

Strasbourg, 22 September 1999

CAHDI (99) 22

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

18th meeting, Strasbourg, 7- 8 September 1999

List of items discussed and decisions taken

1. The *Ad Hoc* Committee of Legal Advisers on Public International Law (CAHDI) held its 18th meeting on 7 and 8 September 1999 in Strasbourg. The meeting was chaired by Ambassador Dr Hilger (Germany), 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 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. The CAHDI held a fruitful exchange of views with the President of the European Court of Human Rights (ECHR), Mr Wildhaber, together with Mr Caflich, Mr Ferrari Bravo and Mr Pastor Ridruejo, members of the ECHR and Mr De Salvia, Register of the ECHR, about the developments concerning the entry into functioning of the new ECHR.
4. The CAHDI presented to the Secretary General, Mr Schwimmer, a Report on the Pilot Project of the Council of Europe on State practice regarding State succession and issues of recognition prepared, under the aegis of the CAHDI, by the Max Planck Institute for Comparative Public Law and International Law (Germany), the T.M.C. Asser Institute (The Netherlands) and the Castrén Institute of International Law and Human Rights (Finland). The CAHDI agreed that this report together with Recommendation No R (99) 13 on responses to inadmissible reservations to international treaties recently adopted by the Committee of Ministers should be forwarded to the United Nations as part of the Council of Europe's contribution to the United Nations Decade of International Law. Following a decision by the Committee of Ministers at the CAHDI's request, Recommendations Nos. R (97) 10 on debts of diplomatic missions, permanent missions and diplomatic missions with "double accreditation", as well as those of their members, and R (97) 11 on the amended model plan for the classification of documents concerning State practice in the field of public international law, have already been forwarded to the Secretary General of the United Nations by the Secretary General of the Council of Europe as part of the Organisation's contribution.
5. The CAHDI was informed about the implementation of the activity on the law and practice relating to reservations to international multilateral treaties currently carried out by the Group of Experts on Reservations to International Treaties (DI-E-RIT). The Chairman of the Group, Ambassador Cede (Austria) informed members of the CAHDI about the second

meeting of the Group held in Strasbourg, on 6 September 1999. The CAHDI agreed on the usefulness of pursuing this activity and adopted draft specific terms of reference of the DI-E-RIT for 2000 submitted to the Committee of Ministers for approval (Appendix III). In addition, following the departure of Ambassador Cede (Austria), the CAHDI appointed Ambassador Magnuson (Sweden) as Chairman of the DI-E-RIT.

6. The CAHDI was informed about the implementation of the activity on “Expression of consent by States to be bound by a treaty”. Delegations and observer States not having done so were kindly invited to submit their contributions before 31 December 1999.

7. The CAHDI held a thorough exchange of views on the practical importance of the European Convention (ETS 63) and decided to consider the European Convention on Consular Functions (ETS 61) at its next meeting.

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

9. The CAHDI took note of recent developments concerning the adoption of the Statute of the International Criminal Court (ICC) in Rome, July 1998 and considered a Secretariat’s proposal for a multilateral Conference to be organised jointly with the European Committee on Crime Problems (CDPC) with a view to a) discussing and ascertaining the obligations for member States arising out of the Rome Statue, and b) examining measures that the Council of Europe might take in order to facilitate co-operation between States and the ICC. The CAHDI supported this proposal and asked the Secretariat to undertake preparatory work.

10. The CAHDI held an exchange of views on the activities and working methods of the Sixth Committee of the General Assembly of the United Nations and the International Law Commission (ILC). In this connection, the CAHDI welcome the consolidation of the links between the CAHDI and the ILC. In this context, the CAHDI examined a non-edited version of the Report of the 51st session of the ILC (Geneva, 3 May – 23 July 1999), obtained as a result of Council of Europe and United Nations inter-secretariat contacts at the CAHDI’s request and a Report on the 51st session of the ILC, prepared by Mr. Simma, member of the ILC, for the attention of the members of the CAHDI.

11. In accordance with the provisions of article 17, Appendix II of Resolution (76) 3 of the Committee of Ministers, the CAHDI re-elected Ambassador Dr Hilger (Germany) as Chair for one year. The CAHDI decided to proceed to the election of the vice-chair at its next meeting (see 13. below).

