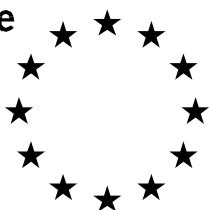


**Council of Europe**  
**Conseil de l'Europe**



Strasbourg, 01/10/98

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

**16<sup>th</sup> meeting, Paris, 17-18 September 1998**

List of items discussed and decisions taken

1. The *Ad Hoc* Committee of Legal Advisers on Public International Law (CAHDI) held its 16th meeting on 17 and 18 September 1998 in Paris. The meeting was chaired by Ambassador G. SZENASI (Hungary), 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 G. 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. The CAHDI pursued consideration of the proposals presented by the Russian Federation concerning it, particularly as regards the amendment of its terms of reference. After a fruitful discussion, the CAHDI adopted a final opinion on these proposals (Appendix III) and draft-terms of reference for the period 1999-2000 (Appendix IV).

3. At the request of the rapporteurs' Group on Human Rights (GR-H) of the Committee of Ministers, the CAHDI considered the preliminary draft Declaration on the occasion of the 50th anniversary of the Universal Declaration of Human Rights, and in particular its paragraph IV. At the close of discussions, the CAHDI adopted the opinion which appears in Appendix V. (This opinion has been considered by the GR-H at its meeting 2 October 1998).

4. The CAHDI considered a Preliminary-Draft Report on the Pilot Project of the Council of Europe on State practice relating to State succession and issues of recognition prepared by the Max Planck Institute (Germany), the Asser Institute (Netherlands) and the Castrén Institute (Finland). The CAHDI decided to invite delegations to provide the Secretariat with any comments relating thereto before 30 October 1998. The Secretariat was asked to bring all comments from delegations to the attention of the consultant-experts, to prepare a revised version of the report and to circulate it for approval by written procedure. The CAHDI agreed to the publication of the report unless any delegation would request that the report be examined at the next meeting of the CAHDI. The CAHDI stressed that the views expressed in the analytical chapters and conclusions of the report are those of the authors, and do not necessarily reflect the position of individual States or of the CAHDI as a whole, with regard to the interpretation of the situations and events referred thereto.

Further, the CAHDI agreed that this report should constitute the remaining part of the Council of Europe's contribution to the United Nations Decade of Public International Law. (Following a

decision by the Committee of Ministers at the CAHDI's request, Recommendations No. R (97) 10 on debts of diplomatic missions, permanent missions and diplomatic missions with "double accreditation", as well as those of their members, and No. 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 Specialists on Reservations to International Treaties (DI-S-RIT). The Chairman of the Group, Ambassador CEDE (Austria) informed members of the CAHDI about the second meeting of the Group held in Paris, 14 to 16 September 1998. For the second time the Group held an exchange of views with Mr Pellet, Special Rapporteur of the United Nations International Law Commission (ILC) on the subject of reservations, about his third report on reservations and the guidelines currently under preparation in the ILC. The Group held an exchange of views with Mr IMBERT, Director of Human Rights of the Council of Europe on the issue of reservations to human rights treaties. Further, the Group was informed by Mr JACQUE, Director of the Legal Service of the Secretariat General of the Council of European Union about co-ordination of objections to reservations to international treaties by member States of the European Union.

The Group adopted model-objection clauses to reservations considered inadmissible and considered a paper on key issues regarding reservations at the various stages of the process of concluding treaties and post-ratification stage. The Group decided to propose to the CAHDI the preparation of a draft Recommendation of the Committee of Ministers to member States on the basis of both texts. Moreover, the Group agreed to propose that the CAHDI undertakes the observation of reservations to international treaties. To this extent, the CAHDI agreed and adopted specific terms of reference for the setting up of a Group of experts responsible for assisting it in carrying out the observation procedure in the form of a European observatory of reservations to international treaties (Appendix VI). The CAHDI decided that this item shall be regularly included in the agenda for its meetings.

6. The CAHDI held a thorough exchange of views on the practical importance of the European Convention on State Immunity (ETS 74) and its Protocol (ETS 74A). The CAHDI noted that the Convention on State Immunity and the Protocol thereto have been ratified respectively by 8 and 6 member States and concluded that they have not been ratified by a sufficient number of States to conclude that the Convention is widely applied in Council of Europe member States. The last Council of Europe member State to ratify it -on 15 May 1990- was the Federal Republic of Germany. Since then no other member State has signed it despite the very significant enlargement of the Organisation. The European Tribunal in matters of State Immunity for its part has not yet been called upon to settle any disputes under the European Convention on State Immunity and the Additional Protocol thereto. The Tribunal may therefore be said to exist only potentially.

