

Strasbourg, 31 March 1998

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

15th meeting, Strasbourg, 3-4 March 1998

List of items discussed and decisions taken¹

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 15th meeting on 3 and 4 March 1998 in Strasbourg. 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 of the decisions taken by the Committee of Ministers concerning the Committee. The CAHDI held a thorough and fruitful exchange of views on the proposals presented by the delegation of the Russian Federation to the Committee of Ministers concerning the CAHDI. Members of the CAHDI unanimously stressed the significant importance of the CAHDI as the only pan-European forum for the Legal Advisers of the Ministries of Foreign Affairs of the member States to meet and discuss items of common interest in the field of public international law. The CAHDI, inspired by the Russian proposal, decided that at all 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. The CAHDI decided to pursue discussion on its future role in view of deciding on the need to amend its terms of reference. At the close of the discussions, the CAHDI adopted an Interim Opinion which appears in Appendix III.

3. 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 informed members of the CAHDI about the first meeting of the Group held in Paris, 26-27 February 1998. The Group held an exchange of views with Professor Pellet, Special Rapporteur of the United Nations International Law Commission (ILC) on the subject of reservations, about the preliminary conclusions in this field adopted by the ILC as it was the view of the Group and of the CAHDI that these conclusions did not take into account the specific international European practice that represents the "Strasbourg" approach. According to this approach, when confronted with unacceptable reservations, members of the Council of Europe have reacted to some extent in a similar way following a non-formal common approach: they have considered these reservations null and void and the reserving State bound by the treaty.

¹The detailed report of the meeting (document CAHDI (98) 9) may be obtained from the Directorate of Legal Affairs, Division of Public and International Law.

The Group agreed on the need to pursue the activity and to examine at its second meeting (see point 11 below): preliminary-draft model objections to reservations considered inadmissible, to be prepared by the Swedish delegation and a paper on key issues regarding reservations at the various stages of the process of concluding treaties and post-ratification stage, to be prepared by the Dutch delegation. Moreover, the Group agreed to initiate a pilot "observation" experience concerning reservation in the attempt to further define the possible functioning of the CAHDI as an "observatory" on reservations to multilateral treaties. To this extent, the Group agreed to consider a list of reservations giving rise to doubts on their admissibility as notified by States concerned.

4. Regarding the Pilot Project of the Council of Europe on State practice relating to State succession and issues of recognition, the CAHDI approved the follow-up to the Pilot Project proposed by the Secretariat, namely the preparation of a report on the Pilot Project in co-operation with the Max Planck Institute (Germany), the Asser Institute (Netherlands) and the Castrén Institute (Finland). Moreover, the CAHDI congratulated the Secretariat for the work undertaken in this respect. The CAHDI further agreed that the draft be circulated to delegations for approval before the 16th meeting of the CAHDI. Once approved, the report will be published and the ensuing publication will possibly constitute the remaining part of the Council of Europe's contribution to the United Nations Decade of Public International Law. 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 at the CAHDI's request as part of the Organisation's contribution.

5. 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). The CAHDI agreed on pursuing consolidation of the links with the ILC. However, it noted that relations between the CAHDI and the ILC should be on an informal basis in order to foster active and thorough interaction between the two bodies. For that purpose, at its 14th meeting, the CAHDI had already authorised its Chairman to issue invitations to ILC's experts on an individual and specific basis.

6. The CAHDI took note of developments concerning the preparation of the draft Statute of a Permanent International Criminal Court (PICC). The Dutch delegation informed members of the CAHDI about the meeting of the Bureau of the Preparatory Committee responsible for the draft Statute of the PICC. The CAHDI took note that only one more meeting of the Preparatory Committee will take place before the Diplomatic Conference on this subject and that several important issues remain unsolved, namely: manner of establishing the Court, jurisdiction, relations with the Security Council of the United Nations, etc. The Italian delegation informed members of the CAHDI about the organisation of the Diplomatic Conference on this matter which will take place in Rome 15 June-17 July 1998.

