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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)

List of items discussed and decisions taken
Abridged Report

54th meeting
Strasbourg (France), 21-22 September 2017

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

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

54th meeting, Strasbourg (France), 21-22 September 2017

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

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 54th meeting in Strasbourg (France) on 21-22 September 2017 with Päivi KAUKORANTA (Finland) as Chair.
2. The CAHDI adopted its agenda as set out in Appendix I to the present report.
3. The CAHDI adopted the Report of its 53rd meeting (Strasbourg, 23-24 March 2017) 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. In particular, the Director of Legal Advice and Public International Law informed the CAHDI of the priorities of the Czech Chairmanship of the Committee of Ministers. Furthermore, he informed the CAHDI of recent developments concerning new or revised conventions and protocols prepared within the framework of the Council of Europe.
5. a. The CAHDI examined its **draft terms of reference for 2018-2019** to be adopted by the Committee of Ministers on 21-23 November 2017 at the 1300th (Budget) meeting of the Ministers' Deputies. The CAHDI examined and agreed to the **request for "participant" status to the CAHDI submitted by the Asian-African Legal Consultative Organisation (AALCO)**. The CAHDI further decided to **transmit this request to the Committee of Ministers for decision**.
- b. The CAHDI took note of the **decisions of the Committee of Ministers relevant to its work** and in particular of the decision of 5 July 2017 at the 1291st meeting of the Ministers' Deputies adopting the *"Model Final Clauses for Conventions, Additional Protocols and Amending Protocols concluded within the Council of Europe"*. Furthermore, the CAHDI took note of the information provided by the Chair of the CAHDI regarding her exchange of views with the Ministers' Deputies held on 14 June 2017.
6. a. Concerning the subject of **"Immunities of States and international organisations"**, 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"*. It took note of the written comments submitted by 17 delegations – namely Albania, Andorra, Armenia, Austria, Belarus, Canada, the Czech Republic, Denmark, Germany, Greece, Hungary, Israel, Mexico, Serbia, Slovenia, Switzerland and the United Kingdom – to the questions contained in the introductory document (CAHDI (2014) 5 confidential dated 7 March 2014) prepared by the Netherlands on this issue, and, invited also other delegations to reply in writing to these questions. Moreover, the CAHDI discussed a new document CAHDI (2017) 21 confidential dated 15 September 2017 prepared by the delegation of the Netherlands summarising the main trends of the replies already received to this questionnaire as well as further examining the issue in the context of peacekeeping and police operations.
- b. The CAHDI furthermore addressed the issue of the *"Immunity of State owned cultural property on loan"* and examined in this regard the replies submitted by 24 delegations – namely Albania, Andorra, Austria, Armenia, Belarus, Belgium, Canada, Croatia, Cyprus, the Czech Republic, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Mexico, the Netherlands, Norway, Romania, Switzerland, the United Kingdom and the United States of America – to the questionnaire prepared on this topic.

On this issue, the CAHDI took note that the delegations of the Czech Republic and Austria encouraged delegations which had not yet done so to consider signing the *"Declaration on*

Jurisdictional Immunities of State Owned Cultural Property” which to date (22 September 2017) had been signed by the Ministers of Foreign Affairs of 20 States (Albania, Armenia, Austria, Belarus, Belgium, the Czech Republic, Estonia, Finland, France, Georgia, Holy See, Hungary, Ireland, Latvia, Luxembourg, the Netherlands, Portugal, Romania, the Russian Federation and the Slovak Republic). In this respect, the recent signature of the Declaration by the Holy See on 22 May 2017 was welcomed. This Declaration, presented by the delegations of the Czech Republic and Austria, had been drafted in support of the recognition of the customary nature of the pertinent provisions of the 2004 *United Nations Convention on Jurisdictional Immunities of States and Their Property* in order to guarantee the immunity of State cultural property on loan. It had been elaborated as a non-legally binding document expressing a common understanding of *opinio juris* on the basic rule that a certain kind of State property (cultural property on exhibition) enjoys jurisdictional immunity. The Committee noted that the Secretariat of the CAHDI performed the functions of “depository” of this Declaration and that the text of this Declaration was available on the website of the CAHDI.

Furthermore, the CAHDI took note that the Permanent Representatives of the Czech Republic and Austria to the United Nations had transmitted a letter dated 27 January 2017 to the Secretary-General of the United Nations requesting the Declaration to be circulated among the member States of the United Nations for information purposes under the agenda item “*The rule of law at the national and international levels*” of the United Nations General Assembly.