Some delegations from States' parties informed the CAHDI about their national situation regarding the application of this instrument. In some countries, such as Switzerland, the application of the Convention has resulted in divergent case-law from the Federal Court while in others, such as the United Kingdom, a number of applications have been lodged before the European Commission of Human Rights as regards the compatibility of the application of this convention with the European Convention by the national authorities with the European Convention of Human Rights.

7. In the context of the item concerning the implementation of international instruments protecting the victims of armed conflicts, the CAHDI was informed by the delegate of Switzerland about the upcoming meeting of the States parties to the Geneva Convention, to be held in Geneva 27-29 October 1998 with the aim of discussing general problems concerning the application of the IVth Geneva Convention concerning the protection of civil staff in times of war.

8. The CAHDI took note of recent developments concerning the adoption of the Statute of the International Criminal Court (ICC) in Rome, July 1998.

9. The CAHDI took note of developments concerning the implementation and the functioning of the Tribunals established by UN Security Council Resolutions 927 (1993) and 955 (1994).

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 signified by Mr PELLET's participation in the meetings of the DI-S-RIT. In this context, the CAHDI examined a non-edited version of the Report of the 50<sup>th</sup> session of the ILC (20 April - 12 June and 27 July - 14 August 1998), obtained as a result of inter-secretariat contacts at the CAHDI's request and a Report on the 50th session of the ILC, prepared by Mr. SIMMA, member of the ILC, for the attention of the members of the CAHDI.

11. The CAHDI was informed about the state of preparations for the Centennial of the First International Peace Conference and the closing of the United Nations Decade of Public International Law. The Committee held an exchange of views on the preliminary report on Peaceful Settlement of International Disputes and took note of the preliminary report on the Development of International Law relating to Disarmament and Arms Control, and the preliminary report on International Humanitarian Law and Laws of War. These reports can be obtained at [www.minbuza.nl/English](http://www.minbuza.nl/English).

12. In accordance with the provisions of article 17, Appendix II of Resolution (76) 3 of the Committee of Ministers, the CAHDI elected Ambassador HILGER (Germany) and Ambassador TOMKA (Slovakia) respectively Chair and Vice-Chair for one year.

13. In accordance with the Council of Europe's draft budget, subject to the Committee of Ministers' approval, following Ambassador CEDE's invitation, the CAHDI decided to hold its 17th meeting in Vienna, 8 and 9 March 1999 and adopted the preliminary-draft agenda that appears in appendix VI. In addition, the CAHDI decided to hold the 1st meeting of the Group of Experts on Reservations to International Treaties (DI-E-RIT) in Vienna, 5 March 1999, 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.

**APPENDIX I****LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS**

ALBANIE/ALBANIA: Mr Qirjako QIRKO, Director of the Legal and Consular Department

ANDORRE/ANDORRA: -

AUTRICHE/AUSTRIA: Mr Franz CEDE, Ambassador, Legal adviser ; M. Georg STILLFRIED, Attaché

BELGIQUE/BELGIUM: Mme Raymonde FOUCART, Directeur Général des Affaires Juridiques ; Mme. A.M. SNYERS, Conseiller Général, Direction Générale des Affaires Juridiques

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

CROATIE/CROATIA: Mr Stanko NICK, Ambassador, Chief Legal Adviser

CHYPRE/CYPRUS: Mme Georgia EROTOKRITOU, Bureau du Procureur

REPUBLIQUE TCHEQUE/CZECH REPUBLIC: M. Milan BERÁNEK, Director of International Law Department

DANEMARK/DENMARK: Mr Laurids MIKAELSEN, Ambassador, Head of the Legal Service

ESTONIE/ESTONIA: Mrs Triin PARTS, Head of Division for International Law

FINLANDE/FINLAND: Mr Erki KOURULA, Ambassador, Deputy Director General for Legal Affairs

FRANCE: M. Jean-François DOBELLE, Directeur adjoint des Affaires Juridiques ; M. Jean-Michel FAVRE, Direction des Affaires Juridiques