7. The CAHDI was informed by the delegate of Switzerland about the First regular Conference on the follow-up to recommendations concerning the implementation of international instruments protecting the victims of armed conflicts, held in Geneva, 19-23 January 1998. The Conference dealt with two topics: "Armed conflicts linked with the breakdown of state structures or «unstructured» conflicts" and "Protection of members of humanitarian organisations". 129 states participated as well as a significant number of observer organisations. For political reasons, the conference was almost cancelled due to controversy about the status of the Palestinian and Yugoslavian delegations. An ad hoc procedure was adopted at the conference and, thus, at the close of discussions no resolution was adopted but a Chairman's summing-up.

8. The CAHDI was informed by the delegates of the Netherlands and the Russian Federation

about the state of preparation of the activities for the Centennial of the First International Peace Conference and the closing of the United Nations Decade of Public International Law. A Programme of action has been adopted including the preparation of expert reports on the various themes dealt with at the First International Peace Conference (armament, humanitarian law, law and customs of war, peaceful settlement of international disputes). These reports will possibly be discussed in regional international fora (including the CAHDI) and they are intended to highlight the achievements since 1899 as well as the lacunae of international law with a view to identifying issues which could be brought to the attention of the 54th meeting of the UN General Assembly. An international commemorative conference will be held in The Hague in May 1999 and a commemorative meeting will be held in St. Petersburg in June 1999. In addition, the 27th session of the International Red Cross will be held in Geneva.

9. The CAHDI was informed by the delegate of Switzerland that the Seat Agreement for the International Court instituted under the Convention on Conciliation and Arbitration of the OSCE was signed on 17 November 1997 by the President of the Court, Mr Badinter and Ambassador Krafft on behalf of the Swiss Federal Council, and deposited with the Government of Sweden. The Court is therefore at present fully operational.

10. In accordance with the provisions of article 5 of Resolution (76) 3 of the Committee of Ministers, the CAHDI unanimously accepted the United States of Mexico as observer to the CAHDI "for the whole duration of the Committee". Members of the CAHDI welcomed the future participation of the legal advisers of the Ministry of Foreign Affairs of the United States of Mexico and expressed their trust in the fruitful contribution they can make to the activities of the Committee.

11. In accordance with the Council of Europe's budget, the CAHDI decided to hold its 16th meeting in Paris, 16-17 September 1998 and adopted the preliminary-draft agenda that appears in appendix IV. In addition, the CAHDI decided to hold the 2nd meeting of the Group of Specialists on Reservations to International Treaties (DI-S-RIT) in Paris, 14-15 September 1998, 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-S-RIT.

12. The Committee of Ministers is invited to:

- take note of the interim opinion adopted by the CAHDI concerning the proposals by the delegation of the Russian Federation on the CAHDI (Appendix III);

- take note of the acceptance of the United States of Mexico as an observer to the CAHDI for the whole duration of the Committee;

- consider the draft agenda of the 16th meeting of the CAHDI as contained in Appendix IV to this report and include in it any matter requiring an exchange of views or an opinion in the field of public international law;

- take note of the report as a whole.

APPENDIX I

LIST OF PARTICIPANTS

ALBANIE/ALBANIA : Mr Qiriako QIRJAKO, Director of the Legal and Consular Department, Ministry of Foreign Affairs

ANDORRE/ANDORRA : -

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

BELGIQUE/BELGIUM : Mme R. FOUCART, Directeur Général Jurisconsulte, Ministère des Affaires Etrangères
Mme. A.M. SNYERS, Conseiller Général, Ministère des Affaires Etrangères

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

CROATIE/CROATIA : Mr Stanko NICK, Ambassador, Chief Legal Adviser, Ministry of Foreign Affairs

CHYPRE/CYPRUS : M. Andrea M. ANGELIDES, Attorney of the Republic, The Legal Services of the Republic of Cyprus

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

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

ESTONIE/ESTONIA : Mr Peter KAPTEN, Counsellor, Head of Division for International Treaties, Legal Department, Ministry of Foreign Affairs

FINLANDE/FINLAND : Mr Holger ROTKIRCH, Ambassador, Director General for Legal Affairs, Ministry for Foreign Affairs

FRANCE: M. Jean-François DOBELLE, Directeur adjoint des Affaires Juridiques, Ministère des Affaires Etrangères
M. Jean-Marie MAGNIEN, Sous-directeur du droit international public, Ministère des Affaires étrangères

