

Strasbourg, 21/03/14

CAHDI (2014) 10

COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)

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

47th meeting
Strasbourg, 20-21 March 2014

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

47th meeting, Strasbourg, France, 20-21 March 2014

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

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 47th meeting in Strasbourg on 20 and 21 March 2014 with Ms Liesbeth Lijnzaad (Netherlands) in the Chair. The list of participants is set out in **Appendix I** to the present report.

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

3. The CAHDI adopted the report of its 46th meeting (Strasbourg, 16-17 September 2013), 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 Jörg Polakiewicz, Director of Legal Advice and Public International Law (DLAPIL).

The Committee took note of the information presented by the Secretariat regarding the project for the development of the databases of the CAHDI (document CAHDI (2014) Inf 1).

5. The CAHDI took note of the decisions of the Committee of Ministers relevant to its work and, in particular, of the CAHDI's terms of reference for 2014-2015, which were adopted by the Committee of Ministers at its 1185th meeting on 19-20 November 2013.

The Committee adopted its opinion on Parliamentary Assembly Recommendation 2037 (2014) "Accountability of international organisations for human rights violations" as set out in **Appendix III** to the present report.

6. The CAHDI held an exchange of view on the issue of the settlement of disputes of a private character to which an international organisation is a party, on the basis of the document presented by the delegation of the Netherlands (document CAHDI (2014) 5). The Committee agreed that the delegations will submit further written comments, which will be examined at the 48th meeting.

The Committee considered national practices and case-law regarding State immunities on the basis of information provided by the delegations and invited delegations to submit or update their contributions to the relevant CAHDI database.

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. It took note of the updated reply submitted by Slovenia to the relevant questionnaire.

The CAHDI took note of the questionnaires on "Immunity of State Cultural Property on Loan" and "Immunity of special missions" and agreed to examine the replies thereto at the 48th meeting of the CAHDI.

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 stock of the revised questionnaire containing additional questions on gender equality in conformity with the Council of Europe Gender Equality Strategy for 2014-2015. It took note in this respect of the replies submitted by the delegations of Albania and Belarus and invited delegations which have not yet done so, to submit or update their contributions to the relevant database.
8. 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 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 information transmitted in this regard by Mr Wennerström, observer of the CAHDI to the *ad hoc* Group 47+1 on the European Union's accession to the ECHR.
10. The CAHDI considered cases brought before the European Court of Human Rights involving issues of public international law and took note in this respect of the information concerning one recent case provided by the delegation of the United Kingdom. It 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 latest version of the document containing information on the International Court of Justice's compulsory jurisdiction (document CAHDI (2013) 11) 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. In addition, the Committee took note of the reactions to reservations and declarations previously examined by the CAHDI. It invited delegations to submit to the Secretariat any relevant information for the update of the summary table as set out in document CAHDI (2014) 6 Addendum prov.
13. In pursuance of the work plan for the review of conventions for which it has been given responsibility adopted at its 46th meeting, the CAHDI held an exchange of views on the European Convention for the Peaceful Settlement of Disputes [ETS No. 23].
14. The CAHDI welcomed the presentation of Ms Fatou Bensouda, Prosecutor of the International Criminal Court (ICC) and held an exchange of views with Ms Bensouda on different topics concerning the ICC.
15. 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. The Committee also took note of the information provided by the delegation of Switzerland on the "Montreux+5" Conference on Private Military and Security Companies.
16. The CAHDI took note of recent developments concerning the International Criminal Court (ICC). It also took note of the information transmitted by the delegation of Slovenia concerning the mutual legal assistance initiative aiming to reinforce the principle of complementarity.
17. The CAHDI took stock of recent developments concerning the implementation and functioning of other international criminal tribunals.

18. The CAHDI held an exchange of views on the international law aspects of the recent events in Ukraine.

The Committee also took note of the information transmitted by the delegation of Austria on the Conference organised by the Austrian Chairmanship of the Committee of Ministers on 15 November 2013 in Vienna “Working together for Europe – Interrelations between the Council of Europe, European Union and Member States”.