ALLEMAGNE/GERMANY: Dr Reinhard HILGER, Ambassador, Director of the Public International Law Section

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

HONGRIE/HUNGARY: Mr György SZENASI, Ambassador, Head of International Law Department (**Président/Chairman**)

ISLANDE/ICELAND : Mr Tomas H. HEIDAR, Legal Adviser, Ministry for Foreign Affairs

IRLANDE/IRELAND: Dr. Alpha CONNELLY, Legal Adviser, Legal Division

ITALIE/ITALY: M. Umberto LEANZA, Chef du Service Juridique ; Mrs Ida CARACCIOLO, Lecturer of International Law

LETTONIE/LATVIA: Mr Raimonds JANSONS, Director of Legal Department

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

LITUANIE/LITHUANIA: Mr Darius JURGELEVICIUS, Director, Legal and International Treaties Department

LUXEMBOURG: M. Paul STEINMETZ, Directeur des Affaires Juridiques

MALTE/MALTA: Dr Lawrence QUINTANO, Senior Counsel for the Republic

MOLDOVA : Mr Oleg LUPAN, Second Secretary, Department of International Law

PAYS-BAS/NETHERLANDS: Dr J.G. LAMMERS, Deputy Legal Adviser

NORVEGE/NORWAY: Mr Hans Wilhelm LONGVA, Director General, Department of Legal Affairs

POLOGNE/POLAND: Dr Jerzy KRANZ, Director of Legal and Treaty Department

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

ROUMANIE/ROMANIA: M. Tudor MIRCEA, Directeur de la Direction Juridique et des Traités

FEDERATION DE RUSSIE/FEDERATION OF RUSSIA: Mr Leonid SKOTNIKOV, Director of the Legal Department ; Mr Kirill GUEVORGUIAN, Deputy Director, Legal Department

SAINT-MARIN/SAN MARINO: -

SLOVAQUIE/SLOVAKIA: Mr Peter TOMKA, Ambassador, Director General for Legal and Consular Affairs

SLOVENIE/SLOVENIA: Mr Andrej GRASSELLI, Head of International Law Department

ESPAGNE/SPAIN: Mr Aurelio PEREZ GIRALDA, Ambassador, Chief Legal Adviser ; M. Maximiliano BERNAD Y ALVAREZ DE EULATE, Professeur de Droit international public et d'institutions et Droit communautaire européens

SUEDE/SWEDEN: Mr Lars MAGNUSON, Ambassador, Director General for Legal Affairs

SUISSE/SWITZERLAND: Monsieur Nicolas MICHEL, Directeur (nommé) de la Direction du droit international public ; Mme Evelyne GERBER, Chef du Service diplomatique et consulaire

"L'EX-REPUBLIQUE YOUGOSLAVE DE MACEDOINE"/"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA": Mme Magdalena DIMOVA, Directorate of International Law

TURQUIE/TURKEY: Mme Nehir ÜNEL, Conseiller juridique au Ministère des Affaires étrangères

UKRAINE : Mr Vasyi GORZASCHENKO, Head of Legal and Treaty Department

ROYAUME-UNI/UNITED KINGDOM: Mr Christopher WHOMERSLEY, Legal Counsellor

**COMMUNAUTE EUROPEENNE/EUROPEAN COMMUNITY**

COMMISSION EUROPEENNE/EUROPEAN COMMISSION: Mr Alessandro IANNIELLO,  
Directorate-General IA, External Relations: Europe and the New Independent States

**OBSERVATEURS/OBSERVERS**

CANADA: -

JAPAN/JAPON: Mr Nobukatsu KANEHARA, Director of Legal Affairs

ETATS-UNIS D'AMERIQUE/UNITED STATES OF AMERICA: -

ARMENIE/ARMENIA: -

AUSTRALIE/AUSTRALIA: -

AZERBAIDJAN/AZERBAIJAN: Mr Djevdet MAMEDOV, Legal adviser

UNITED STATES OF MEXICO/ETATS UNIS DU MEXIQUE: Mr Manuel RODRIGUEZ-ARRIAGA, Ambassador

GEORGIE/GEORGIA: -

SAINT-SIEGE/HOLY SEE: Excusé/Apologised

NOUVELLE ZELANDE/NEW ZEALAND: -

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

ORGANISATION DE COOPERATION ET DE DEVELOPPEMENT  
ECONOMIQUE/ORGANISATION FOR ECONOMIC CO-OPERATION AND  
DEVELOPMENT: Mr David SMALL, Acting Legal Counsel, Legal Directorate

