

Strasbourg, 25/01/99

CAHDI (99) 8

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

**17<sup>th</sup> Meeting**  
**Vienna, *Hofburg*, 8-9 March 1999**

**ACTIVITIES OF THE CAHDI FOR 1999 AND 2000:**  
**EXPRESSION OF CONSENT BY STATES TO BE BOUND BY A TREATY,**  
**UPDATING OF THE 1987 COUNCIL OF EUROPE REPORT**

Secretariat memorandum  
Prepared by the Directorate of Legal Affairs

### **Foreword**

1. In 1986 the Committee of Experts on Public International Law (CJ-DI) - predecessor of the CAHDI -, operating under the aegis of the European Committee of Legal Co-operation (CDCJ) prepared a report on the means by which States consent to be bound by a treaty and national procedures relating thereto.
2. This report was prepared on the basis of the replies by 22 Member States to a questionnaire (included in appendix I). These States were: Austria, Belgium, Cyprus, Denmark, France, Federal Republic of Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey and United Kingdom.
3. In addition to the replies sent by Member States of the Council of Europe, replies were also sent by Australia, Canada and United States of America who attended the meetings of the CJ-DI as observers.
4. The report, published by the Council of Europe in 1987 has interested researchers and scholars and governmental delegations as a useful source of information and inspiration for national practices. The report is attached to this document (appendix II).
5. Twelve years after the publication of the report, national procedures might have changed significantly and membership of the Council of Europe has increased considerably, the Secretariat therefore proposes updating it.

### **Action required**

Members of the CAHDI are invited to consider the Secretariat proposal for updating the report "Expression of consent by States to be bound by a Treaty" and to decide whether it should be carried out as part of the CAHDI's programme of activities for 1999 and 2000.

In the affirmative, members of the CAHDI are invited to consider the original questionnaire, amend it if necessary, and approve it. Once approved, the Secretariat will submit it to each CAHDI delegation and observer State.

## APPENDIX I

### QUESTIONNAIRE ON THE MEANS BY WHICH STATES EXPRESS THEIR CONSENT TO BE BOUND BY A TREATY AND NATIONAL PROCEDURES RELATING THERETO

1. Which authority, in your country, is vested with the treaty making power ?
2. Which authority is competent to authorise negotiations and according to which procedure is the authorisation given ?
3. Does the legal system of your country draw a distinction between signature not subject to ratification, signature subject to ratification, acceptance or approval ?
  - a) If not, please describe the procedure followed in your country to express the consent of your State to be bound by a treaty and reply also to questions 7, 9 to 11, 12 (*mutatis mutandis*) and 13 to 15.
  - b) If the answer is yes, please reply to questions 4 and following.
4. In what cases and under what conditions is signature not subject to ratification, acceptance or approval, possible ?
5. In what cases is signature subject to ratification required ?
6. In what cases and under what conditions is acceptance or approval possible ? Are they preceded by signature ?
7. In each of the situations mentioned under 3 a), 4, 5 and 6, please describe the steps which must be followed leading to the decision to bind the State. In particular, must the authority taking the decision consult other authorities (if so, which ones ?) or professional or other interested groups ?
8. When ratification is necessary, please specify :
  - a) Which authority is competent to ratify ?
  - b) Must it have prior authorisation to ratify ? If so, who gives such authorisation and what form does it take ?
  - c) In cases when a prior authorisation is required, must it be applied for within a certain deadline ? Must the decision of the authorising authority be taken within a certain deadline ? If this deadline is passed without a decision, what is the consequence ?
  - d) Once authorisation to ratify is granted, must the authorised authority proceed to ratification within a given deadline ? Could it refrain from ratifying indefinitely ?
9. In case of accession to a treaty, are there any other procedures not described above which are followed ?
10. Which authority decides whether :
  - a) reservations should be made ?
  - b) reservations should be withdrawn ?
  - c) objections should be presented to reservations made by other States ?
11. Do treaties to which your country is a Party become incorporated into your country's domestic law ?
12. If so, does the incorporation happen by reason of (and at the time of) the signature not subject to ratification, the ratification, acceptance, approval or accession, or is a separate act of legislative or administrative nature necessary ?

13. What is the legal status of a treaty incorporated into the domestic law of your country ?
14. Does signature of a treaty by your country indicate a firm intention to ratify it ?
15. Is the provisional application of a treaty before its entry into force possible in your legal system and under what conditions ?