19. The CAHDI decided to hold its 48th meeting in The Hague (the Netherlands) on 18-19 September 2014. 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

LIST OF PARTICIPANTS

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APPENDIX II

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 46th meeting
4. Information provided by the Secretariat of the Council of Europe
 - a. Statement by Mr Jörg Polakiewicz, Director of Legal Advice and Public International Law
 - b. New databases of the CAHDI

II. ONGOING ACTIVITIES OF THE CAHDI

5. Committee of Ministers' decisions and activities 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)
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
13. Review of Council of Europe Conventions

III. GENERAL ISSUES OF PUBLIC INTERNATIONAL LAW

14. Exchange of views with Ms Fatou BENSOUDA, Prosecutor of the International Criminal Court (ICC) – *“Reflections from the Prosecutor of the International Criminal Court, Ms Fatou BENSOUDA”*
15. Consideration of current issues of international humanitarian law
16. Developments concerning the International Criminal Court (ICC)
17. Implementation and functioning of other international criminal tribunals (ICTY, ICTR, Sierra Leone, Lebanon, Cambodia)
18. Topical issues of international law

IV. OTHER

19. Date, venue and agenda of the 48th meeting of the CAHDI
20. Other business

APPENDIX III

OPINION OF THE CAHDI

ON RECOMMENDATION 2037 (2014) OF THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE – “ACCOUNTABILITY OF INTERNATIONAL ORGANISATIONS FOR HUMAN RIGHTS VIOLATIONS”

1. On 12-13 February 2014, the Ministers’ Deputies communicated Recommendation 2037 (2014) of the Parliamentary Assembly of the Council of Europe (see appendix) to the Committee of Legal Advisers on Public International Law (CAHDI) for information and possible comments by 18 April 2014. The Ministers’ Deputies have also communicated this Recommendation to the Steering Committee for Human Rights (CDDH).
2. The CAHDI examined the above-mentioned Recommendation at its 47th meeting (Strasbourg, 20-21 March 2014) and adopted the following comments which concern aspects of the recommendation which are of particular relevance to the mandate of the CAHDI.
3. From the outset, the CAHDI notes that the protection and promotion of human rights form part of the foundations of the Council of Europe, the European Union (EU), the United Nations (UN) and its specialised agencies, as enshrined in the Statute of the Council of Europe (Article 1), the Treaty on European Union (Article 2) and the Charter of the United Nations (Article 1). In accordance with these constituent treaties, the protection and respect of human rights must be an integral part of any action and activities of these organisations.
4. The CAHDI also notes that in the framework of these international organisations, the most relevant international legal instruments and human rights standards have been developed, such as the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the Convention on the Rights of the Child (1989), the European Convention on Human Rights (1950), the European Social Charter (1961) as well as the Charter of Fundamental Rights of the European Union (2000).
5. The CAHDI also points out that over the years, international organisations and the European Union have developed mechanisms, bodies and entities with a view to ensuring respect for universal human rights standards, including to prevent possible infringements of human rights derived from the application of certain targeted sanctions resolutions, such as the setting up of the Office of the Ombudsperson of the Security Council’s 1267 Committee. It recalls in this regard the exchange of views that it had with the Ombudsperson at its 41st meeting and welcomes the enhancement of the Ombudsperson mandate in Security Council resolutions 1989 (2011) and 2083 (2012).
6. To the extent that international organisations, and in particular the UN, are also increasingly being called upon to provide support to non-UN security forces, the CAHDI underlines the existence of a Human Rights Due Diligence Policy endorsed by the UN Secretary-General in July 2011¹. This policy sets out measures that all UN entities must take in order to ensure that any support that they may provide to non-UN forces is consistent with the purposes and principles as set out in the Charter of the UN and with its responsibility to respect, promote and encourage respect for international humanitarian, human rights and refugee law. The CAHDI would therefore welcome any development aiming at further implementing the Policy’s requirements.
7. Regarding the issue of the “status” of international organisations within national legal systems and in particular the question of the immunities of international organisations, the CAHDI underlines that the privileges and immunities enjoyed by international organisations are essential

¹ See documents A/67/775 and S/2013/110.

elements for the fulfilment of their mission. The privileges and immunities of international organisations are governed by international law such as constituent instruments (e.g. Article 40 of the Statute of the Council of Europe, Article 105 of the UN Charter), multilateral agreements (e.g. Convention on the Privileges and Immunities of the United Nations of 1946, General Agreement on Privileges and Immunities of the Council of Europe of 1949) or bilateral agreements, i.e. headquarters or host agreements (e.g. Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations of 1947). The CAHDI invites international organisations, which according to international law have the exclusive competence to decide to waive their immunity or not, to consider waiver of immunity in individual cases where appropriate.