ORGANISATION DU TRAITE DE L'ATLANTIQUE NORD / NORTH ATLANTIC TREATY  
ORGANISATION: M. Baldwin DE VIDTS, Conseiller Juridique

**SECRETARIAT**

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

M. Alexey KOZHEMYAKOV, Chef de la Division du Droit Public et international/Head of the Public and International Law Division

M. Rafael A. BENITEZ, **Secrétaire du Comité**, Division du Droit Public et international/**Secretary of the Committee**, Public and International Law Division

Mme Francine NAAS, Assistante, Division du Droit public et international/Assistant, Public and International Law Division

M. Christian JEHL, Stagiaire, Division du Droit public et international/Intern, Public and International Law Division

**APPENDIX II****AGENDA****A. INTRODUCTION**

1. Opening of the meeting
  - Report of the 15<sup>th</sup> meeting of the CAHDI (Strasbourg, 3-4 March 1998) **CAHDI (98) 9**
2. Adoption of the agenda **CAHDI (98) OJ 2 rev. 3**
3. Communication by the Secretariat
  - Statement by Mr Guy DE VEL, Director of Legal Affairs
  - Recent developments concerning Council of Europe treaties **CAHDI (98) 19**

**B. ONGOING ACTIVITIES OF THE CAHDI**

4. **Decisions of the Committee of Ministers concerning the CAHDI:** **CAHDI (98) 12**
  - **Follow-up to the Interim Opinion adopted by the CAHDI at its 15th meeting on the proposals presented by the Delegation of the Russian Federation on the CAHDI**
  - **Draft-specific terms of reference of the CAHDI for 1999-2000**
  - **Draft-specific terms of reference of the Group of rapporteurs on reservations to international treaties (DI-S-RIT) (1999)**
  - **Opinion of the CAHDI on paragraph IV of the Declaration on the occasion of the 50<sup>th</sup> anniversary of the Universal Declaration of Human Rights** **CAHDI (98) 12 Add**
5. **Pilot project on the collection and dissemination of documentation on State practice relating to State succession and issues of recognition**
  - Draft report on the Pilot Project of the Council of Europe on State practice relating to State succession and issues of recognition **CAHDI (98) 13**
6. **The law and practice relating to reservations and interpretative declarations concerning to international treaties:**

**2nd meeting of the Group of Specialists on Reservations to International Treaties (DI-S-RIT), Paris, 14-16 September 1998**

  - Report of the 1<sup>st</sup> meeting of the DI-S-RIT (Paris, 26-27 February 1998) **DI-S-RIT (98) 5**
  - Some observations on the State practice concerning objections to reservations made to the Convention on the elimination of all forms of discrimination against women and the Convention on the rights of the child submitted by the Delegation of Finland **CAHDI (98) 11**
  - Summing up of the President of the Group of Specialists on Reservations to International Treaties concerning the Second meeting of the Group (Paris, 14-16 September 1998) **CAHDI (98) 17**

7. **Consideration of conventions under the responsibility of the CAHDI:** CAHDI (98) 16  
 - **Examination of the European Convention on State Immunity (ETS 74)** CAHDI (98) 14

**C. GENERAL ISSUES OF INTERNATIONAL PUBLIC LAW**

8. Depositories of treaties
9. Implementation of international instruments protecting the victims of armed conflicts
10. Statute of the International Criminal Court (ICC)
11. Implementation and functioning of the Tribunals established by UN Security Council Resolutions 827 (1993) and 955 (1994)
12. **The work of the General Assembly of the United Nations and the Sixth Committee, and the International Law Commission (ILC)**
- Report of the International Law Commission on the work of its Fiftieth session (20 April-12 June and 27 July-14 August 1998) CAHDI (98) 18
  - Report on the work of the International Law Commission at its Fiftieth session (1998), by Mr. Bruno SIMMA CAHDI (98) 20
13. **The United Nations Decade of Public International Law from 1990 to 1999: Centennial of the first International Peace Conference and closure of the United Nations Decade of International Law: Discussion of the Special Reports**
- Preliminary report on Peaceful Settlement of Disputes CAHDI (98) 15
  - Preliminary report on the Development of International Law relating to Disarmament and Arms Control since the first Hague Peace Conference in 1899 CAHDI (98) 21
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**D. OTHER**

