

Strasbourg, 10/09/02

CAHDI (2002) 9 rev

COMMITTEE OF LEGAL ADVISERS
ON PUBLIC INTERNATIONAL LAW
(CAHDI)

24th meeting
Bratislava, 9-10 September 2002

REQUESTS FOR CAHDI'S OPINION

**PARTIAL RENUNCIATION OF A TREATY: REQUEST BY THE EUROPEAN COMMITTEE
ON LEGAL CO-OPERATION (CDCJ) AT THE INITIATIVE OF THE COMMITTEE OF
EXPERTS ON NATIONALITY (CJ-NA)**

Secretariat memorandum
Prepared by the Directorate General of Legal Affairs

Foreword

At its 23rd meeting, Strasbourg, 3-4 March 2002, the CAHDI was informed that at its 76th meeting (Strasbourg, 4 to 7 December 2001) following a proposal from the CJ-NA, the CDCJ requested the opinion of the CAHDI concerning the possibility of a partial renunciation of the 1963 Convention on the Reduction of cases of multiple nationality and military obligations in cases of multiple nationality (ETS 43) (hereinafter: *the Convention*, reproduced in Appendix I).

The CAHDI was called upon in particular to give its opinion on:

- 1) whether a partial denunciation of the Convention (Chapter I only) would be possible and
- 2) if, in the opinion of CAHDI, a partial denunciation is possible, the CJ-NA may consider CAHDI's opinion as a sufficient basis to allow the States concerned to proceed in such a manner.

The CAHDI held an exchange of views regarding this issue and asked the Secretariat to prepare a preliminary draft opinion on the basis of the views expressed and with a view to its possible adoption at the 24th meeting. The preliminary draft opinion appears in Appendix II.

It is recalled that according to Article 7 of the Convention:

Each Contracting Party shall apply the provisions of Chapters I and II. It is however understood that a State may declare, at the time of ratification, acceptance or accession, that it will apply the provisions of Chapter II only. In this case the provisions of Chapter I shall not be applicable to that Party.

It may, at any subsequent time, notify the Secretary General of the Council of Europe that it is applying the provisions of Chapter I as well.

Moreover, any Contracting Party may "...denounce the Convention by means of a notification addressed to the Secretary General of the Council of Europe" and "such a denunciation shall take effect one year after the date of receipt by the Secretary General of such notification." (Article 12)

A number of States have informed the CJ-NA that they no longer wish to be bound by Chapter I of the Convention as their new internal legislation will no longer be in line with this Chapter. Nevertheless, these States have expressed their wish to continue to be bound by the provisions of Chapter II of the Convention regarding military obligations in cases of multiple nationality.

Action required

Members of the CAHDI are called upon to consider and approve the draft opinion and to submit it to the CJ-NA.

Appendix I**CONVENTION ON REDUCTION OF CASES OF MULTIPLE NATIONALITY AND MILITARY OBLIGATIONS IN CASES OF MULTIPLE NATIONALITY
Strasbourg, 6.V.1963**

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve greater unity between its members;

Considering that cases of multiple nationality are liable to cause difficulties and that joint action to reduce as far as possible the number of cases of multiple nationality, as between member States, corresponds to the aims of the Council of Europe;

Considering it desirable that persons possessing the nationality of two or more Contracting Parties should be required to fulfil their military obligations in relation to one of those Parties only,

Have agreed as follows:

Chapter I – Reduction of cases of multiple nationality**Article 1**

- 1 Nationals of the Contracting Parties who are of full age and who acquire of their own free will, by means of naturalisation, option or recovery, the nationality of another Party shall lose their former nationality. They shall not be authorised to retain their former nationality.
- 2 Nationals of the Contracting Parties who are minors and acquire by the same means the nationality of another Party shall also lose their former nationality if, where their national law provides for the loss of nationality in such cases, they have been duly empowered or represented. They shall not be authorised to retain their former nationality.
- 3 Minor children, other than those who are or have been married, shall likewise lose their former nationality in the event of the acquisition *ipso jure* of the nationality of another Contracting Party upon and by reason of the naturalisation or the exercise of an option or the recovery of nationality by their father and mother. Where only one parent loses his former nationality, the law of that Contracting Party whose nationality the minor possessed shall determine from which of his parents he shall derive his nationality. In the latter case, the said law may make the loss of his nationality subject to the prior consent of the other parent or the guardian to his acquiring the new nationality.

However, without prejudice to the provisions of the law of each of the Contracting Parties concerning the recovery of nationality, the Party of which the minor referred to in the foregoing paragraph possessed the nationality may lay down special conditions on which they may recover that nationality of their own free will after attaining their majority.

4 In so far as concerns the loss of nationality as provided for in the present article, the age of majority and minority and the conditions of capacity and representation shall be determined by the law of the Contracting Party whose nationality the person concerned possesses.

