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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)

List of items discussed and decisions taken Abridged report

45th meeting
Strasbourg, 25-26 March 2013

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

45th meeting, Strasbourg, France, 25-26 March 2013

**List of items discussed and decisions taken
Abridged report**

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 45th meeting in Strasbourg on 25 and 26 of March 2013 with Ms Liesbeth Lijnzaad (Netherlands) in the Chair. The list of participants is set out in Appendix I to the meeting report.¹

2. The CAHDI adopted its agenda as set out in **Appendix I** to the present report.

3. The CAHDI adopted the report of its 44th meeting (Paris, 19-20 September 2012), and authorised the Secretariat to publish it on the CAHDI's website.

4. The CAHDI took note of the developments concerning the Council of Europe since the last meeting of the Committee, as presented by Mr Manuel Lezertua, former Jurisconsult and Director of Legal Advice and Public International Law (DLAPIL). Mr Lezertua's presentation is set out in Appendix III to the meeting report. The CAHDI thanked Mr Lezertua for his contribution to the work of the CAHDI.

5. The CAHDI considered the decisions of the Committee of Ministers relevant to its work.

6. The CAHDI considered the national legislations, case-law and practices related to service of process on a foreign State and took note of the written contribution of Cyprus in this regard. It was decided to collect information on this issue in an organised manner.

The CAHDI considered national practices and case-law regarding State immunities on the basis of information provided by the delegations. It took note in this respect of the updated contributions from Austria, Belgium, the Netherlands, Portugal and Spain and invited delegations which have not yet done so, to submit or update their contributions to the relevant database at their earliest convenience.

The CAHDI pursued its exchange of views on possibilities for the Ministry of Foreign Affairs to raise public international law issues in procedures pending before national tribunals and related to States' or international organisations' immunities.

The Committee also took stock of the state of ratifications of the United Nations Convention on Jurisdictional Immunities of States and Their Property by the States represented within the CAHDI.

7. The CAHDI further considered the issue of organisation and functions of the Office of the Legal Adviser of the Ministry for Foreign Affairs on the basis of contributions from delegations. It took note in this respect of the updated contributions from Denmark, Hungary, the United Kingdom and "the former Yugoslav Republic of Macedonia" and invited delegations which have not yet done so, to submit or update their contributions to the relevant database at their earliest convenience.

8. The CAHDI took note of the information submitted by the representative of the European Union regarding the latest developments in the case-law of the Court of Justice of the European Union in the field of United Nations Sanctions and respect for human rights.

¹ Document CAHDI (2013) 6

The CAHDI took note of the information regarding cases that have been submitted to national tribunals by persons or entities removed from the lists established by the UN Security Council Sanctions Committees. It took note in this respect of the updated contributions from Hungary and the European Union and of the new contribution submitted by Slovenia and invited delegations which have not yet done so, to submit or update their contributions to the relevant database at their earliest convenience.

9. The CAHDI addressed the issue of the accession of the European Union to the European Convention on Human Rights (ECHR). The CAHDI took note of the Report of the 76th meeting of the Steering Committee for Human Rights (CDDH) and of the reports of the second, third and fourth negotiation meetings between the CDDH and the European Commission on the accession of the European Union to the ECHR. The CAHDI took note of the information transmitted in this regard by Mr Wennerström, observer of the CAHDI to the *ad hoc* Group 47+1 instructed to finalise the legal instruments setting out the modalities of accession of the European Union to the ECHR.

10. The CAHDI took note of cases brought before the European Court of Human Rights involving issues of public international law and further invited delegations to keep the Committee informed of any judgments or decisions, pending cases or relevant forthcoming events.

11. In the context of its consideration of issues relating to the peaceful settlement of disputes, the CAHDI considered the last version of the document containing information on the International Court of Justice's jurisdiction under international treaties and agreements (document CAHDI (2013) 3) and invited the delegations to submit to the Secretariat any relevant information for the update of the document.

12. In the framework of its activity as the European Observatory of Reservations to International Treaties, the CAHDI considered a list of outstanding reservations and declarations to international treaties and the follow-up given to them by the delegations. It invited delegations to submit to the Secretariat any relevant information for the update of the summary table as set out in document CAHDI (2013) 2 Addendum prov.

13. The CAHDI held an exchange of views with Ms Sabine Bauer, Senior Legal Adviser of the Organization for Security and Co-operation in Europe (OSCE) and welcomed her presentation on the topic: *"OSCE – a process or an international organization? OSCE – a unique place of international law in the making"*.