14. **Election of the Chair and Vice-Chair of the CAHDI for a one-year term** CAHDI (98) 10
15. Date, place and agenda of the 17th meeting of the CAHDI
16. Other business



### **APPENDIX III**

#### **FINAL OPINION OF THE AD HOC COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI) CONCERNING THE RUSSIAN FEDERATION'S PROPOSALS ABOUT THE CAHDI**

##### ***Foreword***

The *Ad Hoc* Committee of Legal Advisers on Public International Law (CAHDI) held its 16th meeting in Paris on 17-18 September 1998. The agenda included an item on "Decisions of the Committee of Ministers concerning the CAHDI". In the framework of this item, members of the CAHDI were invited to consider the terms of reference of the CAHDI in the light of the exchange of views which took place at the 15<sup>th</sup> meeting of the CAHDI (Strasbourg, 3-4 March 1998) and the ensuing *Interim Opinion of the CAHDI* on the proposals of the Russian Federation to the Committee of Ministers concerning the role of the CAHDI.

The above-mentioned Russian proposals included: 1) the preparation of a report on topical issues of international public law in Europe for the attention of the Committee of Ministers by the CAHDI twice a year; and 2) the preparation of an inventory of all Council of Europe conventions. At its 15<sup>th</sup> meeting the CAHDI had been asked to consider them and their possible influence in the terms of reference of the Committee in the light of the Final Declaration of the Heads of State and Government at the Second Summit of the Council of Europe, and work already under way in the Organisation, in particular by the Wise Persons Committee.

##### **FINAL OPINION**

The CAHDI wishes to thank the Russian delegation for the interesting proposals submitted for its consideration. These proposals have led to a thorough and useful exchange of views and they have initiated an ongoing process of self-examination aimed at improving the efficiency and suitability of the CAHDI in responding to the needs and demands of member States and the Committee of Ministers.

Members of the CAHDI unanimously wish to stress that the CAHDI is a unique forum where legal advisers of the Ministers of Foreign Affairs of the member States of the Council of Europe can exchange and possibly co-ordinate their views in matters of public international law to the application and development of which they contribute. From this point of view, the CAHDI is irreplaceable and it is the only truly pan-European framework for such activities. Thus, the CAHDI should not only be preserved but also consolidated and its role increased in the future.

Concerning the first proposal, the CAHDI considers that its terms of reference as they stand today, allow the CAHDI to report to the Committee of Ministers on topical issues of public international law whenever necessary. This can be done by means of the CAHDI reports which are submitted to the Committee of Ministers regularly after each meeting and possibly, by means of specific opinions of the CAHDI.

The CAHDI is by its very nature a flexible framework for discussion and exchange of views. The inclusion in its terms of reference of the duty to prepare a report on topical issues of public international law for the attention of the Committee of Ministers on a regular basis would bring in an element of rigidity which is not desirable.

However, the CAHDI, inspired by the Russian proposal, decided that at its future meetings it will hold a substantial discussion on one or two topical issues of public international law as a central part of its agenda. Some topical issues suggested include the following: reservations to multilateral treaties, the role of the depositaries and the use of new information technologies, the European Convention on State Immunity, in the light of developments on the draft articles on the same subject produced by the International Law Commission, etc. On the other hand, a number of items that have become a routine and have lost their purpose will be taken out of the agenda.

Concerning the second proposal, the CAHDI considers that it is not in a position to undertake the evaluation of all the conventions of the Council of Europe for technical and political reasons. Members of the CAHDI do not have the necessary expertise to go into every field of activity of the Council of Europe and in this respect, conventional or steering committees are in a better position to undertake this exercise regarding the conventions falling under the sector of activity for which they are competent. Moreover, assessing the suitability of Council of Europe instruments involves definition of national priorities what can only be done by member States of the Council of Europe themselves.

Accordingly, the CAHDI wishes to propose to the Committee of Ministers that it considers the possibility of instructing steering and analogous committees of the Council of Europe to carry out such an exercise in relation to the conventions under their scope of responsibility.