12. The CAHDI considered a proposal relating to the setting up of a Bureau in accordance with the provisions of article 8, appendix II of Resolution (76) 3 of the Committee of Ministers and decided to consider this proposal at a latter meeting.

13. In accordance with the Council of Europe’s draft budget, subject to the Committee of Ministers’ approval, following Ambassador Hilger’s invitation on behalf of the German authorities, the CAHDI decided to hold its 19th meeting in Berlin, on 13 and 14 March 2000 and adopted the preliminary draft agenda that appears in appendix IV. In addition, the CAHDI decided to hold the 3rd meeting of the Group of Experts on Reservations to International Treaties (DI-E-RIT) in Berlin, 10 March 2000, right before the meeting of the CAHDI in order to allow the participation of as many members of the CAHDI as possible in the meeting of the DI-E-RIT.

14. The CAHDI paid tribute to the memory of the late Ambassador Mircea (Romania), former member of the Committee, and congratulated Ambassador Cede (Austria) for his appointment as Ambassador to the Russian Federation thanking him for his significant contribution to the work of the Committee, particularly in the field of reservations to international treaties.

APPENDIX I

LIST OF PARTICIPANTS

ALBANIA /ALBANIE: Mrs Ledia HYSI, Acting Director of the Legal and Consular Department

ANDORRA /ANDORRE: Mme Maria UBACH, Représentant Permanent adjoint d'Andorre auprès du Conseil de l'Europe

AUSTRIA/AUTRICHE: Mr Franz CEDE, Ambassador, Legal Adviser, Ministry for Foreign Affairs

BELGIUM/BELGIQUE: Mme A.M. SNYERS, Conseiller Général, Direction Générale des Affaires Juridiques, Ministère des Affaires Etrangères

BULGARIA /BULGARIE: Mr Aliocha NEDELTCHEV, Director of International Law Directorate, Ministry of Foreign Affairs

CROATIA /CROATIE: Ms Ljerka ALAJBEG, Ambassador, Chief Legal Adviser, Ministry of Foreign Affairs

CYPRUS /CHYPRE: Mme Georghia EROTKRITOU, Attorney of the Republic of Cyprus

CZECH REPUBLIC /REPUBLIQUE TCHEQUE: M. Jiří MALENOVSKÝ, Ambassador, Director General of the Legal and Consular Section, 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

Mr Esko KIURU, Deputy Director General for Legal Affairs, Ministry of Foreign Affairs

FRANCE: Monsieur Jean-Luc FLORENT, Sous-directeur du droit international public général, Direction des Affaires Juridiques, Ministère des Affaires étrangères

Mme Frédérique COULÉE, Direction des Affaires Juridiques, Sous direction du droit international public, Ministère des Affaires étrangères

GEORGIA/GEORGIE: Mr Gela BEZHUASHVILI, Director of International Law Department, Ministry of Foreign Affairs

GERMANY/ALLEMAGNE: Dr Reinhard HILGER, Ambassador, Director of the Public International Law Section, Federal Foreign Office Section (**Chairman/Président**)

Dr Ernst MARTENS, Deputy Head of the Treaty Division, Federal Foreign Office

Dr Klemens MÖMKES, First Secretary, Public international Law, Federal Foreign Office

GREECE/GRECE: Ms Phani DASCALOPOULOU-LIVADA, Legal Adviser, Deputy Head of the Legal Department, Ministry of Foreign Affairs

HUNGARY/HONGRIE: Mr György SZÉNÁSI, Ambassador, Head of International Law Department, Ministry of Foreign Affairs

Ms Gabrielle HORVÁTH, Deuxième Secrétaire, Département du droit international, Ministère des Affaires étrangères

ICELAND/ISLANDE: Mr Thomas H. HEIDAR, Legal Adviser, Ministry of Foreign Affairs

ITALY/ITALIE: M. Umberto LEANZA, Chef du Service Juridique, Ministère des Affaires Etrangères

Mme Ida CARACCILOLO, Lecturer International Law Detached, Ministry of Foreign Affairs,

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

LATVIA/LETTONIE: -

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

LITHUANIA/LITUANIE: Ms Sigutė JAKŠTONYTE, Deputy Director of the Legal and International Law Department of the Ministry of Foreign Affairs

