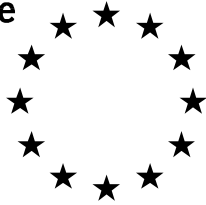


Council of Europe
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AD HOC COMMITTEE OF LEGAL ADVISERS
ON PUBLIC INTERNATIONAL LAW
(CAHDI)

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CONSIDERATION OF CONVENTIONS UNDER THE RESPONSIBILITY OF THE CAHDI

Secretariat memorandum
Prepared by the Directorate of Legal Affairs

Foreword

At the 15th meeting of the CAHDI held in Strasbourg, 3-4 March 1998, in the framework of the discussion concerning the CAHDI's terms of reference, the CAHDI held a thorough exchange of views concerning the proposals submitted by the delegation of the Russian Federation concerning the role of the CAHDI.

Inspired by these proposals, the CAHDI decided to include in its agenda one or two major issues of public international law to be the subject of thorough discussion.

With this in mind, the Secretariat has prepared the following note concerning the legal instruments of the Council of Europe in the field of public international law.

Part I of the note presents the conventions most interesting for the work of the CAHDI. Part II contains a summary of relevant resolutions and recommendations.

Appendices 1-5 include the charts of signatures and ratifications of the conventions under the responsibility of the CAHDI.

I. EUROPEAN TREATIES

(i) European Convention for the peaceful settlement of disputes [ETS 23]

Under Chapter I of this Convention, the Parties shall submit to the judgment of the International Court of Justice all international legal disputes which may arise between them, in particular, those concerning:

- a) interpretation of a treaty;
- b) any question of international law;
- c) the existence of any fact which, if established, would constitute the breach of an international obligations;
- d) nature or extent of the reparation to be made for the breach of the international obligation.

For other disputes, or where the parties to a dispute have agreed to resort to the procedure of conciliation before that of judicial settlement, Chapter II provides that the Parties shall submit to conciliation all disputes which may arise between them. The Convention provides for the setting up of a Permanent Conciliation Commission by the parties concerned or a special Conciliation Commission. The Convention contains details concerning the proceedings of the special Conciliation Commission.

Arbitration is used in the case of disputes other than those provided for under Chapter I and which have not been settled by conciliation, either because the parties have agreed not to have prior recourse to it or because conciliation has failed (Chapter III).

The provisions of the Convention do not apply to disputes, which the Parties agree to submit to another procedure of peaceful settlement. With regard to disputes provided for under Chapter I the Parties may not invoke as between themselves agreements which do not provide for a procedure entailing binding decisions.

The Convention does not affect the application of the provisions of the European Convention of Human Rights.

If one of the parties to a dispute fails to carry out its obligations under a decision of the International Court of Justice or under an award of the Arbitral Tribunal, the other party may appeal to the Committee of Ministers of the Council of Europe which may make recommendations with a view to ensuring compliance.

This Convention, which came into force on 30 April 1958, has been ratified by Austria, Belgium, Denmark, Federal Republic of Germany, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Sweden, Switzerland and the United Kingdom¹. The Convention has been signed by France, Greece, Iceland, Ireland and Turkey.

(ii) European Convention on consular functions and its protocols concerning the protection of refugees and concerning civil aircraft [ETS 61]

This Convention contains detailed provisions on the means by which consular activities, such as for instance: protection of nationals of the sending States, defense of their rights and interests, furtherance of the interests of the sending State, are carried out, in particular as regards assistance to a national of the sending State deprived of his liberty, exercise of functions of registrar and notary public, and safeguard of the interests of minors who are nationals of the sending State.

Specific chapters are devoted to the right to represent a national of the sending State as regards his or her interests in estates or property situated in the receiving State, and to the right to afford all appropriate assistance to vessels of the sending State and to members of their crews when they are in a port or in international or internal waters of the receiving State.

Under the Protocol on Consular Functions concerning the Protection of Refugees, the Contracting Parties may accept that a refugee be represented and his interests protected by a consular officer of the State where he has his habitual residence, and not of the State of which he is a national.

Under the Protocol relating to Consular Functions in respect of Civil Aircraft, the provisions of the Convention concerning vessels shall also apply in relation to civil aircraft as far as applicable.

