

2000



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 02/08/00

CAHDI (2000) 19

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

20th meeting,
Strasbourg, 12-13 September 2000

REQUEST OF THE INTERNATIONAL LEAGUE AGAINST RACISM AND ANTI-SEMITISM (LICRA) FOR STATUS OF OBSERVER
TO THE CAHDI

Secretariat memorandum
Prepared by the Directorate General of Legal Affairs

Foreword

1. By letter dated 6 April 2000 to the Director General of Legal Affairs of the Council of Europe, the Secretary General of *la Ligue Internationale Contre le Racisme et l'Antisemitisme* (International League against Racism and Anti-semitism - LICRA), Mr Serero, requested the status of observer to the CAHDI for LICRA (see Appendix 1).

2. It should be noted that LICRA is an international non-governmental organisation, which has consultative status with the Council of Europe. Moreover, it has recently made similar requests for admission as observer in various intergovernmental committees of the Council of Europe including the Steering Committee on Human Rights (CDDH).

3. In accordance with Article 5 of Resolution (76) 3 of the Committee of Ministers on Committee structures, terms of reference and working methods (see Appendix 2), the Secretariat initiated the specific procedure concerning admission of observers to intergovernmental committees and, by letter of 30 June 2000, the Director General of Legal Affairs, informed member States of the Council of Europe about the LICRA's request (see Appendix 3).

4. Following the relevant procedure, delegations were given four weeks to request that the issue be included in the agenda of the Committee of Ministers. No delegation made such request upon expiry of the deadline: 31 July 2000; the item therefore was included in the agenda for the 20th meeting of the CAHDI (12-13 September 2000).

5. Article 5 of Resolution (76) 3, establishes that the decision [by the CAHDI] to grant the status of observer must then be taken unanimously.

6. The Committee of Ministers addressed two specific messages to Steering Committees and Ad Hoc Committees of experts concerning admission of observers at their 347th and 420th meeting held in Strasbourg respectively in May 1982 and October 1988 (see Appendices 4 and 5).

7. According to these messages, it should be noted that organisations can be granted observer status:

- for the whole duration of the Committee,
- for a given period,
- for a single meeting,
- for a specific activity,
- for a specific item on the agenda.

8. When deciding on granting observer status or not, committees should consider three essential criteria:

- the participation of an observer must be in the interest of the committee (message adopted at the 347th meeting, para. 3 a)
- the participation of an observer must not hinder the work of the committee (message adopted at the 347th meeting, para. 3 b)
- the need to ensure the efficient work of the committee (message adopted at the 420th meeting, para. 3)

9. According to the message of the Committee of Ministers adopted at the 347th meeting, para. 3, the nature of the work of the committee should be considered while assessing the above-mentioned criteria. Other elements to be considered are set out in the message adopted at the 420th meeting, para. 5 and include:

- a. the nature of the requester: a non-governmental organisation,

- b. the origin of the request: the Secretary General of the LICRA,
- c. the nature of the committee in question,
- d. the list of committees to which the requester has been admitted : none, but similar procedures are underway regarding the admission of LICRA as observer in several committees (see 2 above);
- d. list of observers already admitted to the committee (see below) and
- e. opinion of the Secretary General.

10. Moreover, at its 442nd meeting (Strasbourg, June 1990), the Committee of Ministers took a decision relating to "Granting of observer status with intergovernmental committees of experts to non-governmental organisations" (see Appendix 6). According to it and subject to the prior examination of the request by the committee concerned, the Committee of Ministers shall be informed of any unfavourable opinion given by the committee concerned and may pronounce upon it in the final instance.

11. At present, as it results from the specific terms of reference of the CAHDI (see Appendix 7) the following States and international organisations have the status of observer to the CAHDI:

Canada
 Japan
 United States of America
 Mexico
 Holy See
 Armenia
 Azerbaïdjan
 Australia
 Bosnia and Herzegovina
 Israel
 New Zealand
 The Hague Conference on Private International Law
 NATO
 The Organisation for Economic Co-operation and Development
 The United Nations and its specialised agencies

In addition, the European Community, represented by the European Commission or by the Secretariat General of the Council of the European Union, can participate in all the activities of the Council of Europe.