LUXEMBOURG: - Apologised/excusé

MALTA/MALTE: Dr Lawrence QUINTANO, Senior Counsel for the Republic, Office of the Attorney General

MOLDOVA: Mrs Tatiana PARVU, Councillor to the General Department of International Law and Treaties, Ministry of Foreign Affairs

NETHERLANDS/PAYS-BAS: Dr Johan G. LAMMERS, Legal Adviser, Head of the International Law Department, Ministry of Foreign Affairs

NORWAY/NORVEGE: Mr Hans Wilhelm LONGVA, Ambassador, Director General, Department of Legal Affairs, Royal Ministry of Foreign Affairs

Mr Rune RESALAND, Deputy Director General, Department of Legal Affairs, Royal Ministry of Foreign Affairs

POLAND/POLOGNE: Dr Jerzy KRANZ, Directeur du Département juridique et consulaire, Ministère des Affaires étrangères

PORTUGAL: M. José Maria TEIXEIRA LEITE MARTINS, Directeur du Département des Affaires Juridiques, Ministère des Affaires Etrangères

ROMANIA/ROUMANIE: M. Florin FLORIAN, Directeur des Affaires Juridiques et des Traités, Ministère des Affaires Etrangères

RUSSIAN FEDERATION/FEDERATION DE RUSSIE: Mr Leonid SKOTNIKOV, Ambassador, Director of the Legal Department, Ministry of Foreign Affairs

SAN MARINO/SAINT-MARIN: -

SLOVAK REPUBLIC/REPUBLIQUE SLOVAQUE: M. Ján VARŠO, General Director, Section of International Law and Consular Affairs, Ministry of Foreign Affairs

SLOVENIA/SLOVENIE: Mr Andrej GRASSELLI, Head of the International and Law Department, Ministry for Foreign Affairs

SPAIN/ESPAGNE: Mr Aurelio PEREZ GIRALDA, Ambassador, Chief Legal Adviser, Ministerio de Asuntos Exteriores

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

M. Jürg LINDENMANN, Direction du Droit international public, Département fédéral des Affaires étrangères

“THE FORMER YUGOSLAVE REPUBLIC OF MACEDONIA / L’EX-REPUBLIQUE YUGOSLAVE DE MACEDOINE”: -

TURKEY/ TURQUIE: Mrs Nehir ÜNEL, Legal Adviser to the Foreign Ministry, Legal Section

UKRAINE: Mr V. KORZACHENKO, Legal and Treaty Department, Ministry for Foreign Affairs

UNITED KINGDOM/ ROYAUME-UNI: Mr Christopher WHOMERSLEY, Legal Counsellor, Foreign and Commonwealth Office

SPECIAL GUESTS/INVITES SPECIAUX

Mr Luzius WILDHABER, President of the European Court of Human Rights/Président de la Cour Européenne des Droits de l’Homme

M. Lucius CAFLISCH, Judge/Juge, European Court of Human Rights/Cour Européenne des Droits de l’Homme

M. Luigi FERRARI BRAVO, Judge/Juge, European Court of Human Rights/Cour Européenne des Droits de l’Homme

M. Antonio PASTOR RIDRUEJO, Judge/Juge, European Court of Human Rights/Cour Européenne des Droits de l’Homme

Mr Olivier RIBBELINK, T.M.C. Asser Institute

Mr Andreas ZIMMERMANN, Max Planck Institute

Mr Jan KLABBERS, Erick Castrèn Institute, University of Helsinki

EUROPEAN COMMUNITY /COMMUNAUTE EUROPEENNE

EUROPEAN COMMISSION/ COMMISSION EUROPEENNE: Apologised/Excusé

OBSERVERS/ OBSERVATEURS

CANADA: Mr Gilbert LAURIN, Counsellor, The Canadian Embassy

HOLY SEE/SAINT-SIEGE: Mme Odile GANGHOFER, Docteur en droit

JAPAN/JAPON: Ms Masataka OKANO, Deputy Director of the Legal Affairs Division, Treaties Bureau, Ministry of Foreign Affairs