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, Ministry of Foreign Affairs

HONGRIE/HUNGARY : Mr György SZENASI, Ambassador, Head of International Law Department, Ministry of Foreign Affairs; **Chairman of the CAHDI/Président du CAHDI**

ISLANDE/ICELAND : -

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

ITALIE/ITALY : M. Umberto LEANZA, Chef du Service Juridique, Ministère des Affaires Etrangères
Mme Ida CARACCILOLO, Lecturer of International Law, Ministry of Foreign Affairs

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

LIECHTENSTEIN : (excusé/apologised)

LITUANIE/LITHUANIA : Mrs Sigute JAK_TONYTE, Deputy Director, Legal and International Treaties Department, Ministry of Foreign Affairs

LUXEMBOURG: -

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

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

PAYS-BAS/NETHERLANDS : Dr J.G. LAMMERS, Dep. Legal Adviser, Ministry of Foreign Affairs

NORVEGE/NORWAY : Mr Jens EIKAAS, Deputy Director General, Department of Legal Affairs, Ministry of Foreign Affairs

POLOGNE/POLAND : Mr Krzysztof PIORKOWSKI, Counsellor to the Minister, Legal and Treaty Department, Ministry of Foreign Affairs

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

ROUMANIE/ROMANIA : M. Tudor MIRCEA, Directeur de la Direction Juridique et des Traités, Ministère des Affaires Etrangères
Mr Titus CORLATEAN, Attaché Juridique, Représentation Permanente de la Roumanie

FEDERATION DE RUSSIE/FEDERATION OF RUSSIA : M. Kirill GUEVORGUIAN, Deputy Director, Legal Department, Ministry of Foreign Affairs

SAINT-MARIN/SAN MARINO : -

SLOVAQUIE/SLOVAKIA : M. Peter TOMKA, Ambassadeur, Directeur Général aux affaires juridiques et consulaires, Ministère des Affaires Etrangères

SLOVENIE/SLOVENIA: Mr Borut MAHNI_, Head of the International Law Department, Ministry for Foreign Affairs

ESPAGNE/SPAIN: M. José Antonio PASTOR RIDRUEJO, Chef du Service Juridique International, Ministère des Affaires Extérieures
M. Maximiliano BERNAD Y ALVAREZ DE EULATE, Professeur de Droit international public et d'Institutions et Droit communautaire européens, Université de Saragosse

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

SUISSE/SWITZERLAND : Mme Evelyne GERBER, Chef du Service du Droit diplomatique et consulaire, Division du Droit international public, Département fédéral des affaires étrangères

"L'EX-REPUBLIQUE YOUGOSLAVE DE MACEDOINE"/"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA": -

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

UKRAINE : Mr Volodymyr KROKHMAL, Acting Director of Legal Department, Ministry for Foreign Affairs

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

COMMUNAUTE EUROPEENNE/EUROPEAN COMMUNITY

Mr Alessandro IANNIELLO, Directorate-General IA, External Relations, European Commission

OBSERVATEURS/OBSERVERS

ARMENIE/ARMENIA: -

AUSTRALIE/AUSTRALIA : -

AZERBAIDJAN/AZERBAIJAN: Mr Djevdet MAMEDOV, Treaty and Legal Department, Ministry of Foreign Affairs

CANADA : Mme Isabelle POUPART, Délégation du Canada auprès de l'OTAN

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SAINT-SIEGE/HOLY SEE : Madame Odile GANGHOFER, Docteur en Droit

JAPON/JAPAN : Mr Akira ANDO, Consul, Consulate General of Japan

NOUVELLE ZELANDE/NEW ZEALAND : -

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

CONFERENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVE/THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW : excusé/apologised

ORGANISATION DE COOPERATION ET DE DEVELOPPEMENT ECONOMIQUES / 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, Service juridique de l'OTAN,

SECRETARIAT

Mme. Marie-Odile WIEDERKEHR, Deputy Director of Legal Affairs / Directrice Adjointe des Affaires Juridiques

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

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

M. Jörg POLAKIEWICZ, Administrative Officer, Legal Adviser and Treaty Office / Administrateur, Service du Conseiller Juridique et Bureau des Traités