Action required

Members of the CAHDI are invited to consider the request for observer status by the LICRA and to decide upon it bearing in mind the criteria established by the Committee of Ministers for admission of observers in

to intergovernmental committees and the interest of the CAHDI as a whole.

Appendix 1

Request of the LICRA for status of observer to the CAHDI (French only)



FONDEE EN 1927

LIGUE INTERNATIONALE CONTRE LE RACISME ET L'ANTISEMITISME

Siège central : 42, rue du Louvre 750001 PARIS Tél : 01 45 08 08 08 Fax : 01 45 08 18 18
C.C.P. 270-16 W Paris Organisation non gouvernementale dotée du statut consultatif auprès de l'ONU

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Alain JUPPE
Bernard KOUCHNER
Joël LE TAC
François LEOTARD
Léon LEVY
Enrico MACIAS
Albert MEMMI
Abbé René de NAUROS
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Gilbert TRIGANO
Etienne TROCHE
Simone VEIL
Maurice WEINBERG
Elie WIESEL
Fred ZELLER

Conseil de l'Europe

M. DEVEL

Directeur Général des Affaires
Juridiques

Comité des conseillers juridiques
sur le droit international public
670 75 STRASBOURG Cedex

Paris le 6 avril 2000

Messieur,

Notre organisation, bien implantée depuis 1927 sur le territoire français, avec des liens dans un certain nombre d'autres pays européens. Elle entend mettre au service de tous, le plus largement possible sa longue expérience en matière de prévention, de développement et de valorisation des Droits de l'Homme, dans la mesure des moyens humains (l'ensemble des militants et les dirigeants sont des bénévoles) de l'association.

La Licra souhaite participer physiquement au séances de travail du Comité des conseillers juridiques sur le droit international public de la même manière qu'en France elle participe, aux travaux des différents sous comités de la commission nationale consultative des Droits de l'Homme (CNCDH).

La Licra se propose de refléter les travaux des comités par le biais de son journal « le Droit de Vivre », des différentes communications qu'elle fait dans ce cadre de ses activités auprès des publics concernés : élèves, étudiants, enseignants, universitaires, parents, populations issues de l'immigration etc...

La Licra à Paris est la maison mère, c'est à dire le bureau international des tous les autres sections. Au dehors de la France ces sections ont des statuts convenants à leurs pays mais qui sont toujours, bien sûr, conformes aux principes de la Licra.

En espérant recevoir une réponse favorable à cette demande, je vous prie de croire, Monsieur, en l'expression de mes sincères salutations.

Le secrétaire général
Richard SÉRERO

Appendix 2**Resolution (76) 3 of the Committee of Ministers on Committee structures, terms of reference and working methods*****Article 5 - Observers***

Any steering committee may, by a unanimous decision, admit or admit to any committee answerable to it, observers from non-member states of the Council of Europe, or from intergovernmental or non-governmental international organisations, provided that :

- i. Any request for admission as an observer shall be forwarded without delay by the Secretary General both to the Permanent Representatives of member states and to the members of the steering committee concerned.*
- ii. Any government so notified may inform the Secretary General within four weeks of its intention to refer the matter to the Committee of Ministers for decision. This decision shall be taken by a two-thirds majority of all the Representatives entitled to sit on the Committee.*

Appendix 3**Communication by the Secretariat General to Permanent Representatives of member States to the Council of Europe concerning the request of the LICRA for status of observer to the CAHDI**

***To the Permanent Representatives
Before the Council of Europe***

Strasbourg, 30 June 2000

Dear,

In accordance with article 5, para. i) of Resolution (76) 3 of the Committee of Ministers on Committee structures, terms of reference and working methods, I would like to inform you that the *Ligue Internationale Contre le Racisme et l'Anti-sémitisme* (LICRA) has requested the status of observer to the *Ad Hoc* Committee of Legal Advisers on International Public Law (CAHDI) by letter dated 6 April 2000 from the General-Secretary, Mr R. Serero (copy enclosed). For your information, LICRA enjoys consultative status with the Council of Europe.

I would also like to bring your attention to article 5, para. ii) of Resolution (76) 3 which states that "Any government so notified may inform the Secretary General within four weeks of its intention to refer the matter to the Committee of Ministers for decision".

