

Strasbourg, 19 September 2014

CAHDI (2014) 23

COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)

List of items discussed and decisions taken Abridged report

48th meeting
18-19 September 2014
The Hague (the Netherlands)

Public International Law Division and Treaty Office
Directorate of Legal Advice and Public International Law, DLAPIL

cahdi@coe.int - fax +33 (0)3 90 21 51 31 - www.coe.int/cahdi

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

48th meeting, The Hague, Netherlands, 18-19 September 2014

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

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 48th meeting in The Hague (Netherlands) on 18-19 September 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 47th meeting (Strasbourg, 20-21 March 2014), and authorised the Secretariat to publish it on the CAHDI's website.
4. The CAHDI took note of the developments within 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).
5. The CAHDI took note of the decisions of the Committee of Ministers relevant to its work, and in particular the decision on Recommendation 2037 (2014) of the Parliamentary Assembly of the Council of Europe on "Accountability of international organisations for human rights violations" for which the CAHDI adopted an opinion at its 47th meeting.
6. The CAHDI held an exchange of views on the issue of the settlement of disputes of a private character to which an international organisation is a party, and in particular on the questions contained in the document presented by the delegation of the Netherlands at the 47th meeting of the CAHDI (document CAHDI (2014) 5). It took note of the written comments submitted by Slovenia and invited other delegations to also reply to the questions in written.

The CAHDI examined the replies submitted by the members and observers to the questionnaire on "Immunity of State owned cultural property on loan", contained in document CAHDI (2014) 13 prov.

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. It noted that since the 47th meeting of the Committee, Finland had deposited its instrument of acceptance of the Convention on 23 April 2014.

The CAHDI welcomed the publication on its website of the "Declaration on Jurisdictional Immunities of State Owned Cultural Property", which to date has been signed by Austria, the Czech Republic, Georgia, Latvia, Romania and Slovakia. This Declaration aims to support the recognition of the customary nature of the pertinent provisions of the 2004 *United Nations Convention on Jurisdictional Immunities of States and Their Property*. The Committee recalled that this Declaration had been elaborated as a legally non-binding document expressing a common understanding on *opinion juris* on the basic rule that certain kind of State property (cultural property on exhibition) enjoyed jurisdictional immunity. The CAHDI invited its members and observers to sign this Declaration.

The CAHDI also examined the replies submitted by the members and observers to the questionnaire on "Immunities of special missions", contained in document CAHDI (2014) 14 prov.

The CAHDI examined the document prepared by the Secretariat on the issue of “Service of process on a foreign State” containing an analysis and a summary of the submitted replies to the questionnaire on the subject (document CAHDI (2014) 15).

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. It took note of the updated contributions of Slovenia and of the United Kingdom to the relevant 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.

7. The CAHDI further considered the issue of the organisation and functions of the Office of the Legal Adviser of the Ministry for Foreign Affairs and examined notably the replies submitted by the members and observers to the revised questionnaire on the issue contained in document CAHDI (2014) 16 prov.

8. The CAHDI took note of the information regarding cases that have been submitted to national tribunals by persons or entities included in or removed from the lists established by the UN Security Council Sanctions Committee and notably of the contribution submitted by Switzerland on this issue (document CAHDI (2014) 21). It also took note of the *High Level Review of United Nations Sanctions* supported by the governments of Australia, Finland, Germany, Greece and Sweden, in partnership with the Watson Institute of Brown University and Compliance and Capacity International conducted from June to October 2014.

9. The CAHDI addressed the issue of the accession of the European Union to the European Convention on Human Rights (ECHR) and took note of the public hearing of the Court of Justice of the European Union of 5-6 May during which all EU institutions and intervening EU member States argued that the draft accession agreement was compatible with EU law.

10. The CAHDI considered cases brought before the European Court of Human Rights involving issues of public international law and 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 and invited the delegations to submit to the Secretariat any relevant information to update 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 to international treaties previously examined by the CAHDI and for which the deadline for objection has already expired. 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) 17 Addendum prov.

13. Following the decision of the Ministers’ Deputies of 10 April 2013 on the review of Council of Europe conventions adopted in the light of the Secretary General’s report and in pursuance of the CAHDI work plan for the review of conventions for which it has been given responsibility, the CAHDI held an exchange of views on the *European Convention on Consular Functions* [ETS No. 61] as well as on the *European Convention on the Abolition of Legalisation of Documents executed by Diplomatic Agents or Consular Officers* [ETS No. 63].

