the national level;

II. Call on all governments to draw up and implement programmes and policies on human rights education and awareness-raising ;

III. Call on all governments to sign and ratify the Statute of the International Criminal Court ;

[IV. Support the general comment adopted by the Human Rights Committee on 29 October 1997 affirming that the International Covenant on Civil and Political Rights is not subject to denunciation or withdrawal and call on all governments to refrain from taking or supporting such steps;]*

V. Call on all governments to establish or strengthen independent national institutions for the protection and promotion of human rights ;

VI. Call on all member States to sign and ratify the human rights instruments of the Council of Europe, wherever possible without reservations, to review existing reservations with a view to their withdrawal, and to ensure the effective implementation of those instruments at the national level ;

VII. Call on all governments to abolish and refrain from reintroducing the death penalty and urge all member States to sign and ratify Protocol No. 6 to the European Convention on Human Rights ;

VIII. Declare that the promotion and protection of human rights remain a high priority for the Council of Europe and that it is necessary to reinforce this work in its various forms to ensure that human rights are effectively protected and enjoyed by everyone;

* The Preparatory Committee felt that this matter should definitely be addressed in the Declaration but that the CAHDI should be consulted as to the precise wording of this paragraph.

IX. Decide therefore to examine, also in the light of the results of the above-mentioned Colloquy, further measures for ensuring that :

- a. the human rights mechanisms of the Council of Europe are capable of effectively defending the rights of individuals;
- b. high priority is given to the intergovernmental and other human rights activities of the Council of Europe concerning inter alia the promotion and protection of human rights ; the promotion of democratic stability ; the promotion of equality between women and men ; and awareness-raising through information, education and training ;

Note the progress made in the preparation of an instrument providing for a general prohibition of discrimination and look forward to the completion of this process as soon as possible ;

[possible paragraph on the Commissioner for Human Rights] **

XI. Express their commitment to maintain and enhance the Council of Europe's outstanding role in the field of human rights.

** To be drafted by the Rapporteur Group on Human Rights.

APPENDIX II**GENERAL COMMENT NO. 26 (61)¹ OF THE HUMAN RIGHTS COMMITTEE ON ISSUES
RELATING TO THE CONTINUITY OF OBLIGATIONS TO THE INTERNATIONAL
COVENANT ON CIVIL AND POLITICAL RIGHTS**

1. The International Covenant on Civil and Political Rights does not contain any provision regarding its termination and does not provide for denunciation or withdrawal. Consequently, the possibility of termination, denunciation or withdrawal must be considered in the light of applicable rules of customary international law which are reflected in the Vienna Convention on the Law of Treaties. On this basis, the Covenant is not subject to denunciation or withdrawal unless it is established that the parties intended to admit the possibility of denunciation or withdrawal or a right to do so is implied from the nature of the treaty.

2. That the parties to the Covenant did not admit the possibility of denunciation and that it was not a mere oversight on their part to omit reference to denunciation is demonstrated by the fact that article 41 (2) of the Covenant does permit a State party to withdraw its acceptance of the competence of the Committee to examine inter-State communications by filing an appropriate notice to that effect while there is no such provision for denunciation of or withdrawal from the Covenant itself. Moreover, the Optional Protocol to the Covenant, negotiated and adopted contemporaneously with it, permits States parties to denounce it. Additionally, by way of comparison, the International Convention on the Elimination of All Forms of Racial Discrimination, which was adopted one year prior to the Covenant, expressly permits denunciation. It can therefore be concluded that the drafters of the Covenant deliberately intended to exclude the possibility of denunciation. The same conclusion applies to the Second Optional Protocol in the drafting of which a denunciation clause was deliberately omitted.

3. Furthermore, it is clear that the Covenant is not the type of treaty which, by its nature, implies a right of denunciation. Together with the simultaneously prepared and adopted International Covenant on Economic, Social and Cultural Rights, the Covenant codifies in treaty form the universal human rights enshrined in the Universal Declaration of Human Rights, the three instruments together often being referred to as the "International Bill of Human Rights". As such, the Covenant does not have a temporary character typical of treaties where a right of denunciation is deemed to be admitted, notwithstanding the absence of a specific provision to that effect.

4. The rights enshrined in the Covenant belong to the people living in the territory of the State party. The Human Rights Committee has consistently taken the view, as evidenced by its long-standing practice, that once the people are accorded the protection of the rights under the Covenant, such protection devolves with territory and continues to belong to them, notwithstanding change in government of the State party, including dismemberment in more than one State or State succession or any subsequent action of the State party designed to divest them of the rights guaranteed by the Covenant.

5. The Committee is therefore firmly of the view that international law does not permit a State which has ratified or acceded or succeeded to the Covenant to denounce it or withdraw from it.

¹ Adopted at the 1631st meeting (sixty-first session), held on 29 October 1997.

APPENDIX III

OPINION OF THE AD HOC COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI) CONCERNING THE PARAGRAPHE IV OF THE DECLARATION ON THE OCCASION OF THE 50TH ANNIVERSARY OF THE UNIVERSAL DECLARATION ON HUMAN RIGHTS

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 Preliminary draft Declaration on the occasion of the 50th Anniversary of the universal Declaration on human rights and to give an opinion on its paragraph IV.

Paragraph IV states that "[The member States of the Council of Europe] support the general comment adopted by the Human Rights Committee on 29 October 1997 affirming that the International Covenant on Civil and Political Rights is not subject to denunciation or withdrawal and call on all governments to refrain from taking or supporting such steps."

OPINION

The CAHDI considers that the International Covenant on Civil and Political Rights (ICCPR) does not expressly permit denunciation. In these circumstances, under public international law, as codified by the Vienna Convention on the Law of Treaties 1969, denunciation is only possible if it was the intention of the parties to permit it or if such a possibility can be implied from the nature of the Treaty.

The CAHDI further considers that it was not the intention of the parties that denunciation should be possible nor can it be implied from the nature of the ICCPR for the reasons given in the general comment No. 26 (61) adopted by the Human Rights Committee.

The CAHDI therefore endorses paragraph IV of the Preliminary-draft Declaration on the occasion of the 50th Anniversary of the Universal Declaration to the extent that denunciation of the ICCPR is not legally permissible.

However, the CAHDI suggests that for the sake of consistency with the General comment No. 26 (61) adopted by the Human Rights Committee, paragraph IV of the preliminary-draft Declaration be worded as follows: "[The member States of the Council of Europe] support the general comment No. 26 (61) adopted by the Human Rights Committee on 29 October 1997 affirming that the International Covenant on Civil and Political Rights does not permit a State which has ratified, acceded or succeeded to the Covenant to denounce it or to withdraw from it, and call on all governments to refrain from taking or supporting such steps."

The CAHDI welcomes this paragraph of the Preliminary-draft Declaration on the occasion of the 50th Anniversary of the universal Declaration and considers that it is an important step towards **(option a)** the recognition of the irreversibility of States' commitments relating to the protection of human rights / **(option b)** effective implementation of the Universal Declaration of Human Rights.