Therefore if such a request is not made before 31 July 2000, this item will be included in the agenda for the 20th meeting of the CAHDI scheduled 12-13 September 2000. For your information, Article 5, para. 1 of Resolution (76) 3, establishes that any decision by the CAHDI to grant the status of observer must be unanimous.

Mr Rafael BENITEZ, Secretary of the CAHDI (Tel. +33 388 41 34 79, Fax +33 388 41 27 64, e-mail: rafael.benitez@coe.int), remains at your disposal for any further information you may require.

Yours faithfully,

Guy De Vel

1 attachment

Copy: Heads of delegation to the CAHDI

Appendix 4**MESSAGE FROM THE COMMITTEE OF MINISTERS TO
STEERING COMMITTEES AND AD HOC COMMITTEES OF EXPERTS**

*[adopted at the 347th meeting of the Committee of Ministers,
Appendix VI]*

Subject: Admission of observers to intergovernmental committees of experts

1. The Committee of Ministers has noted a considerable increase in the number of requests by non-member States, international intergovernmental organisations and international non-governmental organisations for admission as observers to committees of experts. It interprets this increase as a sign of more lively and wider interest outside the Council of Europe in the work of the Council's committees and as a result of the Organisation's policy of greater openness. It also notes that extending working relationships is likely to benefit the Council of Europe and spread its message more widely.

2. The Committee of Ministers, though wishing to pursue this policy, considers that in some cases the presence of observers, especially in large numbers, may hinder the work of committees and any discussions where it may be necessary to maintain a strictly intergovernmental character and the confidentiality which this entails. In an attempt to reconcile these two sometimes conflicting aspects the Ministers' Deputies have reexamined some of the general issues relating to the admission of observers in order to determine coherent criteria to be applied on the subject.

3. When examining requests for admission as an observer to committees of experts, two criteria are essential:

- a. the presence of the observers should be in the interests of the committee;
- b. the presence of the observers should not hinder the committee's work.

In weighing these two criteria, account must be taken of the committee's work and the applicant's expertise.

4. The Committee of Ministers points out that the text governing the admission of observers to committees (paragraph 5 of Resolution (76)3) allows for a number of different arrangements which make it possible to take a qualified decision:

- a. admission for the whole period of the committee's existence;
- b. admission for a specified period;
- c. admission for a single meeting;
- d. admission for a specific activity;
- e. admission for a specific item on the agenda.

The Committee of Ministers recommends steering committees and ad hoc committees of experts to bear in mind the considerations given in paragraphs 2 and 3 of this message when they have to choose between the above options, and especially when they incline towards the first of them.

5. Other factors should also be taken into consideration:

- a. the nature of the applicant: non-member State, international intergovernmental organisation, international non-governmental organisation, (and in the last case, whether the organisation has consultative status);
- b. the origin of the request; a member State, a committee of experts, the Secretariat, or the applicant itself;
- c. the nature of the committee in question: steering committee, committee of experts;
- d. the list of committees on which the applicant already has observer status;
- e. the list of observers already admitted to the committee in question;
- f. the Secretary General's opinion.

In future, written notification of requests for admission addressed to the Permanent Representatives and members of steering committees in accordance with paragraph 5 of Resolution (76)3 will include as much information as possible on some of these points.

6. The Committee of Ministers points out that there are two ways in which committees of experts may discuss certain items in the absence of observers: on the one hand the Chairman may declare at any time during a meeting that the proceedings will continue in private; and on the other convocation of observers may be delayed. The use of this second procedure is a matter for decision by the committees concerned who will convey their views as necessary to the Secretary General, if appropriate via their bureaux.

7. The Committee of Ministers also points out that observer status is not the only way in which outsiders can be involved in a committee's work. Within their general terms of reference, committees should make more use of hearings, a formula which allows them to benefit from the expertise or opinions of an outside organisation or highly qualified individual but does not require the application of the procedure under paragraph 5 of Resolution (76)3.

