

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

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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.