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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)

**Presentation by Ms Liesbeth Lijnzaad,
Chair of the Committee of Legal Advisers on Public International
Law (CAHDI)**

**at the 65th Session of the United Nations International Law
Commission**

46th meeting
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Chair of the Committee of Legal Advisers on Public International Law (CAHDI)**

at the 65th Session of the United Nations International Law Commission

Geneva, 10 July 2013

Introduction

It is an honour and a pleasure for me to address this meeting of the International Law Commission and to inform you of the work that the CAHDI has been undertaking since you have heard a report on our work last year from my predecessor, Ms Edwige BELLARD, the Legal Adviser of France. I am honoured to have been elected by my colleagues in CAHDI to continue the work she has presided over with great knowledge and skill. It is a pleasure for me to work with Mr Paul RIETJENS, the Belgian Legal Adviser who has been elected the deputy chair of CAHDI.

To start off, I would like to express my appreciation and indeed the appreciation of the members of CAHDI for this opportunity to inform you about our work – it has become a tradition to invite the Chair of the CAHDI to attend a meeting of the ILC once a year, in order to update you on the work undertaken by the CAHDI. We value this opportunity and the interest you are showing in our work in the field of public international law. In the following, I will highlight some of CAHDI's work, and I will be happy to respond to any questions you may have.

The CAHDI

Let me first give you some information about the Committee I have the pleasure to preside. CAHDI is an intergovernmental committee which brings together the Legal Advisers on public international law of the Ministries of Foreign Affairs of the member States of the Council of Europe as well as of a significant number of observer States and international organisations. We meet twice a year – in March and in September – in order to exchange ideas, discuss various issues of public international law and give opinions at the request of the Committee of Ministers.

According to the terms of reference, we are instructed to:

- examine questions related to public international law;
- conduct exchanges and co-ordinate views of member States;
- provide opinions at the request of the Committee of Ministers or at the request of other steering committees or *ad hoc* committees, transmitted via the Committee of Ministers.

Opinions at the request of the Committee of Ministers

Let me now address some of the activities of the Committee since your last discussion with a CAHDI chair. CAHDI serves as the internal body that provides expert advice to other working groups within the Council of Europe, and indeed to the Committee of Ministers.

At its 44th meeting, the CAHDI adopted its Comments on Recommendation 1995 (2012) of the Parliamentary Assembly of the Council of Europe on "The International Convention for the Protection of All Persons from Enforced Disappearance". In this recommendation, the Parliamentary Assembly raised four weaknesses in this UN Convention and invited the Committee of Ministers to consider launching a process of preparing for negotiations in the framework of the Council of Europe of a European Convention for the Protection of All Persons from Enforced Disappearance.

The comments adopted after discussion by the CAHDI stressed that the UN Convention is a recent text, and underlined that the weaknesses pinpointed by the Parliamentary Assembly had already been debated during the negotiations within the UN. A large number of delegations stressed that in the

current situation, it was inappropriate to draw up a new convention in the framework of the Council of Europe. Such an initiative might be considered as conflicting with that of the United Nations. Delegations also considered that, on the contrary, all efforts should be concentrated on universal acceptance of the UN Convention.

On 16 January 2013, the Committee of Ministers adopted its reply to this Recommendation of the Parliamentary Assembly taking into account the comments made by the CAHDI.

Exchange of views on ILC work

As has become a good practice, CAHDI held an exchange of views with an ILC member during the September session held in Paris. At the 44th meeting, Sir Michael WOOD, Special Rapporteur of the ILC on “Formation and evidence of customary international law” presented the recent work of the ILC and of the UNGA Sixth Committee (Legal). This exchange with an ILC member - on a purely personal basis - is greatly valued by the members of CAHDI, as it provides the opportunity to better understand the development of the work of this important UN body.

Furthermore, at the close of the French Chairmanship of the CAHDI, the Ministry of Foreign Affairs of France and the Public International Law Division of the Council of Europe organised a Conference on “The Judge and International Custom” (Paris, 21 September 2012). The Conference was opened by Mr Bernard CAZENEUVE, former Minister Delegate for European Affairs attached to the Minister of Foreign Affairs of France and Mr Manuel LEZERTUA, former Jurisconsult and Director of Legal Advice and Public International Law (Council of Europe). Sir Michael WOOD acted as the moderator, and CAHDI was honoured by the participation of a number of international judges who reflected on the practice of their respective courts on the issue of international customary law. Participants included:

- Mr Peter TOMKA, President of the International Court of Justice (himself a former CAHDI member);
- Mr Jiří MALENOVSKÝ, Judge at the Court of Justice of the European Union;
- Ms Ineta ZIEMELE, Judge at the European Court of Human Rights;
- Mr Andreas PAULUS, Judge at the Federal Constitutional Court of Germany;
- Mr Bernard STIRN, President of Section of the *Conseil d'État* of France.