The CAHDI considers that it is up to the Committee of Ministers to define the criteria which shall guide this exercise. However, the CAHDI would like to propose to the Committee of Ministers that the evaluation be carried out from a practical point of view. Accordingly, the committees concerned should consider the current and future practical importance of the conventions under their scope of responsibility. In the assessment of the practical importance of conventions, the Committees concerned could consider whether in the given case a multilateral regime is preferable to a network of bilateral agreements. Similarly they could consider other legal instruments prepared outside the framework of the Council of Europe which deal with the same subject matter and, if appropriate, carry out a comparison with the Council of Europe's instruments

In this connection, the CAHDI considers that it would be a useful exercise to assess the current suitability of the conventions falling under its field of competence, namely: European Convention for the Peaceful Settlement of Disputes (1957, ETS 23), European Convention on Consular Functions (1967, ETS 61) and its protocols (61A, 61B), European Convention on the Abolition of Legalisation of Documents Executed by Diplomatic Agents or by Consular Officers (1968, ETS 63), European Convention on State Immunity (1972, ETS 74) and its Protocol (1972, ETS 74A). Thus, at its last meeting (Paris, 17-18 September 1998) the CAHDI held an exchange of views as the European Convention on State Immunity (1972, ETS 74) and its Protocol (ETS 74A.).

Finally, as regards the terms of reference of the CAHDI, the CAHDI considers that in their current formulation they allow the CAHDI to carry out the tasks entrusted to it. However it agrees that it would be appropriate to reformulate them in view of reflecting more precisely the unique role of the CAHDI, where legal advisers of the Ministers of Foreign Affairs of the member States of the Council of Europe can exchange and possibly co-ordinate their views in matters of public international law to the application and development of which they contribute. In addition, the CAHDI considers that it would be advisable that Steering and *Ad Hoc* Committees of the Council of Europe are allowed to ask the opinion of the CAHDI on matters of public international law.

Therefore, the CAHDI wishes to propose to the Committee of Ministers that its specific terms of reference be amended along the lines that are mentioned in the paragraph above.

**APPENDIX IV****DRAFT 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, Japan, United States of America.
- 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:

The Holy See

\* Armenia (1)

\* Azerbaijan (1)

Australia

\* Bosnia and Herzegovina (2)

\* Georgia (2)

United States of Mexico (4)

New Zealand

The Hague Conference on Private International Law

NATO (3)

The Organisation for Economic Co-operation and Development

The United Nations and its specialised agencies.

6. Structures and working methods: -
7. Duration: The present terms of reference expire on 31 December 2000.

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

(4) Admitted as observer "for the whole duration of the Committee" by the CAHDI, 15th meeting, Strasbourg 3-4 March 1998

**APPENDIX V****OPINION OF THE AD HOC COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI) CONCERNING PARAGRAPH IV OF THE DECLARATION ON THE OCCASION OF THE 50<sup>TH</sup> ANNIVERSARY OF THE UNIVERSAL DECLARATION ON HUMAN RIGHTS*****Foreword***

The *Ad Hoc* Committee of Legal Advisers on Public International Law (CAHDI) held its 16th meeting in Paris on 17-18 September 1998. The agenda included an item on "Decisions of the Committee of Ministers concerning the CAHDI". In the framework of this item members of the CAHDI were invited to consider the Preliminary-draft Declaration on the occasion of the 50<sup>th</sup> Anniversary of the Universal Declaration on human rights and to give an opinion on its paragraph IV.

Paragraph IV states that "[The member States of the Council of Europe] support the general comment adopted by the Human Rights Committee on 29 October 1997 affirming that the International Covenant on Civil and Political Rights is not subject to denunciation or withdrawal and call on all governments to refrain from taking or supporting such steps."

**OPINION**

The CAHDI considers that the International Covenant on Civil and Political Rights (ICCPR) does not expressly permit denunciation or withdrawal. In these circumstances, under public international law, as codified by the Vienna Convention on the Law of Treaties 1969, denunciation or withdrawal is only possible if it was the intention of the parties to permit it or if such a possibility can be implied from the nature of the Treaty.

If that is not the case, denunciation or withdrawal is therefore only possible with the consent of all the States parties.

The CAHDI considers that it was not the intention of the parties that denunciation or withdrawal should be possible nor can it be implied from the nature of the ICCPR for the reasons given in the general comment No. 26 (61) adopted by the Human Rights Committee.