Article 2

- 1 A person who possesses the nationality of two or more Contracting Parties may renounce one or more of these nationalities, with the consent of the Contracting Party whose nationality he desires to renounce.
- 2 Such consent may not be withheld by the Contracting Party whose nationality a person of full age possesses *ipso jure*, provided that the said person has, for the past ten years, had his ordinary residence outside the territory of that Party and also provided that he has his ordinary residence in the territory of the Party whose nationality he intends to retain.

Consent may likewise not be withheld by the Contracting Party in the case of minors who fulfil the conditions stipulated in the preceding paragraph, provided that their national law allows them to give up their nationality by means of a simple declaration and provided also that they have been duly empowered or represented.

- 3 The age of majority and minority and the conditions for being empowered or represented shall be determined by the law of the Contracting Party whose nationality the person in question desires to renounce.

Article 3

The Contracting Party whose nationality a person desires to renounce shall not require the payment of any special tax or charge in the event of such renunciation.

Article 4

Nothing in the provisions of this Convention shall preclude the application of any provision more likely to limit the occurrence of multiple nationality whether embodied or subsequently introduced into either the municipal law of any Contracting Party or any other treaty, convention or agreement between two or more of the Contracting Parties.

Chapter II – Military obligations in cases of multiple nationality

Article 5

- 1 Persons possessing the nationality of two or more Contracting Parties shall be required to fulfil their military obligations in relation to one of those Parties only.
- 2 The modes of application of paragraph 1 may be determined by special agreements between any of the Contracting Parties.

Article 6

Except where a special agreement which has been, or may be, concluded provides otherwise, the following provisions are applicable to a person possessing the nationality of two or more Contracting Parties:

- 1 Any such person shall be subject to military obligations in relation to the Party in whose territory he is ordinarily resident. Nevertheless, he shall be free to choose, up to the age of 19 years, to submit himself to military obligations as a volunteer in relation to any other Party of which he is also a national for a total and effective period at least equal to that of the active military service required by the former Party.
- 2 A person who is ordinarily resident in the territory of a Contracting Party of which he is not a national or in that of a State which is not a Party may choose to perform his military service in the territory of any Contracting Party of which he is a national.
- 3 A person who, in accordance with the rules laid down in paragraphs 1 and 2, shall fulfil his military obligations in relation to one Party, as prescribed by the law of that Party, shall be deemed to have fulfilled his military obligations in relation to any other Party or Parties of which he is also a national.
- 4 A person who, before the entry into force of this Convention between the Parties of which he is a national, has, in relation to one of those Parties, fulfilled his military obligations in accordance with the law of that Party, shall be deemed to have fulfilled the same obligations in relation to any other Party or Parties of which he is also a national.
- 5 A person who, in conformity with paragraph 1, has performed his active military service in relation to one of the Contracting Parties of which he is a national, and subsequently transfers his ordinary residence to the territory of the other Party of which he is a national, shall be liable to military service in the reserve only in relation to the latter Party.
- 6 The application of this article shall not prejudice, in any respect, the nationality of the persons concerned.
- 7 In the event of mobilisation by any Party, the obligations arising under this article shall not be binding upon that Party.

Chapter III – Application of the Convention

Article 7

- 1 Each Contracting Party shall apply the provisions of Chapters I and II. It is however understood that each Contracting Party may declare, at the time of ratification, acceptance or accession, that it will apply the provisions of Chapter II only. In this case the provisions of Chapter I shall not be applicable in relation to that Party.

It may, at any subsequent time, notify the Secretary General of the Council of Europe that it is applying the provisions of Chapter I as well. This notification shall become effective as from the date of its receipt, and the provisions of Chapter I shall thereupon become applicable in relation to that Party.

- 2 Each Contracting Party which has applied the provisions of the first sub-paragraph of paragraph 1 of this article may declare, at the time of signing or at the time of depositing its instrument of ratification, acceptance or accession that it will apply the provisions of Chapter II only in regard to Contracting Parties which are applying the provisions of Chapters I and II. In this case the provisions of Chapter II shall not be applicable between the Party making such a declaration and a Party applying the second sub-paragraph of paragraph 1.

Chapter IV – Final clauses

Article 8

- 1 Any Contracting Party may, when signing this Convention or depositing its instrument of ratification, acceptance or accession, declare that it avails itself of one or more of the reservations provided for in the Annex to the present Convention. No other reservation shall be permitted.
- 2 Any Contracting Party may wholly or partly withdraw a reservation it has made in accordance with the foregoing paragraph by means of a notification addressed to the Secretary General of the Council of Europe, which shall become effective as from the date of its receipt.
- 3 A Contracting Party which has made a reservation in respect of any provision of the Convention in accordance with this article may not claim application of the said provision by another Party; it may, however, if its reservation is partial or conditional claim the application of that provision in so far as it has itself accepted it.