14. Concerning the work of the International Law Commission (ILC) and of the Sixth Committee, the CAHDI held an exchange of views with Ms Marie Jacobsson, Member of the ILC, on the recent activities of the latter. It also took note of the exchange of views between the Chair of the CAHDI, the Secretary of the CAHDI and the ILC members which took place in Geneva on 16 July 2014.

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.

16. The CAHDI took note of the recent developments concerning the International Criminal Court (ICC) and other international criminal tribunals.

17. The CAHDI considered topical issues of international law. It held an exchange of views on the issue of "Foreign fighters" upon the request of one delegation.

18. In accordance with *Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods*, the CAHDI elected Mr Paul Rietjens (Belgium) and Ms Päivi Kaukoranta (Finland), respectively as Chair and Vice-Chair of the Committee for one year, as from 1 January 2015.

19. The CAHDI decided to hold its 49th meeting in Strasbourg on 19-20 March 2015. The Committee instructed the Secretariat, in liaison with the Chair of the Committee, to prepare in due course the provisional agenda of this meeting.

20. At the request one delegation, the CAHDI held an exchange of views on the International Commission on Civil Status.

APPENDIX I**LIST OF PARTICIPANTS****MEMBER STATES OF THE COUNCIL OF EUROPE /
ETATS MEMBRES DU CONSEIL DE L'EUROPE****ALBANIA / ALBANIE**

Mr Armand SKAPI

Director
Treaties and International Law Department
Ministry of Foreign Affairs

ANDORRA / ANDORRE

Mme Carmen PERNA GARCÍA

Legal Adviser
Government of Andorra

Ms Patricia QUILLACQ [Apologised / Excusée]

Legal Adviser
Department of General and Legal Affairs
Ministry of Foreign Affairs

ARMENIA / ARMENIE

Mr Vahagn PILIPOSYAN

Head of International Treaties and Deposit Division
Legal Department
Ministry of Foreign Affairs

AUSTRIA / AUTRICHE

Mr Helmut TICHY

Legal Adviser
Austrian Federal Ministry for Europe

AZERBAIJAN / AZERBAIDJAN

Mr Sadi JAFAROV

Second Secretary
International Law and Treaties Department
Ministry of Foreign Affairs

BELGIUM / BELGIQUE

M. Paul RIETJENS**Vice-Chair / Vice-Président**

Directeur général des Affaires juridiques
Service Public Fédéral des Affaires étrangères,
Commerce extérieur et Coopération au
Développement

Mme Sabrina HEYVAERT

Conseiller
Service Public Fédéral des Affaires étrangères
Commerce extérieur et Coopération au
Développement
Direction Droit International Public

**BOSNIA AND HERZEGOVINA /
BOSNIE-HERZEGOVINE**

Mme Đanela ZEĆO

Head of the Department of International Treaties
Ministry of Justice

BULGARIA / BULGARIE

Mr Danail CHAKAROV

Head of International Law Department
Ministry of Foreign Affairs

CROATIA / CROATIE

Mr Toma GALLI

Minister Councillor, Director
International Law Directorate
Ministry for Foreign and European Affairs

CYPRUS / CHYPRE

Ms Irene NEOPHYTOU

Counsel for the Republic
Law Office of the Republic of Cyprus

CZECH REPUBLIC / REPUBLIQUE TCHEQUE

Mr Petr VALEK

Director
International Law Department
Ministry of Foreign Affairs

DENMARK / DANEMARK

Mr David KENDAL

Chief Legal Consultant
Centre for Legal Service
Ministry of Foreign Affairs

ESTONIA / ESTONIE

Ms Marina KALJURAND

Undersecretary for Legal and Consular Affairs
Ministry of Foreign Affairs

FINLAND / FINLANDE

Ms Päivi KAUKORANTA

Director General
Legal Service
Ministry for Foreign Affairs

Ms Liisa VALJENTO

Deputy Director
Legal Service
Ministry for Foreign Affairs

FRANCE

M. François ALABRUNE

Directeur des affaires juridiques
Ministère des affaires étrangères et du
développement international

M. Ludovic LEGRAND

Rédacteur
Direction des affaires juridiques
Ministère des affaires étrangères et du
développement international