The CAHDI takes note of paragraph IV of the Preliminary-draft Declaration on the occasion of the 50th Anniversary of the Universal Declaration to the effect that unilateral denunciation or withdrawal of the ICCPR is not legally permissible. The CAHDI considers that express reference should be made to the fact that a State party may withdraw from the Covenant by consent of all the parties after consultation with the other contracting States.

Moreover, the CAHDI considers that, in so far as the Declaration states the position of the member States of the Council of Europe, it is advisable that this position be expressed directly by member States rather than endorsing the general comment of the Human Rights Committee.

The CAHDI therefore suggests that paragraph IV of the preliminary-draft Declaration be worded as follows: "[The member States of the Council of Europe] affirm that the International Covenant on Civil and Political Rights is not subject to unilateral denunciation or withdrawal with out the consent of all the States parties, and call on all governments to refrain from taking or supporting such steps."

Finally, the CAHDI wishes to propose to the Committee of Ministers that the preliminary-draft Declaration be re-examined in the whole to ensure legal accuracy.

**APPENDIX VI**  
**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 as an European observatory of 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 7 experts, one from each of the following countries: Croatia, Finland, Netherlands, Romania, Russia, Spain and Turkey.
    - c. The European Community may appoint a representative without reimbursement of expenses nor right to vote.
    - d. Representatives of the following organisations and countries will be invited to take part as observers in the meetings of the Group:
      - The Hague Conference on Private International Law
      - Organisation for Economic Co-operation and Development (OECD)
      - North Atlantic Treaty Organisation (NATO)
      - Armenia
      - Australia
      - Azerbaijan
      - Canada
      - Holy See
      - Japan

- New Zealand
- United States of America
- United States of Mexico (\*)
- The United Nations and its specialised agencies

6. Working structures and methods:

- a. The Group is co-ordinated by the representative of Austria in the CAHDI, Ambassador Franz CEDE.
- 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 1999.

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(\*) Admitted following decision of the CAHDI (15<sup>th</sup> meeting, Strasbourg, 3-4 March 1998).

**APPENDIX VI****PRELIMINARY DRAFT AGENDA<sup>1</sup>**

17<sup>th</sup> meeting  
Vienna, 8-9 March 1999

**A. INTRODUCTION**

1. Opening of the meeting
2. Adoption of the agenda
3. Communication by the Secretariat
  - Statement by Mr Guy DE VEL, Director of Legal Affairs
  - Recent developments concerning Council of Europe treaties

**B. ONGOING ACTIVITIES OF THE CAHDI**

4. **Decisions of the Committee of Ministers concerning the CAHDI:**
  - **Follow-up to the Final Opinion adopted by the CAHDI at its 16th meeting on the proposals presented by the Delegation of the Russian Federation on the CAHDI**
  - **Follow up to the Opinion adopted by the CAHDI at its 16<sup>th</sup> meeting on paragraph IV of the Declaration on the occasion of the 50<sup>th</sup> anniversary of the Universal Declaration of Human Rights**
5. **Draft Report on the Pilot project on the collection and dissemination of documentation on State practice relating to State succession and issues of recognition<sup>2</sup>**
6. **The law and practice relating to reservations and interpretative declarations concerning to international treaties:**
  - **1st meeting of the Group of experts on Reservations to International Treaties (DI-E-RIT), Vienna, 5 March 1999**
  - **Preliminary-Draft Recommendation of the Committee of Ministers on Objection to Inadmissible Reservations to International Treaties**
  - **European Observatory of Reservations to International Treaties**
7. **Consideration of conventions under the responsibility of the CAHDI: Examination of the European Convention on Peaceful Settlement of disputes**

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<sup>1</sup> Items where significant discussion is likely to take place appear **in bold**.

<sup>2</sup> This item may be included in the agenda if a delegation so requests.

**C. GENERAL ISSUES OF INTERNATIONAL PUBLIC LAW**

8. Depositaries of treaties
9. Implementation of international instruments protecting the victims of armed conflicts
10. Developments concerning the International Criminal Court (PICC)
11. Implementation and functioning of the Tribunals established by UN Security Council Resolutions 827 (1993) and 955 (1994)
12. Protection of Cultural Heritage in times of War.
13. **The work of the General Assembly of the United Nations and the Sixth Committee, and the International Law Commission (ILC)**
14. **The United Nations Decade of Public 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**

15. Date, place and agenda of the 18th meeting of the CAHDI
16. Other business