



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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**United Nations General Assembly
68th Session
Sixth Committee
Agenda item 81
Report of the International Law Commission
Part 2**

Mr Chairman,

Ladies and Gentlemen,

- Let me start by saying how honoured I am to speak to you today on behalf of the Council of Europe and to address such an eminent audience of representatives of member states and intergovernmental organisations.
- As a regional organisation created in 1949, the Council of Europe has always attached a great importance to its cooperation with the United Nations. The UN are indeed an “across the board” partner for the Council of Europe.
- The Council of Europe **welcomes the work of the ILC on reservations** which is of particular relevance for our Organisation. The Council of Europe Secretariat contributed to the reports by Prof Alain Pellet and I would like to seize this opportunity to congratulate him personally for having accomplished a truly impressive task. His **guide to practice is a very useful tool** which goes beyond a mere restatement of existing practice and contains a number of practical recommendations.
- In my intervention, I would like to make a few comments taking into account recent developments regarding reservations in the Council of Europe, namely (1) the convention review and (2) the work of CAHDI.

The review of Council of Europe conventions

- The issue of reservations has been on the Council of Europe’s agenda in the context of the convention review exercise launched by Secretary General, Thorbjørn Jagland in 2011.
- There are the **more than 200 international treaties** that have been concluded within the Council of Europe, certainly our most important contribution to international law. The convention review aimed at critically assessing the relevance of this body of treaties with a view to enhancing their impact and effectiveness.
- In **April 2013**, the **Committee of Ministers** of the Council of Europe concluded this exercise by **adopting a series of concrete and practical measures**.
- Regarding **reservations**, the Committee of Ministers agreed on the need, during the drafting process of each convention, to examine whether to include **explicit provisions on reservations**, which would determine on a case-by-case basis the regime applicable.
- It also invited the **bodies responsible for monitoring conventions** to raise with the national authorities, particularly on the occasion of on-the-

spot visits, the question of the need to maintain reservations already formulated, and the possibility of considering their withdrawal. This decision echoes guideline 2.5.3 of the ILC's guide to practice.

- These decisions by the Committee of Ministers are also of interest beyond the restricted circle of Council of Europe member states because most of our **214 conventions** are **open to accession by states which are not members of the Organisation**.
- Our most successful convention worldwide is the one on the **transfer of sentenced persons**, which gives foreigners convicted of a criminal offence the possibility of serving their sentences in their own countries. It has been ratified by 18 non-member states and is in force for 64 countries altogether.
- At this moment, the Council of Europe is actively promoting accession by non-member states to its conventions on **cybercrime, violence against women, counterfeit medicine and data protection**.
- Against the background of a worldwide debate on privacy and its limits, the Council of Europe has launched the modernisation of **data protection convention 108**, the only existing international treaty in this field. Our Committee of Ministers invited an unprecedented number of non-member states to participate in the negotiations which will start in two weeks in Strasbourg.
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- If you wish to obtain further information on Council of Europe conventions or accession procedures, please do not hesitate to contact us.

CAHDI'S WORK ON RESERVATIONS

- Coming back to Prof Alain Pellet's report, the Council of Europe takes pride in the fact that it amply refers to the work of CAHDI as **European Observatory of Reservations to International Treaties**. The CAHDI brings together the legal advisers to the ministries of foreign affairs of the member States of the Council of Europe and a significant number of observer states and organisations.
- The strength of this committee is the combination of **high-level of representativeness** and the **topicality of the issues** of public international law on its agenda.
- CAHDI's activities as **European Observatory of Reservations to International Treaties** cover both Council of Europe conventions as well as treaties drawn up within the United Nations. States are thus alerted to potential difficulties and encouraged to regularly review reservations and declarations.

- The mechanism allows a certain coordination of reactions to inadmissible reservations and declarations, although the decision whether or not to react remains obviously an individual one for each state to take.
- The process may also lead to **real dialogue**. If the state having formulated the reservation is present during the CAHDI meeting, it often provides information on the reasons motivating the formulation of the reservation. The advantages of such “informal” consultations are numerous.
- States have the **possibility to interact** directly with the state having formulated the reservation or declaration in question and obtain additional information, which will allow them to take an informed decision about possible reactions.
- The concerned state is made aware of other states’ arguments and able to give additional information or withdrawing the reservation (which is encouraged by the ILC).
- The situation is quite different when the reserving state is not present at the meeting. In that respect, there may be scope for further development of the CAHDI mechanism.
- However, already in its present form, the European observatory is a good example for a **flexible cooperation mechanism** that, without being compulsory in any way, produces effective results.
- To give just **one recent example**: at the last CAHDI meeting in September of this year, the list of reservations included a reservation which had been formulated by a ratifying State to the International Convention for the Suppression of the Financing of Terrorism, aimed at excluding certain acts from the definition of terrorism for the purposes of the convention. Since this meeting, 19 States participating in CAHDI have raised an objection to this reservation.
- All information relating to CAHDI’s activity as a European observatory will soon be made available in an even more comprehensive and userfriendly way on **CAHDI’s new website** which we presented two days ago at the Permanent Representation of the Netherlands.
- It is not for me to comment the proposal of a reservations and objections assistance mechanism. I would only like to stress that, whatever decisions will be taken on this matter in the future, the **Council of Europe stands ready to provide our expertise and support to other international organisations** that may be interested in proceeding with a similar exercise.

Mr Chairman,

Ladies and Gentlemen,

- The **United Nations and the Council of Europe are tied together by history and purpose.**
- Cooperation with other international entities, and in particular with the United Nations and the International Law Commission is high on CAHDI's agenda. Under its terms of reference, the CAHDI is mandated to "*deepen exchanges of views on the work of the International Law Commission and of the Sixth Committee*".
- Europe is an increasingly small part of the world, but due to our diversity and experience of regional integration, it is a fertile testing ground for models of cooperation.
- "***L'union fait la force***", let us combine our efforts to contribute to the development of public international law.
- I thank you very much for your attention.