Appendix 5

MESSAGE FROM THE COMMITTEE OF MINISTERS TO STEERING AND AD HOC COMMITTEES OF EXPERTS CONCERNING THE ADMISSION OF OBSERVERS

**(adopted by the Committee of Ministers on 26 October 1988
at the 420th meeting of the Ministers' Deputies)*

1. The Committee of Ministers has noted a continued increase in the number of requests for observer status in intergovernmental committee of experts. This increase reflects the wide interest shown by organisations in the work of the Council of Europe. The Committee of Ministers, however, is also aware that an overabundance of observers may hamper the work of intergovernmental committees of the Council of Europe. A consistent policy therefore has to be developed which is in the interest of the Council of Europe. To this end, the Committee of Ministers recalls that the admission of observers to intergovernmental committees is governed by paragraph 5 of Resolution (76)3 of the Committee of Ministers. It should be emphasised that this provision allows for a number of different modalities of participation by observers:

- (i) admission for the whole period of the committee's existence;
- (ii) admission for a specified period;
- (iii) admission for a single meeting;
- (iv) admission for a specific activity;
- (v) admission for a specific item on the agenda.

2. The Committee of Ministers furthermore wishes to recall that, at the 347th meeting (May 1982) of the Ministers' Deputies, it adopted a message to steering and ad hoc committees of experts concerning the admission of observers. This message lays down certain criteria for the admission of observers and recapitulates the different possible modalities of participation by observers (see pages 14/2/1 and 14/2/2).

3. At the 419th meeting, and in the light of the increase of observers in some committees, especially of non-governmental organisations, the Ministers' Deputies agreed that, when considering a request by such an organisation, the committee concerned should take carefully into account, on the one hand, the criteria laid down in the aforementioned message and, on the other hand, the efficiency of the work of the committee concerned.

4. The Committee of Ministers finally asks all steering and ad hoc committees annually to reconfirm, in the light of the above-described criteria and aims, the list of observers admitted to them or their subordinate committees, especially as regards non-governmental organisations. Following a re-evaluation, the committees may submit proposals to the Committee of Ministers for changes in the list of observers admitted to them.

Appendix 6

**GRANTING OF OBSERVER STATUS WITH
INTERGOVERNMENTAL COMMITTEES OF EXPERTS
TO NON-GOVERNMENTAL ORGANISATIONS**

At their 442nd meeting (June 1990, item 11) the Deputies agreed

1. that all requests by international non-governmental organisations for observer status with intergovernmental committees of experts - other than the Steering Committee for Human Rights (CDDH) - shall be subject to prior examination by the competent steering committee or ad hoc committee; nonetheless, the Committee of Ministers shall be informed of any unfavourable opinion given by the steering committee or ad hoc committee concerned and may pronounce upon it in the final instance;
2. that all requests by international non-governmental organisations for observer status with the Steering Committee for Human Rights (CDDH) shall be subject to prior examination by the CDDH; nonetheless, whatever opinion the CDDH may give, the Committee of Ministers shall, in any case, be required to pronounce upon the matter in the final instance.

Appendix 7
SPECIFIC TERMS OF REFERENCE[†]

1. Name of committee: *AD HOC* 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 to examine questions of public international law, to exchange and, if appropriate, 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.

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 Community 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, Holy See, Japan, United States of America and Mexico.
 - 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:
 - * Armenia (1)
 - * Azerbaijan (1)
 - Australia
 - * Bosnia and Herzegovina (2)
 - New Zealand
 - Israel (3)
 - The Hague Conference on Private International Law
 - NATO (4)
 - The Organisation for Economic Co-operation and Development
 - The United Nations and its specialised agencies (5).
6. Structures and working methods: -
7. Duration: The present terms of reference expire on 31 December 2000.

(†) Adopted at the 649th meeting of the Deputies, Strasbourg, 17 November 1998, appendix II to list of decisions, CM/Del/Dec(98)615/10.2, 631/10.1, CM(98)64, CM(98)172.

(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) Admitted as observer "for the whole duration of the Committee" by the CAHDI, 15th meeting, Strasbourg 3-4 March 1998. The same is valid for subordinated committees. This decision was confirmed by the Committee of Ministers at its 670th meeting, Strasbourg, 18 May 1999. See CM/Del/Dec(99)670, item 10.2.

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

(5) For specific items, at the request of the Committee.