The Convention, which requires 5 ratifications for entry into force, has been ratified by 4 States: Greece, Norway, Portugal and Spain. It has been signed by 4 States: Austria, the Federal Republic of Germany, Iceland and Italy. The Protocol on consular functions concerning the protection of refugees has been ratified by Norway and Portugal and signed by Austria, the Federal Republic of Germany and Italy. The Protocol relating to consular functions in respect of civil aircraft has been ratified by Portugal and Spain and signed by the Federal Republic of Germany and Italy.

¹

The following Contracting States have declared that they will not be bound by

- Chapter III relating to arbitration: Belgium, Malta, Netherlands, Sweden and the United Kingdom
- Chapters II and III relating to conciliation and arbitration: Italy.

(iii) European Convention on the abolition of legalisation of documents executed by diplomatic agents or consular officers [ETS 63]

This Convention was prepared as the Convention abolishing the requirements of legalisation for foreign public documents, which was concluded at The Hague on 5 October 1961, excludes from its field of application documents executed by diplomatic or consular agents.

No distinction has been made among the documents drawn up by diplomatic agents or consular officers.

Contracting Parties are required to take all necessary steps to ensure that their administrative authorities, and particularly the Ministry for Foreign Affairs, refuse requests for legalisation of diplomatic or consular documents, which are justified under the terms of the Convention.

The Convention provides for the setting up of a national system to verify, where necessary, the authenticity of documents.

This Convention, which came into force on 14 August 1970, has been ratified by 18 States: Austria, Cyprus, Czech Republic, Federal Republic of Germany, France, Greece, Italy, Liechtenstein (accession), Luxembourg, Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom.

(iv) European Convention on State Immunity and Additional Protocol [ETS 74]
(see also II - Resolution (72) 2 below)

The Convention lists the cases in which a Contracting State cannot claim immunity, e.g. when the State institutes or intervenes in proceedings or agrees to submit to the jurisdiction of a Court of another State, or in case of proceedings relating to contracts of employment, participation in a company, industrial, commercial and financial activities, intellectual property rights, etc. A Contracting State is entitled to immunity from the jurisdiction of the courts of another Contracting State if the proceedings do not fall within these specified categories.

The Protocol to the Convention provides for the settlement of disputes: to this end a specific European Tribunal has been established which will operate according to the detailed rules of procedure laid down in the Protocol.

The Additional Protocol establishes the European Tribunal in matters of State Immunity. It has the function of determining, by means of a final and binding judgment:

- (i) on application by one of the States concerned or by special agreement, disputes between States over the interpretation and application of the convention; and
- (ii) on application by a private litigant, disputes as to whether a State is bound, under the Convention, to give effect to a judgment given against it in his favour.

States Parties to the Protocol may declare that they do not accept the Tribunal's jurisdiction over disputes of the second kind.

The European Tribunal will be composed of the same members as the European Court of Human Rights. If a non-member State of the Council of Europe were to accede to the Protocol, the membership of the Tribunal would be increased to include a suitably qualified person designated by that State.

This Convention came into force on 11 June 1976 and has been ratified by 8 States: Austria, Belgium, Cyprus, Federal Republic of Germany, Luxembourg, Netherlands, Switzerland and the United Kingdom. The Convention has been signed by Portugal.

The Additional Protocol came into force on 22 June 1985 and has been ratified by 6 States: Austria, Belgium, Cyprus, Luxembourg, Netherlands and Switzerland. It has been signed by the Federal Republic of Germany and Portugal. None of the States concerned has declared that it does not accept the European Tribunal's jurisdiction over applications by private litigants.

(v) Other Conventions

In addition to the above Conventions, certain matters relating to public international law are also dealt with by several Conventions.

II. RESOLUTIONS AND RECOMMENDATIONS OF THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE

1. Publications

The Committee of Ministers has adopted the following texts concerning publications in the field of public international law:

- Resolution (64) 10 publication of digests of State practice in the field of public international law

Governments are recommended to publish digest concerning national practice in the field of public international law and to follow certain principles in order to comply as far as possible with certain uniform standards in order to make the digests readily accessible and comparable with each other.

- Resolution (68) 17 model plan for the classification of documents concerning State practice in the field of public international law

This Resolution recommends that those governments which have not already adopted a final plan for digests of their national practice adopt the model plan which is appended to the Resolution as a basis for preparing digests of their national practice.

- Resolution (69) 12 Consolidated treaty series

This Resolution recommends to the governments of member States to facilitate the preparation of this a consolidated Treaty Series covering the period 1648-1919.

