

Strasbourg, 16/09/02

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

24th meeting, Bratislava, 9-10 September 2002

List of items discussed and decisions taken

1. Following the kind invitation of the Slovak authorities, the Committee of Legal Advisers on Public International Law (CAHDI) held its 24th meeting in Bratislava, on 9 and 10 September 2002. The meeting was chaired by Ambassador Peter Tomka (Slovak Republic), Chairman of the CAHDI. The list of participants can be consulted in the draft meeting report (document CAHDI (2002) 16 prov.) and the agenda appears in Appendix I.
2. The CAHDI approved the report of its 23rd meeting (Strasbourg, 10-11 March 2002) and authorised its publication on the CAHDI's web site (www.coe.int/cahdi).
3. The CAHDI was informed by the Director for Legal Co-operation, Mr. Roberto Lamponi, about recent developments concerning the Council of Europe including those relating to the European Treaties Series.
4. Following the request by the European Committee on Legal Co-operation (CDCJ) at the initiative of the Committee of Experts on Nationality (CJ-NA), the CAHDI adopted an opinion concerning the possibility of a partial denunciation of the 1963 Convention on the reduction of cases of multiple nationality and military obligations in cases of multiple nationality (ETS 43) as it appears in Appendix II.
5. The CAHDI was informed of the decisions relevant to the CAHDI taken by the European Committee on Crime Problems (CDPC) and submitted to the Committee of Ministers, in particular the adoption of draft specific terms of reference for the setting up of a Group of Experts for consultation on the International Criminal Court (PC-S-ICC), which is to include a representative of the CAHDI, and the opinion adopted by the CDPC concerning Recommendation 1523 (2001) of the Parliamentary Assembly on domestic slavery.
6. Subject to approval by the Committee of Ministers of the specific terms of reference for the PC-S-ICC, the CAHDI entrusted its Chairman with the task of representing the CAHDI at meetings of that Group of experts. Moreover, the CAHDI took note of the CDPC's opinion on the Recommendation of the Parliamentary Assembly.
7. In the context of its operation as European Observatory of Reservations to International Treaties, the CAHDI considered a list of outstanding declarations and reservations to international treaties. Moreover, following the decision taken by the CAHDI at its previous

meeting, the CAHDI considered reservations to certain international treaties applicable to the fight against terrorism.

8. In the context of the Council of Europe's Pilot Project on State practice regarding Immunities of States, the CAHDI was informed about the contributions provided to date by States and the Chairman invited those delegations not having yet done so to submit their contribution before 31 December 2002. The CAHDI agreed to decide on the follow-up to the Pilot Project at its next meeting in March 2003.

9. The CAHDI held a fruitful exchange of views with Professor Gerhard Hafner, Chairman of the UN Ad Hoc Committee on Jurisdictional Immunities of States and their Property regarding this UN's activity and the ongoing Pilot Project of the Council of Europe which could represent a practical contribution to the UN's work.

10. The CAHDI also held a productive exchange of views with Professor Bruno Simma, member of the UN International Law Commission (ILC), regarding the 54th Session of the ILC (Geneva, 29 April-7 June and 22 July-16 August 2002) on the basis of the summary report prepared by Professor Simma for the attention of the members of the CAHDI.

11. The CAHDI was informed about developments concerning the implementation of international instruments protecting the victims of armed conflicts as well as the functioning of the Tribunals established by UN Security Council Resolutions 927 (1993) and 955 (1994), and the work under way in the fight against terrorism by international organisations.

12. The CAHDI held an exchange of views on developments concerning the International Criminal Court, in particular those relating to the non-surrender bilateral agreements being negotiated and concluded in the light of Article 98 of the Rome Statute.

13. The CAHDI approved its draft specific terms of reference for 2003-2004 as they appear in Appendix III and decided to submit them to the Committee of Ministers for adoption. In addition, the CAHDI elected Ambassador Nicolas Michel (Switzerland) Chair of the CAHDI for 2003 and postponed election of its Vice-Chair to the 25th meeting of the Committee (see item below).