I would note that the willingness of these judges to participate in a CAHDI event demonstrates the importance they attach to this committee as a forum for exchange. Given the topicality of the issue as well as the quality of the interventions, the Public International Law Division of the Council of Europe decided to publish the Proceedings of the Conference, which were issued in March 2013. The proceedings will also be published in the next issue of the Journal “*Law and Practice of International Courts and Tribunals*” (Brill Publishers) in July 2013, and will thus be broadly available.

I would also like to mention a number of issues dealt with by CAHDI as part of its on-going work. In particular I want to refer to the European Observatory on Reservations to Treaties, and to the various databases on issues of international law established by CAHDI.

Reservations

In its capacity as European Observatory of Reservations to International Treaties, the CAHDI regularly considers outstanding reservations and declarations to international treaties. This activity covers both conventions concluded outside the Council of Europe, in particular those drawn up within the United Nations, as well as conventions concluded within the Council of Europe.

The Secretariat of the CAHDI follows the notifications of the Treaty Office of the UN in order to identify the relevant reservations/declarations. These reservations/declarations are compiled in a document which provides the basis for the discussions within the Committee. The information collected by the Secretariat is seen as a valuable tool by delegations. Delegations will share their respective positions

(comments and observations) regarding potentially problematic outstanding reservations/declarations. This discussion implies that States are alerted to potential difficulties with reservations and are aware of the need to reflect on the matter. Also, I would venture to suggest that this process has certain educational aspects and may introduce some States to a regular review of reservations and declarations.

This exercise is quite comprehensive and has been welcomed on several occasions by Mr Alain PELLET, your former Special Rapporteur of the International Law Commission (ILC) for the topic "Reservations to treaties", who has underlined that the efforts of the CAHDI is beginning to bear fruits as States endeavour to coordinate and harmonize, to the extent possible, their reactions and objections to reservations. Clearly the decision whether or not to react to reservations and declarations remains an individual one for States, but the process now includes the possibility of an exchange of views with colleagues in the Council of Europe.

Databases

The CAHDI has developed and maintains a number of databases on public international law that are of great importance to the everyday work of Legal Advisers on public international law in the Ministries of Foreign Affairs. Currently three databases on the following subjects are operational:

- State practice regarding State Immunities;
- The position of Office of the Legal Adviser of the Ministry of Foreign Affairs; and
- The implementation of UN Sanctions and respect for Human Rights.

The year 2012 was marked by an increase of the number of contributions to these databases which increases their relevance to day-to-day work.

At our 45th meeting in March of this year, the CAHDI launched the examination of a new topic on "Service of process on a foreign State" which is part of the broader discussion on immunities of States and international organizations. Following issues raised by Portugal and Austria (in particular referring to the ECHR Wallishauser case), a discussion developed concerning the obligation to translate court documents into the language locally spoken, and whether embassies were acceptable for the service of process. Much of this discussion revolves around the customary nature (or not) of the 2004 UN Convention on State immunity.

A questionnaire has now been drafted which will allow for the collection of the relevant information in a structured way, and further enrich the database on State Immunities. We anticipate that this will be a useful and informative investigation of the practice of member States.

Forum for exchange

If anything, CAHDI is a forum for exchange on questions of international law. This is a role that runs through the agenda of our meetings, and it is not only the exchange between Legal Advisers of the member States (and indeed also non-member States), but also with international organisations. In accordance with its terms of reference, CAHDI is instructed to "*maintain contacts with lawyers and legal services of other entities or international organisations*". There are many such contacts and this is very much the attraction of participation in CAHDI.

In recent meetings we have had the opportunity of exchange with some international bodies. To give you a few examples, I would like to mention the following activities:

- At its 44th meeting, the CAHDI held an exchange of views with Judge Fausto POCAR, President of the International Institute of Humanitarian Law of San Remo (Italy). He presented the work of the Institute, and more particularly the conclusions of its 35th annual Round Table on "Private Military and Security Companies (PMSCs)" (San Remo, 6-8 September 2012).

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- Similarly, at its 45th meeting, 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). She gave a presentation entitled “OSCE: a process or an international organization? OSCE – a unique place of international law in the making”.
 - Also, as a side-event to the 45th meeting of the CAHDI, the Permanent Representation of Liechtenstein organised a meeting on “Ratification and Implementation of the Kampala amendments on the Crime of Aggression in the European Context” (26 March 2013). The meeting was opened by Mr Daniel OSPELT, Permanent Representative of Liechtenstein, and Mr Thorbjørn JAGLAND, Secretary-General of the Council of Europe. Speakers from Liechtenstein, from academia and NGO provided for an informative discussion about the Kampala amendments to the Rome Statute on the International Criminal Court.

So, in sum – and let me be partial as the president of CAHDI - the Committee is working hard and provides an important forum for a lively and thorough debate on contemporary questions of international law between member States, and indeed also some non-member States and international organisations. The discussions are informative and contribute to the development of legal thinking and to better understanding the various views and interpretations of the law. We cover a broad field, and it is my belief that the hard work and the quality of the discussions between lawyers do contribute to a better understanding amongst States and to the development of international law.

Thank you.