8. The CAHDI underlines that it regularly discusses the issue of the immunity of international organisations and has noted in this respect an increase in the practice and case-law related to the scope of this immunity and to the question of the availability of “reasonable alternative means”² in the framework of the relevant organisation for an effective protection of the rights under the European Convention on Human Rights. It furthermore underlines that these issues can be considered alongside the procedures for dispute settlement involving international organisations and points out that a reflection on this specific topic is currently taking place within the Committee.

9. With regard to the invitation of the Committee of Ministers to engage in a reflection on the accountability issues concerning international organisations, the CAHDI can only encourage any initiative in this respect as this issue, on the one hand, raises several questions which deserve special attention and on the other hand, is important for ensuring the full enjoyment of human rights and fundamental freedoms. It refers in this regard to the recent case-law on the attribution of responsibility to a State or an international organisation³ with regard to the implementation of international organisations’ norms as well as to the work of the International Law Commission (ILC) on “The responsibility of States for internationally wrongful acts” and on “The responsibility of international organisations”.

10. Concerning the latter topic of the ILC, the CAHDI recalls that in 2011, the Directorate of Legal Advice and Public International Law of the Council of Europe submitted a contribution to the ILC on the Draft Articles on “Responsibility of International Organisations” and which were presented to the CAHDI for information. It also notes that, as it appears in the General Commentary of the Articles, “*the fact that several of the present draft articles are based on limited practice moves the border between codification and progressive development in the direction of the latter.*”⁴. It is thus the view of the CAHDI that discussions should continue on these questions in order to participate in their development.

² European Court of Human Rights, *Beer and Regan v. Germany*, application No. 28934/95, judgment delivered on 18 February 1999; European Court of Human Rights, *Waite and Kennedy v. Germany*, application No. 26083/94, judgment delivered on 18 February 1999; European Court of Human Rights, *Chapman v. Belgium*, application No. 39619/06, judgment delivered on 5 March 2013.

³ European Court of Human Rights, *Nada v. Switzerland*, application No. 10593/08, judgment delivered on 12 September 2012; Judgment of the Court of Justice of the European Union of 18 July 2013 in Joined Cases C-584/10 P, C-593/10 P and C-595/10 P, *Commission, Council, United Kingdom v. Yassin Abdullah Kadi*; European Court of Human Rights, *Al-Dulimi and Montana Management Inc. v. Switzerland*, application No. 5809/08, judgment delivered on 26 November 2013.

⁴ General Commentary, paragraph 5.

APPENDIX TO THE OPINION

RECOMMENDATION 2037 (2014) OF THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE – “ACCOUNTABILITY OF INTERNATIONAL ORGANISATIONS FOR HUMAN RIGHTS VIOLATIONS”^{**}

1. The Parliamentary Assembly refers to its Resolution 1979 (2014) on accountability of international organisations for human rights violations, which stresses the importance of appropriate mechanisms to ensure the accountability of such organisations for any human rights violations that may occur as a consequence of their activities.
2. The Assembly invites the Committee of Ministers to:
 - 2.1. encourage international organisations of which member States are a part, including the United Nations and its specialised agencies, as well as the European Union and the International Monetary Fund, to examine the quality and effectiveness of mechanisms aimed at ensuring compliance with their human rights obligations and to further develop legal standards in this area;
 - 2.2. recommend that member States examine the status of international organisations within their national legal systems and ensure that arrangements be envisaged for waiver of immunity when this is required;
 - 2.3. engage in a reflection on the accountability issues raised by the phenomenon of international organisations taking on responsibilities traditionally held by States with respect to which the European Court of Human Rights does not have jurisdiction, with a view to closing the resulting lack of accountability.
3. The Assembly also considers it appropriate that the Council of Europe, as an international organisation specialising in human rights matters, reflect on how to respond to the call in United Nations General Assembly Resolution 66/100 (2011) relating to the International Law Commission’s text on the responsibility of international organisations, and ensure follow-up thereto within the remit of its competence both with respect to its own accountability as well as that of other international organisations.

^{**} *Assembly debate* on 31 January 2014 (9th Sitting) (see [Doc. 13370](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr José María Beneyto). *Text adopted by the Assembly* on 31 January 2014 (9th Sitting).