

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

**1171<sup>st</sup> meeting of the Ministers' Deputies  
(29 May 2013)**

## **INTRODUCTION**

It is a pleasure for me to address this meeting of the Minister's Deputies 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, Mrs. Edwige Belliard, 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, skill and indeed personal charm.

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 for a long time been a tradition to invite the Chair of the CAHDI to attend a meeting of the Committee of Ministers once a year, in order to update the Ministers' Deputies 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 organizations. We meet twice a year – generally 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. We have discussed various issues raised by Council of Europe bodies, I would like to highlight two issues.

### **ENFORCED DISAPPEARANCES**

- At its 44<sup>th</sup> meeting, the CAHDI adopted its Comments on Recommendation 1995 (2012) of the Parliamentary Assembly 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 on a European Convention for the Protection of All Persons from Enforced Disappearance.
- The comments adopted by the CAHDI after discussion stressed that the UN Convention is a recent text and underline that the weaknesses pinpointed by the Parliamentary Assembly had already been debated during the negotiations held 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 universalizing this 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

### **BELARUS**

- In the most recent meeting of 25 - 26 March 2013, CAHDI has addressed the request by Belarus for observer status in the CAHDI. Belarus had addressed a request to the Secretary General of the Council of Europe dated 9 January 2013, and on 13 March 2013, at the 1165<sup>th</sup> meeting of the Ministers' Deputies, the Secretary General informed the Committee of Ministers of his intention to ask the CAHDI to hold a preliminary exchange of views on the request submitted by Belarus at its forthcoming meeting.
- And so we did, CAHDI held an exchange of views on the request by Belarus. Delegations took note of the participation of Belarus as an observer to certain Council of Europe intergovernmental committees, such as the Steering Committee for Human Rights (CDDH), the European Committee on Legal Co-operation (CDCJ) and the Steering Committee on Media and Information Society (CDMSI)
- It was recalled that the CAHDI was a technical body and that the decision to admit as observer to this committee a non-member State of the Council of Europe which did not enjoy observer status with the Organization was a political decision which fell within the mandate of the Committee of Ministers
- Delegations also indicated that they would expect an observer State to the Committee to commit to certain shared values. It was stated that observer status should serve as a means to promote respect for international law and the principle of the rule of law
- The outcome of this exchange of views was communicated to your Committee. On 2 May 2013, the outcome of the exchange of views within the CAHDI was examined by the GR-DEM (Rapporteur Group on Democracy). I understand that the GR-DEM will continue its examination of Belarus' request on 30 May 2013.

## **INTERNATIONAL LAW COMMISSION**

Following the work of the International Law Commission, the United Nations' body charged with the codification and development of international law, is an important task for CAHDI. The terms of reference instruct CAHDI "*to deepen exchanges of views on the work of the International Law Commission and of the Sixth Committee*". The links between the CAHDI and the ILC were further strengthened in 2012 in different ways.

- Firstly, the former Chair of the CAHDI, Ms Edwige BELLARD and the former Jurisconsult of the Council of Europe, Mr Manuel LEZERTUA, held the **annual exchange of views with the members of the ILC** in Geneva on 4 July 2012. This exchange of views concerned, *inter alia*:
  - the principle of *aut dedere aut judicare*;
  - the Council of Europe exercise on the review of the Organisation's conventions;
  - the implications for the Council of Europe member States of the ratification of the Rome Statute of the International Criminal Court;
  - the issue of "personal immunity";
  - the relationship between the Council of Europe and the European Union;
  - the relationship between the CAHDI and other international entities (amongst others, regional intergovernmental organisations);
  - the CAHDI website.
  
- The Chair of the CAHDI and Ms Christina OLSEN, Secretary to the CAHDI will hold the **annual exchange of views with the members of the ILC** in Geneva on 10 July 2013.
  
- As has become a good practice, CAHDI held an exchange of views with an ILC member. At the 44<sup>th</sup> meeting, **Sir Michael WOOD**, member of the ILC and 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). The exchange with ILC members - on a personal basis - is greatly valued by the members of CAHDI, as this provides the opportunity to better understand the development of 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 custom". 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 decided to publish the Proceedings of the Conference, which were issued in March 2013. The proceedings will 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.

## ONGOING WORK

I would like to mention a number of issues dealt with by CAHDI as part of its ongoing 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.

## 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, and 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.
- This exercise is quite comprehensive and has been welcomed on several occasions by Mr Alain PELLET, 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.

## DATABASES

- The CAHDI has developed and maintains a number of databases in public international law that are of crucial importance to the everyday work of Legal Advisers on public international law in the Ministries of Foreign Affairs. To be fair, I should mention that the Secretariat plays a vital role in ensuring that these databases are up-to-date and remain the useful tools they have become over the years. Currently three databases are operational on the following subjects:
  - State practice regarding State Immunities;
  - The Office of the Legal Adviser of the Ministry of Foreign Affairs;
  - 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. And at our 45<sup>th</sup> 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”. A questionnaire was drafted which will allow collection of the relevant information in a structured way and to further enrich the database on State Immunities.

## FORUM FOR EXCHANGE

Lastly I would like to note that if anything, CAHDI is a forum for exchange on questions of international law between the legal advisers of COE member States. 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 44<sup>th</sup> 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 35<sup>th</sup> annual Round Table on “Private Military and Security Companies (PMSCs)” (San Remo, 6-8 September 2012).
- Similarly, at its 45<sup>th</sup> 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 45<sup>th</sup> 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’s 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 between member States, and

indeed also some non-member States and international organizations, on contemporary questions of international law. 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.