Mme. Francine NAAS, Assistant, Division of Public and International Law / Assistante, Division du Droit Public et International

APPENDIX II

AGENDA

15th meeting Strasbourg, 3 - 4 March 1998

Introduction

1. Opening of the meeting
2. Adoption of the agenda
3. Statement by the Secretariat
- i. intervention by Mrs Marie-Odile WIEDERKEHR, Deputy Director of Legal Affairs
- ii. decisions of the Committee of Ministers concerning the CAHDI

A. General questions of international law

4. State succession
5. The role of the depositaries of treaties
 - a. Council of Europe
 - b. Other depositaries
6. Implementation of international instruments protecting the victims of armed conflicts
7. The law and practice relating to reservations to international treaties and interpretative declarations:
1st meeting of the Group of Specialists on Reservations to International Treaties (DI-S-RIT),
Paris, 26-27 February 1998

B. United Nations

8. Draft Statute of a Permanent International Criminal Court (PICC)
9. Implementation and functioning of the Tribunals established by UN Security Council
Resolutions 827 (1993) and 955 (1994)
 - Agreement between the international criminal tribunal for the former Yugoslavia and
the Government of Finland on the enforcement of sentences of the
international tribunal
 - Agreement between the Government of the Italian Republic and the United Nations on
the enforcement of sentences of the international criminal tribunal for
the former Yugoslavia
 - Constitutional Act on the co-operation of the Republic of Croatia with the international
criminal tribunal
10. The work of the General Assembly of the United Nations and working methods of the Sixth
Committee and the International Law Commission (ILC)

11. The United Nations Decade of Public International Law from 1990 to 1999:

- a. Pilot project of the Council of Europe on the collection and dissemination of documentation on State practice relating to State succession and issues of recognition
- b. Centennial of the first International Peace Conference and closure of the United Nations Decade of International Law

C. Europe

12. Recent developments in international law in Europe:

- a. The Council of Europe
- b. The OSCE

D. Other

- 13. Request of the United States of Mexico for the status of observer in the CAHDI
- 14. Date, place and agenda of the 16th meeting of the CAHDI
- 15. Other business

APPENDIX III

INTERIM 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 15th meeting in Strasbourg on 3-4 March 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 hold an exchange of views on the proposals of the Russian Federation to the Committee of Ministers, dated 16 December 1997, to modify the activities of the CAHDI 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.

The above-mentioned Russian proposals include: 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. The Russian delegate in the CAHDI presented these proposals to the members of the CAHDI

INTERIM 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 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, has now decided that at all 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 which 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.

In this connection, the CAHDI considers that it would be a useful exercise to assess the current suitability of the conventions falling under its area of competence, namely: European Convention for the Peaceful Settlement of Disputes (1957, ETS 23), European Convention on Consular Functions (1967, ETS 61), 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).

Finally, the CAHDI considers that it requires to pursue further the examination of its terms of reference in order to determine whether they need to be amended or not. The CAHDI will be able to take a position on this issue at its 16th meeting, 16-17 September 1998.

APPENDIX IV

PRELIMINARY-DRAFT AGENDA²

**16th meeting of the CAHDI
Paris, 16-17 September 1998**

A. INTRODUCTION

1. Opening of the meeting
2. Adoption of the agenda
3. Statement by the Secretariat

B. ONGOING ACTIVITIES OF THE CAHDI

4. Decisions of the Committee of Ministers concerning the CAHDI:

- Follow-up to the Iterim Opinion adopted by the CAHDI at its 15th meeting on the proposals presented by the Delegation of the Russian Federation on the CAHDI

- Draft-terms of reference of the CAHDI for 1999-2000

5. Pilot project on the collection and dissemination of documentation on State practice relating to State succession and issues of recognition

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, 14-15 September 1998

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

C. GENERAL ISSUES OF INTERNATIONAL PUBLIC LAW

8. Depositaries of treaties
9. Implementation of international instruments protecting the victims of armed conflicts
10. Draft Statute of a Permanent International Criminal Court (PICC)
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)

² Items where significant discussion is likely to take place appear **in bold**

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

D. OTHER

14. Election of the Chair and Vice-Chair of the CAHDI for a one-year term

15.Date, place and agenda of the 17th meeting of the CAHDI

16.Other business