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

UNITED STATES OF MEXICO/ ETATS UNIS DU MEXIQUE: Mr Miguel Angel GONZÁLEZ FELIX, Ambassador, Chief Legal Adviser, Ministry of Foreign Affairs (SRE)

ISRAEL: Mr Alan BAKER, Legal Adviser, Ministry of Foreign Affairs

AZERBAIJAN/AZERBAIDJAN: M. Gunesh ROUSTAM-ZADEH, 3rd Secretary of Legal and Treaties Department, Ministry of Foreign Affairs

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

Apologised/Excusé

NORTH ATLANTIC TREATY ORGANISATION / ORGANISATION DU TRAITE DE L’ATLANTIQUE NORD: M. Baldwin DE VIDTS, Conseiller Juridique, Service juridique de l’OTAN

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

SECRETARIAT GENERAL

Mr Walter SCHWIMMER, Secretary General of the Council of Europe/Secrétaire général du Conseil de l'Europe

Mr Mario MARTINS, Principal Administrator/Administrateur principal, Private Office of the Secretary General/Cabinet du Secrétaire Général

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

M. Michel DE SALVIA, Register of the European Court of Human Rights/Greffier de la Cour européenne des Droits de l'Homme

M. Jean-André TSIMARATOS, Directeur délégué à l'édition et de la documentation/ Director responsible for publishing and documentation service

M. Alexey KOZHEMYAKOV, Head of the Public and International Law Division/Chef de la Division du Droit Public et international, Directorate of Legal Affairs/Direction des Affaires juridiques

M. Rafael A. BENITEZ, Secretary of the CAHDI/Secrétaire du CAHDI, Public and International Law Division/Division du Droit public et international, Directorate of Legal Affairs/Direction des Affaires juridiques

Mme Francine NAAS, Assistant/Assistante, Public and International Law Division/Division du Droit public et international, Directorate of Legal Affairs/Direction des Affaires

Interpreters/Interprètes

Mr Norman EDWARDS

Mr Didier JUNGLING

APPENDIX II

AGENDA

A. INTRODUCTION

1. Opening of the meeting by the Chairman, Ambassador Hilger
Draft report of the 17th meeting of the CAHDI (Vienna, 8-9 March 1999) **CAHDI (99) 15**
2. Adoption of the agenda **CAHDI (99) OJ 2**
3. Communication by the Director of Legal Affairs, Mr De Vel
Recent changes concerning Council of Europe treaties **CAHDI (99) 18**

B. ONGOING ACTIVITIES OF THE CAHDI

4. Statement by the President of the European Court of Human Rights (ECHR), Mr Wildhaber, exchange of views with the members of the CAHDI and visit of the ECHR
5. Decisions of the Committee of Ministers concerning the CAHDI
6. The law and practice relating to reservations and interpretative declarations concerning international treaties :
Recommendation No. R (99) 13 on responses to inadmissible reservations to international treaties **R. No. (99) 13**
 - a. 2nd meeting of the Group of experts on Reservations to International Treaties (DI-E-RIT) Strasbourg, 6 September 1999
 - b. Key issues regarding the formulation of Reservations to International Treaties **DI-E-RIT (99) 5**
 - c. European Observatory of Reservations to International Treaties **DI-E-RIT (99) 7**
 - d. Draft specific terms of reference of the DI-E-RIT for 2000 **DI-E-RIT (99) 8**
7. Consideration of conventions under the responsibility of the CAHDI: examination of the European Convention on the abolition of legalisation of documents executed by diplomatic agents or consular officers (ETS 63) **CAHDI (99) 16**
8. Consent by States to be bound by a treaty **CAHDI (99) 21**
9. Presentation of the Report of the Council of Europe's Pilot Project on State practice concerning State succession and issues of Recognition to the Secretary General of the Council of Europe (cf. Item 16 below)

C. GENERAL ISSUES OF PUBLIC INTERNATIONAL LAW

10. Depositaries of treaties
11. Implementation of international instruments protecting the victims of armed conflicts
12. Developments concerning the International Criminal Court **CAHDI (99) 20**
13. Implementation and functioning of the Tribunals established by UN Security Council Resolutions 827 (1993) and 955 (1994)
14. Protection of Cultural Heritage in times of War