14. With regard to consideration of current issues of international humanitarian law, the CAHDI took note of the presentation made by the representative of the International Committee of the Red Cross.

15. The CAHDI took note of recent developments concerning the International Criminal Court (ICC).

16. The CAHDI took stock of recent developments concerning the implementation and functioning of other international criminal tribunals.

17. The CAHDI proceeded with exchanges of views regarding topical issues of international law.

18. Pursuant to the request of the Secretary General of the Council of Europe, Mr. Thorbjørn Jagland, the CAHDI held an exchange of views on the request for observer status within the CAHDI submitted by Belarus. The outcome of this exchange of views is reproduced in **Appendix II** to the present report.

19. The CAHDI decided to hold its 46th meeting in Strasbourg on 16-17 September 2013. The Committee instructed the Secretariat, in liaison with the Chair of the Committee, to prepare in due course the provisional agenda of this meeting.

APPENDIX I

AGENDA

I. INTRODUCTION

1. Opening of the meeting by the Chair, Ms Liesbeth Lijnzaad
2. Adoption of the agenda
3. Adoption of the report of the 44th meeting
4. Statement by the former Director of Legal Advice and Public International Law, Mr Manuel Lezertua

II. ONGOING ACTIVITIES OF THE CAHDI

5. Committee of Ministers' decisions of relevance to the CAHDI's activities, including requests for CAHDI's opinion
6. Immunities of States and international organisations
 - a. State practice and case-law
 - recent national developments and updates of the website entries
 - exchange of national practices on possibilities for the Ministry of Foreign Affairs to raise public international law issues in procedures pending before national tribunals and related to States' or international organisations' immunities
 - b. UN Convention on Jurisdictional Immunities of States and Their Property
7. Organisation and functions of the Office of the Legal Adviser of the Ministry of Foreign Affairs
8. National implementation measures of UN sanctions and respect for human rights
9. European Union's accession to the European Convention of Human Rights (ECHR)
 - Information provided by Mr Erik Wennerström, observer of the CAHDI to the *ad hoc* Group 47+1
10. Cases before the European Court of Human Rights involving issues of public international law
11. Peaceful settlement of disputes
12. Law and practice relating to reservations and interpretative declarations concerning international treaties: European Observatory of Reservations to International Treaties
 - List of outstanding reservations and declarations to international treaties

III. GENERAL ISSUES OF PUBLIC INTERNATIONAL LAW

13. Exchange of views with Ms Sabine Bauer, Senior Legal Adviser, Organization for Security and Co-operation in Europe (OSCE)
14. Consideration of current issues of international humanitarian law
15. Developments concerning the International Criminal Court (ICC)
16. Implementation and functioning of other international criminal tribunals (ICTY, ICTR, Sierra Leone, Lebanon, Cambodia)
17. Topical issues of international law

IV. OTHER

18. Exchange of views on the request for observer status within the CAHDI submitted by Belarus
19. Date, venue and agenda of the 46th meeting of the CAHDI
20. Other business

APPENDIX II**OUTCOME OF THE EXCHANGE OF VIEWS OF THE COMMITTEE OF LEGAL ADVISERS ON
PUBLIC INTERNATIONAL LAW (CAHDI)****ON THE REQUEST FOR OBSERVER STATUS WITHIN THE CAHDI SUBMITTED BY
BELARUS**

By letter dated 9 January 2013 and addressed to the Secretary General of the Council of Europe, the Minister of Foreign Affairs of the Republic of Belarus requested the status of observer to the CAHDI. On 13 March 2013, the Secretary General informed the Committee of Ministers of his intention to consult the CAHDI in this regard. During its 45th meeting, the CAHDI held an in depth exchange of views on the request for observer status submitted by Belarus.

Delegations presented their views on the granting of such status to a non-member State of the Council of Europe. It was noted that Belarus has an observer status within three intergovernmental committees (CDCJ, CDDH and CDMSI). The Committee recalled the primarily technical/legal nature of its mandate and noted that the granting of observer status to a non-member State which does not have observer status at the Council of Europe is a political matter falling within the mandate of the Committee of Ministers¹.

In light of its mandate, the CAHDI underlined that the Committee of Ministers may grant observer status to States that are committed to the peaceful settlement of disputes, the codification and the progressive development of international law, respecting their treaty obligations as well as the principles of the rule of law. The CAHDI invited the Committee of Ministers to take into account these elements when considering a request for observer status to the CAHDI from a non-member State of the Council of Europe.

¹ As provided by *Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods*.