14. The CAHDI decided to hold its 25th meeting in Strasbourg, from 17 to 18 March 2003, agreed to invite Mr Alvaro Gil-Robles, Commissioner of Human Rights of the Council of Europe and Mr Vaclav Mikulka, Director of the Codification Division at the UN Secretariat General as special guests and adopted the preliminary draft agenda in Appendix IV.

APPENDIX I

**AGENDA OF THE 24TH MEETING OF THE CAHDI
BRATISLAVA, 9-10 SEPTEMBER 2002**

A. INTRODUCTION

1. Opening of the meeting by the Chairman, Ambassador Peter Tomka
2. Adoption of the agenda and approval of the report of the 23rd meeting (Strasbourg, 4-5 March 2002)
docs: CAHDI (2002) 0J 2 rev 2 & CAHDI (2002) 8 prov
3. Communication by the Director for Legal Co-operation, Mr. Lamponi
docs : CAHDI (2002) Inf 2 & SdC (2002) Concl

B. ONGOING ACTIVITIES OF THE CAHDI

4. Decisions by the Committee of Ministers concerning the CAHDI and requests for CAHDI's opinion
docs: CDPC (2002) 15, CAHDI (2002) 9 & corrigendum, CJ-NA GT (2002) 12
5. The law and practice relating to reservations and interpretative declarations concerning international treaties : European Observatory of Reservations to international Treaties
 - a) Consideration of outstanding reservations and declarations to international Treaties
docs: CAHDI (2002) 10 & addendum, &CAHDI (2002) 8 prov, paras. 21-30
 - b) Consideration of reservations and declarations to international Treaties applicable to the fight against terrorism
doc: CAHDI (2002) 11
6. Pilot Project of the Council of Europe on State practice regarding State immunities
doc: CAHDI (2002) 12

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

7. The work of the Sixth Commission of the General Assembly of United Nations and of the International Law Commission (ILC)
 - a) Exchange of views with Professor G. Hafner, President of the UN Ad Hoc Committee on Jurisdictional Immunities of States and their Property
docs: UN doc A/57/22 & CAHDI (2002) 12
 - b) Exchange of views with Professor B. Simma, Member of the ILC
docs: CAHDI (2002) Inf 3 and 4
8. Implementation of international instruments protecting the victims of armed conflicts

9. Developments concerning the International Criminal Court
10. Implementation and functioning of the Tribunals established by United Nations Security Council Resolutions 827 (1993) and 955 (1994)
11. Fight against Terrorism - Information about work undertaken in the Council of Europe and other international Fora
docs: GMT (2002) 11 & H (2002) 4
- D. OTHER
12. Draft specific terms of reference of the CAHDI for 2003 – 2004
doc: CAHDI (2002) 14
13. Election of the Chair and Vice-Chair for 2003
doc: CAHDI (2002) 15
14. Date, place and agenda of the 25th meeting of the CAHDI
15. Other business

APPENDIX II

**OPINION OF THE CAHDI CONCERNING THE POSSIBILITY OF PARTIAL
DENUNCIATION OF THE CONVENTION ON REDUCTION OF CASES OF
MULTIPLE NATIONALITY AND MILITARY OBLIGATIONS IN CASES OF
MULTIPLE NATIONALITY (STRASBOURG, 6.V.1963)**

At its 23rd meeting (Strasbourg, 3-4 March 2002), the Committee of Legal Advisers on Public International Law (CAHDI) was informed that at its 76th meeting (Strasbourg, 4 to 7 December 2001) following a proposal from the Committee of Experts on Nationality (CJ-NA), the European Committee on Legal Co-operation (CDCJ) requested the opinion of the CAHDI concerning the possibility of a partial denunciation of the 1963 Convention on the Reduction of cases of multiple nationality and military obligations in cases of multiple nationality (ETS 43) (hereinafter: *the Convention*).