GEORGIA / GÉORGIE

Ms Salome IMNADZE

Deputy Director
Department of International Law
Ministry of Foreign Affairs

GERMANY / ALLEMAGNE

Mr Martin NEY

Legal Adviser
Director General of Legal Affairs
Department of Legal Affairs
Federal Foreign Office

Mr Oliver FIXSON

Head of Division
Federal Foreign Office

GREECE / GRECE

Ms Maria TELALIAN

Head of the Legal Department
Ministry of Foreign Affairs

HUNGARY / HONGRIE

Mr Ferenc DANCS

Ministry of Foreign Affairs and Trade International
Law Department

ICELAND / ISLANDE

Mr Kristjan Andri STEFANSSON

Director General for Legal and Executive Affairs
Directorate for Legal and Executive Affairs
Ministry for Foreign Affairs

Mr Matthías PÁLSSON

Legal and Administrative Department
Ministry for Foreign Affairs

IRELAND / IRLANDE

Mr James KINGSTON

Legal Adviser
Department of Foreign Affairs and Trade

ITALY / ITALIE

Mr Paolo EPIFANI
First Secretary
Legal Service
Ministry of Foreign Affairs

LATVIA / LETTONIE

Ms Sanita PEKALE
Director
Legal Department
Ministry of Foreign Affairs

LIECHTENSTEIN

[Apologised / *Excusé*]

LITHUANIA / LITUANIE

Ms Sigute JAKSTONYTE
Director
Law and International Treaties Department
Ministry of Foreign Affairs

LUXEMBOURG

M. Carlo KRIEGER
Ambassadeur
Directeur des Affaires juridiques et culturelles
Ministère des Affaires étrangères et européennes

M. David HEINEN
Conseiller juridique
Direction des Affaires juridique et culturelles
Ministère des Affaires étrangères et européennes

MALTA / MALTE

[Apologised / *Excusé*]

REPUBLIC OF MOLDOVA / REPUBLIQUE DE MOLDOVA

Mr Dumitru SOCOLAN
Director
General Directorate of International Law
Ministry of Foreign Affairs and European Integration

MONACO

[Apologised / *Excusé*]

MONTENEGRO

Ms Bozidarka KRUNIC
Head of International Law Department
Ministry of Foreign Affairs and European Integration

NETHERLANDS / PAYS-BAS

Ms Liesbeth LIJZAAD
Chair / *Présidente*
Legal Adviser
Head of the International Law Division
Legal Affairs Department
Ministry of Foreign Affairs

Mr René LEFEBER
Deputy Legal Adviser
International Law Division
Legal Affairs Department
Ministry of Foreign Affairs

Mr Jeroen GUTTER
Legal Officer
International Law Division
Legal Affairs Department
Ministry of Foreign Affairs

NORWAY / NORVÈGE

Ms Margit TVEITEN
Director General
Ministry of Foreign Affairs

Mr Torfinn ARNTSEN
Minister Counsellor
Embassy of Norway to the Netherlands

POLAND / POLOGNE

Mr Lukasz KULAGA
Legal expert
Legal and Treaty Department
Ministry of Foreign Affairs

PORTUGAL

Ms Rita FADEN
 Legal Adviser
 Department of Legal Affairs
 Ministry of Foreign Affairs

ROMANIA / ROUMANIE

Mr Ion GÂLEA
 Director General
 Ministry of Foreign Affairs

RUSSIAN FEDERATION / FEDERATION DE RUSSIE

Mr Gennady KUZMIN
 Deputy Director
 Legal Department
 Ministry of Foreign Affairs

SAN-MARINO / SAINT-MARIN

[Apologised / *Excusé*]

SERBIA / SERBIE

Mr Slavoljub CARIĆ
 Ambassador
 Head of Department of International Legal Affairs
 Ministry of Foreign Affairs

SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE

Mr Metod ŠPAČEK
 Director
 International Law Department
 Ministry of Foreign and European Affairs

SLOVENIA / SLOVENIE

Mr Mihael ZUPANČIČ
 Head of the International Law Department
 Ministry of Foreign Affairs

SPAIN / ESPAGNE

Ms María CRUZ GUZMÁN
 Deputy Head of Division
 International Law Division
 Ministry of Foreign Affairs and Cooperation

