

**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 15th 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 15th 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 on-going 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.