

**OPINION OF THE COMMITTEE OF LEGAL ADVISERS ON
PUBLIC INTERNATIONAL LAW (CAHDI)
ON RECOMMENDATION 1920 (2010) OF THE PARLIAMENTARY ASSEMBLY ON
“REINFORCING THE EFFECTIVENESS OF COUNCIL OF EUROPE TREATY LAW”**

1. On 9 June 2010, the Ministers' Deputies forwarded Recommendation 1920 (2010) of the Parliamentary Assembly to the Committee of Legal Advisers on Public International Law (CAHDI) for information and possible comments by 15 October 2010.
2. In its Recommendation, the Parliamentary Assembly asks the Committee of Ministers to:
 - approve an action plan to secure the early ratification by all member States of the core Council of Europe treaties, as defined in the appendix to the Assembly resolution, with the fewest possible reservations;
 - urge member States to withdraw their reservations, derogations and restrictive declarations concerning Council of Europe treaties, particularly the European Convention on Human Rights, and instruct the Committee of Legal Advisers on Public International Law (CAHDI) to intensify its existing efforts in this area and to reduce the use of such clauses;
 - agree on an action programme of new conventions to be drawn up, as a matter of priority, over the next five years;
 - instruct the Steering Committee on Human Rights (CDDH), the European Committee on Legal Co-operation (CDCJ) and the European Committee on Crime Problems (CDPC), in close co-operation with the Council of Europe's Legal Advice Department and the Treaty Office, to examine the binding legal instruments within their respective areas of authority, with a view to identifying:
 - treaties that are still relevant but require updating;
 - treaties that are obsolete and should be abrogated;
 - treaties which have lost their relevance and have not come into force within a certain number of years of their adoption and which should be withdrawn;
 - in the light of changes in European law within the European Union, particularly the advent of framework decisions or community acts, consult

the CAHDI on the possible adoption by the Council of Europe of pan-European model acts to supplement its treaties.

Furthermore, the Assembly asks the Committee of Ministers to draw up strict guidelines to control the practice of the so-called disconnection clause in Council of Europe treaties, on the base of the work of the CAHDI, in order to ensure the coherence of the Council of Europe treaty law, and to avoid establishing new dividing lines in Europe.

3. The CAHDI examined the above-mentioned Recommendation at its 40th meeting (Tromsø, 16-17 September 2010) and adopted the following comments which are of particular relevance to the activities of the CAHDI and to its mandate (Public International Law).
4. From the outset, the CAHDI observes that the Council of Europe conventions constitute a unique integrated system of legal standards collectively defined within the Organisation and agreed upon by the member States. The Council of Europe should continue playing a major role in setting standards and developing international law in the areas of human rights' protection, democracy and the rule of law.
5. In this context, and as regards the issue of reducing the use of reservations, derogations and restrictive declarations, the CAHDI has conducted two specific recent activities in its capacity as European Observatory of reservations to international treaties. Since 1998, the CAHDI regularly considers a list of outstanding reservations to international treaties, concluded within and outside the Council of Europe. Members of the CAHDI are therefore regularly called upon to consider outstanding reservations and declarations and to exchange views on national positions. A table of objections to these clauses is regularly presented to the Committee of Ministers together with abridged reports of the CAHDI meetings. This activity constitutes one of the core activities of the CAHDI.
6. With regards to reservations to international treaties applicable to the fight against terrorism, the CAHDI has specifically - since its 23rd meeting (4-5 March 2002) - held exchanges on views on possible problematic reservations to regional and universal conventions relating to the fight against terrorism with a view to co-ordinating the positions taken by member States. Since then, the CAHDI has produced a list of possibly problematic reservations. In 2004 the Ministers' Deputies examined the list, and invited the member States concerned to consider withdrawing their respective reservations. They further invited the Secretary General to notify to non-member States the conclusions of CAHDI with regard to their respective reservations and invited member States to volunteer to approach those non-member States with regard to their respective problematic reservations. In 2009 the Deputies took note of a Revised List of Problematic Reservations and Declarations to International Treaties Applicable to the Fight against Terrorism. The CAHDI stands ready to reopen this activity if such an interest is expressed by States and/or decision-making bodies of the Council of Europe.

7. Furthermore, the CAHDI takes note of the suggestion of the Parliamentary Assembly to involve the Steering Committee on Human Rights (CDDH), the European Committee on Legal Co-operation (CDCJ) and the European Committee on Crime Problems (CDPC) – together with the Council of Europe’s Legal Advice Department and the Treaty Office – in the review of the CoE binding legal instruments with the aim of identifying treaties that require updating, that are obsolete or which have lost their relevance. Taking into account the nature of this activity and the scope of the competence of the CAHDI (public international law), the CAHDI expresses its interest to remain closely associated to this Council of Europe activity. In this respect, the CAHDI would like to recall that it has already conducted activities which are pertinent to this new activity, suggested by the Assembly in this Recommendation, such as the activities on the role of the depositaries of treaties, within or outside the Council of Europe, on consent of State to be bound by the treaty, and on State succession in Europe relating to treaties.
8. Moreover, the CAHDI takes note of the suggestion made by the Parliamentary Assembly Recommendation to “consult the CAHDI on the possible adoption by the Council of Europe of pan-European model acts to supplement its treaties” (...) “in the light of changes in European law within the European Union, particularly the advent of framework decisions or community acts”.
9. In this sense the CAHDI would like to underline that, according to Article 15 of the Statute of the Council of Europe, the Committee of Ministers is the competent body of the Council of Europe to adopt decisions and/or to address recommendations to member States. Additionally, the CAHDI would like to recall that, in this regard, the Statute foresees only two different categories of legal acts to be adopted by the Committee of Ministers, either conventions or recommendations.
10. In response to the Parliamentary Assembly suggestion concerning "pan-European model acts to supplement its treaties", the CAHDI observes, without ignoring the possible harmonising effect that such model acts might entail, that such a proposal would not be consistent with the Council of Europe treaty practice.

Moreover, the CAHDI observes that States and their authorities should retain the flexibility required to incorporate international treaties into the respective domestic legal orders.

Given that the Council of Europe member States have different systems of transforming treaty obligations into their national laws, it is also not clear whether “pan-European model acts” could be of significant assistance in facilitating the implementation of Council of Europe treaties.

11. Finally, as regards the suggestion of the Parliamentary Assembly concerning the practice of the so-called disconnection clause, the CAHDI recalls its report on the consequences of the so-called “disconnection clause” and stresses the

importance of maintaining a coherent approach in the use of such clauses in line with the Ministers' Deputies decision of 10 December 2008. In this respect, the CAHDI stands ready to work closely with the relevant decision-making bodies of the Council of Europe if the need arises.