Finally, the CAHDI held an exchange of views on the main content of the Seminar “*State Immunity under International Law and Current Challenges*” organised in the framework of the Czech Chairmanship of the Committee of Ministers of the Council of Europe and on the occasion of the 54th meeting of the CAHDI. This Seminar took place on 20 September 2017 in Strasbourg (France).

c. The CAHDI also addressed the issue of the “*Immunities of special missions*” and examined in this regard the replies submitted by 30 delegations (Albania, Andorra, Armenia, Austria, Belarus, Belgium, Bulgaria, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Hungary, Ireland, Israel, Italy, Latvia, Malta, Mexico, the Republic of Moldova, the Netherlands, Norway, Romania, Serbia, Sweden, Switzerland, the United Kingdom and the United States of America) to the questionnaire prepared on this topic. The CAHDI welcomed that **Sir Michael WOOD**, member of the United Nations International Law Commission (ILC) and former Chair of the CAHDI, has agreed to prepare an analytical report on legislation and practice of member States of the Council of Europe and other States and international organisations participating in the CAHDI concerning “Immunities of Special Missions”, including the main trends arising from the replies to the questionnaire prepared by the CAHDI on this matter. The CAHDI encouraged delegations which had not yet done so, to submit or update their contribution to the questionnaire in order to enable the preparation of this future new CAHDI book.

d. The CAHDI furthermore addressed the issue of “*Service of process on a foreign State*” and examined in this regard the replies submitted by 28 delegations (Albania, Andorra, Austria, Belarus, Belgium, Canada, Cyprus, the Czech Republic, Finland, France, Germany, Greece, Hungary, Ireland, Israel, Italy, Japan, Latvia, Mexico, the Netherlands, Norway, Portugal, Romania, Serbia, Slovenia, Switzerland, the United Kingdom and the United States of America) to the questionnaire prepared on this topic. The CAHDI encouraged delegations which had not yet done so, to submit or update their contribution to the questionnaire in order to prepare an analysis outlining the main trends arising from these replies.

e. The CAHDI 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 its last meeting, no State represented within the CAHDI had signed, ratified, accepted, approved or acceded to the convention.

f. With regard to its *Database on “State practice regarding State Immunities”*, the CAHDI noted that to date (22 September 2017), 35 States (Andorra, Armenia, Austria, Belgium, Canada, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland,

Ireland, Israel, Italy, Japan, Mexico, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, Serbia, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey and the United Kingdom) and one organisation (European Union) had submitted a contribution to this database.

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

g. The CAHDI pursued its exchange of views on the *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 CAHDI noted that to date (22 September 2017), 30 delegations (Albania, Austria, Belgium, Canada, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Israel, Italy, Japan, Latvia, Luxembourg, Mexico, Montenegro, the Netherlands, Norway, Portugal, Romania, the Russian Federation, the Slovak Republic, Slovenia, Spain, Sweden and the United States of America) had replied to the questionnaire on this matter. The CAHDI invited delegations which had not yet done so to submit or update their replies to the questionnaire.

h. The CAHDI took further note of the information provided by the representative of the **OSCE** in relation to two new agreements concluded in June 2017, the “*Agreement between the Republic of Austria and the OSCE regarding the Headquarters of the OSCE*”, and, the “*Arrangement between the Republic of Poland and the OSCE regarding the Status of the OSCE in the Republic of Poland*”.

7. Regarding the revised questionnaire on the “**Organisation and functions of the Office of the Legal Adviser of the Ministry of Foreign Affairs**” which contains additional questions on gender equality following the recommendations contained in the “*Council of Europe Gender Equality Strategy 2014-2017*”, the CAHDI examined the replies submitted by 38 delegations (Albania, Andorra, Armenia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Canada, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Israel, Italy, Latvia, Lithuania, Luxembourg, Malta, Mexico, the Republic of Moldova, Montenegro, Norway, Romania, Serbia, Slovenia, Sweden, Switzerland, Turkey, the United Kingdom, the United States of America and NATO) to this revised questionnaire. 14 further delegations (Azerbaijan, Bulgaria, Iceland, Ireland, Japan, the Netherlands, Poland, Portugal, the Russian Federation, the Slovak Republic, Spain, “the former Yugoslav Republic of Macedonia”, Ukraine and Interpol) have replied to the original questionnaire. The CAHDI invited delegations to send to the Secretariat any further information in order to complete their replies.