M. Maximiliano BERNAD Y ÁLVAREZ DE EULATE
 Professeur émérite de droit international
 Conseiller de droit international public
 Université de Saragosse

SWEDEN / SUEDE

Mr Anders RÖNQUIST
 Director General for Legal Affairs
 Ministry for Foreign Affairs

Mr Emil JOHANSSON
 Desk Officer
 Department for International Law, Human Rights
 and Treaty Law
 Ministry for Foreign Affairs

SWITZERLAND / SUISSE

M. Valentin ZELLWEGER
 Ambassador, Director
 Directorate of International Public Law
 Swiss Federal Department of Foreign Affairs

Mme Caroline KRAEGE
 Deputy Head of Division I
 Directorate of International Law
 Swiss Federal Department of Foreign Affairs

"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA" / "L'EX-REPUBLIQUE YOUGOSLAVE DE MACEDOINE"

Ms Natasha DESKOSKA
 Deputy Director
 Ministry of Foreign Affairs

TURKEY / TURQUIE

Mr Bülent Şeref SARIOĞLU
 Legal Counselor
 Ministry of Foreign Affairs

UKRAINE

Ms Larysa GERASKO

Directorate General for International Law
Ministry of Foreign Affairs

UNITED KINGDOM / ROYAUME-UNI

Mr Iain MACLEOD

Legal Adviser
Foreign and Commonwealth Office

Ms Joanna BATEMAN

Assistant Legal Adviser
Foreign and Commonwealth Office

Mr Philip DIXON

Assistant Legal Adviser
Foreign and Commonwealth Office

EUROPEAN UNION / UNION EUROPEENNE

EUROPEAN COMMISSION / COMMISSION EUROPEENNE

Mr Lucio GUSSETTI

Director

Legal Service

Mr Roland TRICOT

Member of the Legal Service

EUROPEAN EXTERNAL ACTION SERVICE / SERVICE EUROPEEN POUR L'ACTION EXTERIEURE (EEAS)

Mr Stephan MARQUARDT

Deputy Head of the Legal Affairs Division

COUNCIL OF THE EUROPEAN UNION / CONSEIL DE L'UNION EUROPEENNE

[Apologised / *Excusé*]

PARTICIPANTS AND OBSERVERS TO THE CAHDI / PARTICIPANTS ET OBSERVATEURS AUPRES DU CAHDI

CANADA

Mr William CROSBIE

Legal Adviser
Foreign Affairs
Trade and Development Canada

Ms Mariam KHAN

Legal Officer
Security, Diplomatic and Criminal Law
Foreign Affairs
Trade and Development Canada

HOLY SEE / SAINT-SIEGE

Mr René GULDENMUND

Maître en droit
Nonciature Apostolique

JAPAN / JAPON

Mr Tomohiro MIKANAGI

Director
International Legal Affairs Division

Mr Sadaharu KODAMA

First Secretary
Embassy of Japan in the Netherlands
Legal Affairs Section

Mr Nobuyuki MURAI

First Secretary
Embassy of Japan in the Netherlands
Legal Affairs Section

MEXICO / MEXIQUE

Mr Max Alberto DIENER SALA

Legal Adviser
Ministry of Foreign Affairs

Mr Santiago OÑATE LABORDE

Permanent Observer
Permanent Mission of Mexico
to the Council of Europe

UNITED STATES OF AMERICA / ETATS-UNIS D'AMERIQUE

Ms Mary MCLEOD

Principal Deputy Legal Adviser
U.S. Department of State

Mr Todd BUCHWALD

Assistant Legal Adviser for United Nations Affairs
U.S. Department of State

Mr Kenneth PROPP

Legal Counselor
U.S. Mission to the European Union

AUSTRALIA / AUSTRALIE

Mr Todd QUINN

Legal specialist
Embassy of Australia in the Netherlands

BELARUS

Mr Andrei POPKOV

Director
General Department of Legal Affairs and Treaties
Ministry of Foreign Affairs

ISRAEL / ISRAËL

Mr Ehud KEINAN

Legal Adviser and Deputy Director General
Ministry of Foreign Affairs

NEW ZEALAND / NOUVELLE ZELANDE

[Apologised / *Excusé*]

UNITED NATIONS / NATIONS UNIES

[Apologised / *Excusé*]

**ORGANISATION FOR ECONOMIC CO-
OPERATION AND DEVELOPMENT (OECD) /
ORGANISATION DE COOPERATION ET DE
DEVELOPPEMENT ECONOMIQUES (OCDE)**