- Recommendation R (97) 11 on the amended model plan for the classification of documents concerning State practice in the field of public international law

This Recommendation reiterates the recommendation made to member States of the Council of Europe in Resolution (64) 10 to publish, if they have not done yet so, digests concerning national practice in the field of public international law in accordance with the rules and methods contained in the above-mentioned Resolution.

It further recommends to the governments of member States of the Council of Europe the adoption of the attached model plan for the preparation of digest concerning their national practice.

2. Application and interpretation of treaties

The Committee of Ministers has adopted the following texts concerning the application and interpretation of treaties:

- Resolution (69) 27 on measures likely to promote uniform interpretation of European treaties

This Resolution recommends that the member States take certain steps concerning the translation of Conventions and Agreements of the Council of Europe and make available, so far as possible, to the national organs responsible for applying and interpreting such Conventions and Agreements, appropriate information on the application and interpretation given to their provisions in other member States.

- Resolution (69) 28 on collection and distribution of information on the application and interpretation of Council of Europe Conventions and Agreements

This Resolution recommends that governments of member States appoint bodies to collect and distribute information on the application and interpretation of Council of Europe Conventions and Agreements.

The bodies appointed for this purpose are required to communicate to the Secretariat each year a list of the decisions rendered by their highest courts, courts of appeal and other courts, and of all legislative measures of a general character, bearing on the application and interpretation of certain Council of Europe Conventions chosen by the Secretary General.

- Recommendation No R (88) 16 on ratifying and improving the implementation of the Conventions and Agreements concluded within the Council of Europe in the field of private law, notably the Conventions which protect the interest of the child

This text recommends Governments of member States to ratify certain Council of Europe Conventions and Agreements and to take steps to improve the implementation of these treaties.

Governments are recommended to improve co-operation and the exchange of information between central authorities designated in pursuance of these treaties and to take measures to inform those for whose benefit the treaties are designed and to seek the assistance of the Secretary General to find solutions to problems which have prevented ratification or full implementation.

3. Other questions

The Committee of Ministers has also adopted the following texts concerning public international law:

- Resolution (69) 29 privileges and immunities of international organisations

This Resolution recommends that governments of member States be guided by the considerations set out in an explanatory report to the Resolution in any future negotiations concerning privileges and immunities of international organisations.

At its 10th meeting (September 1988) the CJ-DI agreed that it would be useful to prepare a further Recommendation on privileges and immunities containing principles to be taken into account when new international organisations are set up [see CDCJ (88) 49 paragraphs 20 to 24].

- Resolution (72) 2 concerning the European Convention on State Immunity
(see also I-ETS 74 above)

This Resolution recommends to governments of Contracting States to this Convention to establish a procedure for the purpose of Article 21 of the Convention, which shall be as expeditious and simple as possible.

Article 21 gives anyone who wishes to enforce a judgment given in his favour against a State the possibility to introduce proceedings before a court of the State concerned.

- Recommendation No R (87) 2 containing a model agreement to enable the members of the family forming part of the household of a member of a diplomatic mission or consular post to engage in a gainful occupation

The draft text for this Recommendation and its explanatory memorandum were prepared by the CJ-DI.

When a member of a diplomatic mission or consular post is posted abroad, a member of the family of this official may encounter difficulties in obtaining the necessary authorizations to engage in a gainful occupation in the receiving State.

Bilateral agreements were considered to be more appropriate than multilateral agreements as they enabled account to be taken of the different requirements of individual States.

The Recommendation therefore contains a model agreement that maybe used and, if necessary, adapted by States when concluding bilateral agreements on this topic.

The model agreement deals with authorization to engage in a gainful occupation, procedures, civil and administrative privileges and immunities, criminal immunity and fiscal and social security regimes.

- Recommendation No. R (97) 10 on debts of diplomatic missions, permanent missions, and diplomatic missions with "double accreditation" as well as those of their members

This text recommends that the Governments of member States take into account the measures envisaged in the appendix to the Recommendation in order to remedy on a case basis the difficulties raised by debts.

APPENDIX 1

Chart of signatures and ratifications of the European Convention for the peaceful settlement of disputes

APPENDIX 2

Chart of signatures and ratifications European Convention on consular functions and its protocols concerning the protection of refugees and concerning civil aircraft

APPENDIX 3

**Chart of signatures and ratifications of the European Convention on the abolition of
legalisation of documents executed by diplomatic agents or consular officers**

APPENDIX 4

**Chart of signatures and ratifications of the European Convention on State immunity
and its Additional Protocol**