8. With regard to the issue of “**National implementation measures of UN sanctions and respect for human rights**”, the CAHDI took note of the information regarding cases that had been submitted to national tribunals by persons or entities included in or removed from the lists established by the United Nations Security Council Sanctions Committees.

9. The CAHDI took note of information provided by the delegations on cases brought before the **European Court of Human Rights** involving issues of public international law.

10. The CAHDI held an exchange of views on issues relating to the **peaceful settlement of disputes**, in particular, on cases decided or pending before international courts and tribunals.

11. Within the framework of its activity as the **European Observatory of Reservations to International Treaties**, the CAHDI examined a list of 10 reservations and declarations to international treaties subject to objection.

In addition, the CAHDI took note of the reactions to reservations and declarations to international treaties previously examined by the CAHDI and for which the deadline for objection had already

expired. It invited delegations to submit to the Secretariat any information relevant for the update of the summary table as set out in document *CAHDI (2017) 17 Addendum prov confidential bilingual*.

12. The CAHDI welcomed the presentation of the work of the International Law Commission (ILC) by the **special guest Mr Georg NOLTE**, the Chairperson of the ILC.

Furthermore, the CAHDI took note of the exchange of views which took place on 6 July 2017 in Geneva (Switzerland) between the members of the ILC, the Chair of the CAHDI and the Secretary to the CAHDI.

13. With regard to the **consideration of current issues of international humanitarian law**, the CAHDI took note of the information provided by several delegations.

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

15. With regard to the examination of **topical issues of international law**, the CAHDI took note of the comments made by delegations.

16. In accordance with *Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods*, the CAHDI elected Ms Päivi KAUKORANTA (Finland) and Mr Petr VÁLEK (Czech Republic), respectively as **Chair and Vice-Chair of the Committee**, for a term of one year, as from 1 January 2018.

17. The CAHDI decided to hold its **55th meeting** in Strasbourg (France), on 22-23 March 2018. The CAHDI instructed the Secretariat, in liaison with the Chair of the CAHDI, to prepare in due course the provisional agenda of this meeting.

18. The CAHDI decided to appoint Mr Petr VÁLEK (Czech Republic) to represent the CAHDI to the Council of Europe **Drafting Group on the Longer-term future of the European Convention on Human Rights (DH-SYSC-II)** of the Steering Committee for Human Rights (CDDH) and will consider inviting the Chair of the DH-SYSC-II to a forthcoming CAHDI meeting.

19. The CAHDI adopted the present Abridged Report and instructed the Secretariat to submit it to the Committee of Ministers for information.

APPENDIX I**AGENDA****I. INTRODUCTION**

- 1. Opening of the meeting by the Chair**
- 2. Adoption of the agenda**
- 3. Adoption of the report of the 53rd meeting**
- 4. Information provided by the Secretariat of the Council of Europe**

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**
 - a. Draft Terms of Reference of the CAHDI for 2018-2019 and examination of the request submitted by the Asian-African Legal Consultative Organisation (AALCO) to be granted observer/participant status to the CAHDI*
 - b. Other Committee of Ministers' decisions and activities of relevance to the CAHDI's activities*
- 6. Immunities of States and international organisations**
 - c. 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
 - d. UN Convention on Jurisdictional Immunities of States and Their Property*
 - e. 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. Cases before the European Court of Human Rights involving issues of public international law**
- 10. Peaceful settlement of disputes**
- 11. Law and practice relating to reservations and interpretative declarations concerning international treaties: European Observatory of Reservations to International Treaties**

- List of reservations and declarations to international treaties subject to objection

III. GENERAL ISSUES OF PUBLIC INTERNATIONAL LAW

12. The work of the International Law Commission (ILC)

- Presentation of the work of the International Law Commission (ILC) by Mr Georg NOLTE, Chairperson of the ILC (Thursday, 21 September 2.30pm)
- Exchange of views between the ILC, the Chair of the CAHDI and the Secretary of the CAHDI, Geneva (Switzerland), 6 July 2017

13. Consideration of current issues of international humanitarian law

14. Developments concerning the International Criminal Court (ICC) and other international criminal tribunals

15. Topical issues of international law

IV. OTHER

16. Election of the Chair and Vice-Chair of the CAHDI

17. Place, date and agenda of the 55^h meeting of the CAHDI: Strasbourg (France), 22-23 March 2018

18. Any other business

- Invitation to CAHDI to be represented in meetings of the CDDH Drafting Group on the longer-term future of the European Convention on Human Rights (DH-SYSC-II)

19. Adoption of the Abridged Report and closing of the 54th meeting