

Strasbourg, 05/02/02

CAHDI (2002) 5

COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW
(CAHDI)

23rd meeting
Strasbourg, 4-5 March 2002

REQUEST OF THE GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA
FOR STATUS OF OBSERVER TO THE CAHDI

Secretariat memorandum
prepared by the Directorate General of Legal Affairs

Foreword

1. By letter dated 18 January 2002 to the Director of Legal Affairs of the Council of Europe, the Consul General of the Federal Republic of Yugoslavia, Mr Trojan Stankovic, requested the status of observer to the CAHDI for his Government (see Appendix 1).

2. 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 2 March 1999, the Director for Legal Co-operation informed member States of the Council of Europe about the request of the Government of the Federal Republic of Yugoslavia (see Appendix 3).

3. No delegation having requested the examination of the request by the Committee of Ministers, the item has been included in the agenda for the 23rd meeting of the CAHDI (4-5 March 2002).

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

5. 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).

6. According to these messages, it should be noted that states 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.

7. When deciding on granting the observer status, the Committees should consider three essential criteria:

- the participation of the observer must be in the interest of the Committee (message adopted at the 347th meeting, para. 3 a)
- the participation of the 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)

8. 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-member State, candidate for admission
- b. the origin of the request: the Consul General of the Federal Republic of Yugoslavia,
- c. the nature of the Committee in question: Intergovernmental committee

- d. the list of committees to which the requester has been admitted:
CDEG, CDMM, CDCS, CDMG, CDSP, CDLR, CDCJ, CDPC, CAHAR,
CCJE, GMT
- e. list of observers already admitted to the Committee (see below) and
- f. opinion of the Secretary General.

9. At present, as it results from the terms of reference of the CAHDI (see Appendix 6) the following States and international organisations have the status of observer to the CAHDI:

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

Appendix 1**Request of the Government of the Federal Republic of Yugoslavia for status of observer
to the CAHDI
(French only)**

ГЕНЕРАЛНИ КОНЗУЛАТ САВЕЗНЕ РЕПУБЛИКЕ ЈУГОСЛАВИЈЕ
CONSULAT GENERAL DE LA REPUBLIQUE FEDERALE DE YUGOSLAVIE

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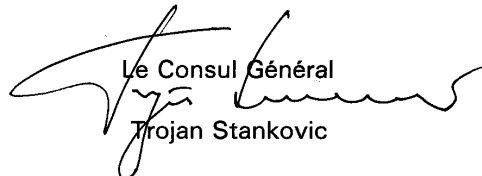
Strasbourg le 18 janvier 2002

Monsieur le Directeur Général,

J'ai l'honneur de Vous informer que la République Fédérale de Yougoslavie souhaite prendre part dans le travail du Comité des conseillers juridiques sur le droit public international (CAHDI).

Le Représentant de la République Fédérale de Yougoslavie qui a été désigné pour prendre part à ce travail est Monsieur Vladimir Djerić, Conseiller du Ministre Fédéral des affaires étrangères de la RFY. Vous trouverez en annexe, le curriculum vitae de Monsieur V.Djerić.

Vous en souhaitant bonne réception, je Vous prie de croire, Monsieur le Directeur Général, en l'assurance de ma considération distinguée.


Le Consul Général
Trojan Stankovic

Monsieur Guy de Vel
Directeur Général
des affaires juridiques

Conseil de l'Europe
F-67075 Strasbourg cedex

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 addressed to Permanent Representatives of member States to the Council of Europe concerning the request of the Government of the Federal Republic of Yugoslavia for status of observer to the CAHDI****SECRETARIAT GENERAL**

DIRECTORATE GENERAL OF LEGAL AFFAIRS



Strasbourg, 1 February 2002

Dear Madam/Sir

In accordance with article 5, paragraph i) of la 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 Government of the Federal Republic of Yugoslavia has requested the status of observer to the Committee of Legal Advisers on International Public Law (CAHDI) by letter dated 18 January 2002 of the Consul General, Mr Trojan STANKOVIC (copy is enclosed).

I would also like to bring your attention to article 5, paragraph 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 1 March 2002, this item will be included in the agenda for the next meeting of the CAHDI scheduled for 4-5 March 2002. Article 5, paragraph 1 of Resolution (76) 3 establishes that the decision by the CAHDI to grant the status of observer must be taken by unanimity.

M. Rafael A. BENITEZ, Secretary of the CAHDI (Tel.: 33 3 88 41 34 79, Fax: 33 3 88 41 27 64, E-mail: rafael.benitez@coe.int), remains at your disposal for any further information you may require.

Yours faithfully,

Marie-Odile WIEDERKEHR
Director for Legal Co-operation

1 enclosure

Addressees: Permanent Representatives to the Council of Europe

Copies: Members of 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: 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:
 - Australia
 - *Bosnia and Herzegovina (1)
 - New Zealand
 - Israel (2)
 - The Hague Conference on Private International Law
 - NATO (3)
 - The Organisation for Economic Co-operation and Development
 - The United Nations and its specialised agencies (4).
6. Structures and working methods: The CAHDI may set up working parties and have recourse to consultant experts.
7. Duration: The present terms of reference expire on 31 December 2002

[†] As adopted by the Committee of Ministers at its 742nd meeting (15 February 2001) (CM/Deldec(2001)742, point 10.1, Appendix 8).

(1) Subject to their request.

(2) Admitted as observer "for the whole duration of the Committee" by the CAHDI, 17th meeting, Vienna, 8-9 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.

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

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