Article 9

- 1 Any Contracting Party may, by a declaration made to the Secretary General of the Council of Europe on signature or on depositing its instrument of ratification, acceptance or accession, or at any subsequent time, with regard to States and territories for which it assumes international responsibility, or for which it is empowered to contract, define the term “nationals” and specify the “territories” to which the present Convention shall be applicable.
- 2 Any declaration made in accordance with this article may, in respect of the nationals and territories mentioned in such declaration, be withdrawn according to the procedure laid down in Article 12 of this Convention.

Article 10

- 1 This Convention shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.
- 2 This Convention shall enter into force one month after the date of deposit of the second instrument of ratification or acceptance.
- 3 In respect of a signatory State ratifying or accepting subsequently, the Convention shall come into force one month after the date of deposit of its instrument of ratification or acceptance.

Article 11

- 1 After this Convention has come into force the Committee of Ministers of the Council of Europe may unanimously decide to invite any State which is not a member of the Council to accede to it. Any State so invited may accede by depositing its instrument of accession with the Secretary General of the Council.
- 2 The Convention shall come into force in respect of any State acceding thereto one month after the date of deposit of its instrument of accession.

Article 12

- 1 This Convention shall remain in force indefinitely.
- 2 Any Contracting Party may, in so far as it is concerned, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 3 Such denunciation shall take effect one year after the date of receipt by the Secretary General of such notification.

Article 13

The Secretary General of the Council of Europe shall notify the member States of the Council and the government of any State which has acceded to this Convention of :

- a any signature and any deposit of instruments of ratification, acceptance or accession;
- b all dates of entry into force of the Convention in accordance with Articles 10 and 11 thereof;
- c any reservation made in accordance with Article 8, paragraph 1;
- d the withdrawal of any reservation in accordance with Article 8, paragraph 2;
- e any declaration or notification received in accordance with the provisions of Article 7 and Article 9, paragraph 1;
- f any notification received in pursuance of the provisions of Article 9, paragraph 2, and of Article 12 and the date on which denunciation takes effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 6th day of May 1963, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory and acceding governments.

ANNEX

Any Contracting Party may declare that it reserves the right:

- 1 to make the loss of nationality referred to in Article 1, paragraphs 1, 2 and 3, subject to the condition that the person concerned already ordinarily resides or at some time takes up his ordinary residence outside its territory, except where, in the case of acquisition of a foreign nationality of his own free will, such person is exempted by the competent authority from the condition of ordinary residence abroad;
- 2 not to regard a declaration made by a woman with a view to acquiring her husband's nationality by virtue and at the time of marriage as an option within the meaning of Article 1;
- 3 to allow any of its nationals to retain his previous nationality if a Contracting Party for whose nationality he applies in the manner referred to in Article 1 gives its prior consent thereto;
- 4 not to apply the provisions of Articles 1 and 2 when the wife of one of its nationals has acquired another nationality while her husband retains the nationality of such Party.

Appendix II

OPINION OF THE CAHDI CONCERNING THE POSSIBILITY OF PARTIAL DENUNCIATION OF THE CONVENTION ON REDUCTION OF CASES OF MULTIPLE NATIONALITY AND MILITARY OBLIGATIONS IN CASES OF MULTIPLE NATIONALITY (STRASBOURG, 6.V.1963)

At its 23rd meeting (Strasbourg, 3-4 March 2002), the Committee of Legal Advisers on Public International Law (CAHDI) was informed that at its 76th meeting (Strasbourg, 4 to 7 December 2001) following a proposal from the Committee of Experts on Nationality (CJ-NA), the European Committee on Legal Co-operation (CDCJ) requested the opinion of the CAHDI concerning the possibility of a partial denunciation of the 1963 Convention on the Reduction of cases of multiple nationality and military obligations in cases of multiple nationality (ETS 43) (hereinafter: *the Convention*).

The CAHDI was called upon in particular to give its opinion on whether a partial denunciation of the 1963 Convention (Chapter I only) would be possible and if, in the opinion of CAHDI, a partial denunciation is possible, the CJ-NA may consider CAHDI's opinion as a sufficient basis to allow the States concerned to proceed in such a manner.

The CAHDI held an exchange of views regarding this issue at its 23rd and 24th meetings and at its 24th meeting (Bratislava, 9-10 September 2002) adopted the following

OPINION

The CAHDI understands the reasons which move the CJ-NA to consider the possibility of a partial denunciation of the Convention as an alternative to the drafting of an amending protocol to that convention which would be a more complex and time-consuming procedure.

However, the CAHDI considers that the Convention does not provide a legal basis for such a partial denunciation of the Convention. In such a case, according to the law of treaties as embodied in the Vienna Convention the Law of Treaties (in particular Article 44, para 1) the partial denunciation of the Convention will only be possible if agreed by all the States Parties to the Convention. The CAHDI is of the view that such an agreement is a *condition sine qua non* for a State to proceed to a partial denunciation of the Convention.

Nothing in this opinion shall be considered by the CJ-NA as a sufficient basis to allow the States concerned to proceed to partial denunciation of the Convention.