The CAHDI was called upon in particular to give its opinion on whether a partial denunciation of the 1963 Convention (Chapter I only) would be possible and if, in the opinion of CAHDI, a partial denunciation is possible, the CJ-NA may consider CAHDI's opinion as a sufficient basis to allow the States concerned to proceed in such a manner.

The CAHDI held an exchange of views regarding this issue at its 23rd and 24th meetings and at its 24th meeting (Bratislava, 9-10 September 2002) adopted the following

O P I N I O N

The CAHDI understands the reasons which move the CJ-NA to consider the possibility of a partial denunciation of the Convention as an alternative to the drafting of an amending protocol to that convention which would be a more complex and time-consuming procedure.

However, the CAHDI considers that the Convention does not provide a legal basis for such a partial denunciation of the Convention. In such a case, according to the law of treaties as embodied in the Vienna Convention the Law of Treaties (in particular Article 44, para 1) the partial denunciation of the Convention will only be possible if agreed by all the States Parties to the Convention. The CAHDI is of the view that such an agreement is a *condition sine qua non* for a State to proceed to a partial denunciation of the Convention.

Nothing in this opinion shall be considered by the CJ-NA as a sufficient basis to allow the States concerned to proceed to partial denunciation of the Convention.

APPENDIX III

DRAFT SPECIFIC TERMS OF REFERENCE OF THE CAHDI FOR 2003-2004

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 observers with the Council of Europe may send a representative to meetings without the right to vote or to a refund of expenses:

Canada
Holy See
Japan
Mexico
United States of America
 - d. The following observers with the Committee may send representatives to meetings of the Committee, without the right to vote or to a refund of expenses:

Federal Republic of Yugoslavia¹
Australia
Israel²
New Zealand
The Hague Conference on Private International Law
NATO³
The Organisation for Economic Co-operation and Development
The United Nations and its specialised agencies⁴

6. Structures and working methods:

¹ See CM/Del/Dec(2000)735, item 2.1a, para. 4 and SG/Inf(2000)48, para. 34. and CM/Del/Dec(2001)742, item 10.1, Appendix 8.

² Admitted as observer "for the whole duration of the Committee" by the CAHDI, March 1998. The same is valid for subordinated committees. Decision confirmed by the Committee of Ministers (CM/Del/Dec(99)670, item 10.2 and CM(99)57, para. D15).

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

⁴ For specific items at the request of the Committee.

The CAHDI may set up working parties and have recourse to consultant experts.

7. Duration: The present terms of reference expire on 31 December 2004

APPENDIX IV

**DRAFT AGENDA FOR THE 25TH MEETING OF THE CAHDI
STRASBOURG, 17-18 MARCH 2003****A. INTRODUCTION**

1. Opening of the meeting by the Chairman, Ambassador Nicolas Michel
2. Adoption of the agenda and approval of the report of the 24th meeting (Bratislava, 9-10 September 2002)
3. Communication by the Director general of Legal Affairs, Mr. De Vel

B. ONGOING ACTIVITIES OF THE CAHDI

4. Decisions by the Committee of Ministers concerning the CAHDI
5. The law and practice relating to reservations and interpretative declarations concerning international treaties : European Observatory of Reservations to international Treaties
6. Pilot Project of the Council of Europe on State practice regarding Immunities of States

C. GENERAL ISSUES ON PUBLIC INTERNATIONAL LAW

7. Exchange of views with Mr Alvaro Gil-Robles, Commissioner of Human Rights of the Council of Europe (tentative)
8. Implementation of international instruments protecting the victims of armed conflicts
9. Developments concerning the International Criminal Court
10. Implementation and functioning of the Tribunals established by United Nations Security Council Resolutions 827 (1993) and 955 (1994)
11. Fight against terrorism : Exchange of views with Mr Vaclav Mikulka, Director of the Codification Division regarding UN activities in this area (tentative)

D. OTHER

12. Election of the Vice-Chair of the CAHDI for 2003
13. Date, place and agenda of the 26th meeting of the CAHDI
14. Other business
15. Closing