15. The work of the General Assembly of the United Nations and the Sixth Committee, and the International Law Commission (ILC) **CAHDI (99) Inf. 3**
CAHDI (99) Inf. 4
 16. The United Nations Decade of International Law, from 1990 to 1999: Centennial of the first International Peace Conference and closure of the United Nations Decade of International Law
- D. OTHER
17. Election of the Chair and Vice-Chair of the CAHDI **CAHDI (99) 19**
 18. Appointment of the Bureau of the CAHDI **CAHDI (99) 17**
 19. Date, place and agenda of the 19th meeting of the CAHDI
 20. Other business
 21. Closing

APPENDIX III

DRAFT SPECIFIC TERMS OF REFERENCE

1. Name of committee: GROUP OF EXPERTS ON RESERVATIONS TO INTERNATIONAL TREATIES (DI-E-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 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 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 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 on reservations to international treaties.
5. Membership of the committee:
 - a. All member States may appoint an expert in the Group.
 - b. The Council of Europe bears the travel and subsistence expenses of the Chairman and 7 experts, one from each of the following countries: Croatia, Finland, The Netherlands, Romania, Russian Federation, Spain and Turkey.
 - c. The European Community may appoint a representative without reimbursement of expenses nor right to vote.
 - d. 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 Group: Canada, Holy See, Japan and United States of America.
 - e. Representatives of the following organisations and countries will be invited to take part as observers in the meetings of the Group:
 - Armenia
 - Australia
 - Azerbaijan
 - Bosnia and Herzegovina

- New Zealand
- United States of Mexico¹
- Israel²
- The Hague Conference on Private International Law
- Organisation for Economic Co-operation and Development (OECD)
- North Atlantic Treaty Organisation (NATO)
- The United Nations and its specialised agencies³

6. Working structures and methods:

- a. The Group is co-ordinated by Ambassador Magnuson (Sweden).
- b. In carrying out its terms of reference, the Group may have recourse to specialists.

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

¹ Admitted following decision of the CAHDI (15th meeting, Strasbourg, 3-4 March 1998).

² Admitted following decision of the CAHDI (17th meeting, Vienna, 8-9 March 1999) confirmed by the Committee of Ministers at Deputies level (670th meeting, in Strasbourg, 18 May 1999) (CM/Dél/Déc(99)661/10.1).

³ For specific items at the request of the DI-E-RIT and/or the CAHDI.

APPENDIX IV**PRELIMINARY DRAFT AGENDA OF THE 19th MEETING****A. INTRODUCTION**

1. Opening of the meeting by the Chairman, Ambassador Hilger
2. Adoption of the agenda
3. Communication by the Director of Legal Affairs, Mr De Vel

B. ONGOING ACTIVITIES OF THE CAHDI

4. Contribution of the CAHDI to the celebrations of the 50th anniversary of the European Convention on Human Rights (ECHR): Exchange of views on the implications of the European Convention on Human Rights on the development of Public International Law
5. Decisions of the Committee of Ministers concerning the CAHDI
6. The law and practice relating to reservations and interpretative declarations concerning international treaties :
 - a. 3rd meeting of the Group of experts on Reservations to International Treaties (DI-E-RIT) Berlin, 10 March 2000
 - b. Key issues regarding the formulation of Reservations to International Treaties
 - c. European Observatory of Reservations to International Treaties
7. Consideration of conventions under the responsibility of the CAHDI: examination of the European Convention on Consular Functions (ETS 61)
8. Consent by States to be bound by a treaty
9. Proposal for the setting up of a General Judicial Authority of the Council of Europe

C. GENERAL ISSUES OF PUBLIC INTERNATIONAL LAW

10. Communication and exchange of views with by the President of the Court on Conciliation and Arbitration, Mr Badinter
11. Implementation of international instruments protecting the victims of armed conflicts
12. Developments concerning the International Criminal Court
13. Implementation and functioning of the Tribunals established by UN Security Council Resolutions 827 (1993) and 955 (1994)
14. Law of the Sea: Protection of Subaquatic Cultural Heritage

D. OTHER

15. Election of the Vice-Chair of the CAHDI
16. Date, place and agenda of the 20th meeting of the CAHDI
17. Other business
18. Closing