M. Remi CEBE

Senior Legal Adviser
Directorate for Legal Affairs

**ORGANISATION FOR SECURITY AND CO-
OPERATION IN EUROPE (OSCE) /
ORGANISATION POUR LA SÉCURITÉ ET LA
COOPÉRATION EN EUROPE (OSCE)**

Ms Lisa TABASSI

Head of the Legal Services

**EUROPEAN ORGANISATION FOR NUCLEAR
RESEARCH (CERN) / ORGANISATION
EUROPEENNE POUR LA RECHERCHE
NUCLEAIRE (CERN)**

[Apologised / *Excusé*]

**THE HAGUE CONFERENCE ON PRIVATE
INTERNATIONAL LAW / CONFERENCE DE LA
HAYE DE DROIT INTERNATIONAL PRIVE**

[Apologised / *Excusé*]

INTERPOL

Mr Joël SOLLIER

General Counsel
Office of Legal Affairs

Mr Gerhard KREUTZER

Legal Officer
General Secretariat

**NORTH ATLANTIC TREATY ORGANISATION
(NATO) / ORGANISATION DU TRAITE DE
L'ATLANTIQUE NORD (OTAN)**

Mr Steven HILL

Legal Adviser
Director
Office of Legal Affairs

**INTERNATIONAL COMMITTEE OF THE RED
CROSS (ICRC) / COMITE INTERNATIONAL DE
LA CROIX ROUGE (CICR)**

M. Jean-François QUEGUINER

Head of the Unit of the Thematic Legal Advisers
Legal Division

Mr Romain CLERCQ-ROQUES

Délégation du CICR en France

SPECIAL GUESTS / INVITES SPECIAUX

Ms Marie G. JACOBSSON

Member of the United Nations International Law Commission

SECRETARIAT GENERAL

**DIRECTORATE OF LEGAL ADVICE AND
PUBLIC INTERNATIONAL LAW / DIRECTION DU
CONSEIL JURIDIQUE ET DU DROIT
INTERNATIONAL PUBLIC**

Mr Jörg POLAKIEWICZ

Director / *Directeur*

**CAHDI SECRETARIAT / SECRETARIAT DU
CAHDI**

Ms Marta REQUENA

Secretary to the CAHDI / *Secrétaire du CAHDI*

Head of Division / *Chef de Division*

Public International Law Division and Treaty Office /
*Division du droit international public et du Bureau
des Traités*

Ms Hélène FESTER

Lawyer / *Juriste*

Public International Law Division and Treaty Office /
*Division du droit international public et du Bureau
des Traités*

Ms Yanna PARNIN

Assistant Lawyer / *Juriste assistante*

Public International Law Division and Treaty Office /
*Division du droit international public et du Bureau
des Traités*

Ms Anna LE VALLOIS

Assistant / *Assistante*

Public International Law Division and Treaty Office /
*Division du droit international public et du Bureau
des Traités*

INTERPRETERS / INTERPRETES

Ms Chloé CHENETIER-KIPPING

Ms Lucie DE BURLET SUTER

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 47th meeting
4. Information provided by the Secretariat of the Council of Europe
 - Statement by Mr Jörg Polakiewicz, Director of Legal Advice and Public International Law

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. *Topical issues related to immunities of States and international organisations*
 - Settlement of disputes of a private character to which an international organisation is a party
 - Immunity of State owned cultural property on loan
 - Immunities of special missions
 - Service of process on a foreign State
 - b. *UN Convention on Jurisdictional Immunities of States and Their Property*
 - c. *State practice, case-law and updates of the website entries*
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. The work of the International Law Commission (ILC) and of the Sixth Committee
 - Presentation of the work of the International Law Commission (ILC) and of the Sixth Committee by Ms Marie Jacobsson, Member of the ILC
 - Exchange of views between the ILC, the Chair of the CAHDI and the Secretary to the CAHDI, Geneva, 16 July 2014
15. Consideration of current issues of international humanitarian law
16. Developments concerning the International Criminal Court (ICC) and other international criminal tribunals
17. Topical issues of international law

IV. OTHER

18. Election of the Chair and Vice-Chair of the CAHDI
19. Date and agenda of the 49th meeting of the CAHDI
20. Other business