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

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

**at the 66<sup>th</sup> Session of the United Nations International Law  
Commission**

**48<sup>th</sup> meeting**  
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**Intervention by Ms Liesbeth Lijnzaad,  
Chair of the Committee of Legal Advisers on Public International Law (CAHDI)**

**at the 66<sup>th</sup> Session of the United Nations International Law Commission**

**Geneva, 16 July 2014**

## **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 we met last time in July 2013. I am now in my second year as a Chair of the CAHDI and my term of office will therefore end in December 2014.

To start off, I would like to express [once again] my appreciation, and indeed the appreciation of the members of CAHDI as a whole for this opportunity to inform you about our work. We value this opportunity and the interest you are showing in our work in the field of public international law.

## **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. In this regard, I can mention that with the adoption of its new terms of reference for 2014-2015, the CAHDI now counts Belarus among its observer States and the OSCE as new observing organization. We meet twice a year – in March and in September – in order to exchange ideas, discuss various pertinent issues of public international law and give opinions at the request of the Committee of Ministers.

The high-level of representation and indeed participation makes the CAHDI a unique forum where topical issues of international law can be discussed and cooperation can be strengthened between the different actors of international law.

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 our last discussion in July 2013.

The first activity I would like to mention concerns one of the recent opinions the CAHDI has provided at the request of the Committee of Ministers.

It concerns an opinion adopted at its last meeting in March of this year regarding Recommendation 2037 (2014) of the Parliamentary Assembly of the Council of Europe on “Accountability of international organisations for human rights violations”.

With regard to this very topical issue, the CAHDI first stressed that the promotion and protection of human rights forms part of the foundations of the Council of Europe, the European Union (EU), the United Nations (UN) and its specialised agencies and that the most relevant international legal

instruments and human rights standards have been developed in the framework of these international organisations.

It went on to underline that privileges and immunities of international organisations were essential elements for the fulfilment of their mission and that they are governed by international law. The CAHDI invited international organisations to consider waiving of immunity in individual cases where appropriate, stressing however that the decision to waive immunity is the exclusive competence of the international organisation itself.

It underlined that the question of the immunity of international organisations was frequently discussed within the Committee and referred in this regard to recent case-law of the ECHR related to the scope of this immunity and to the requirement of the availability of “reasonable alternative means”.

The CAHDI finally encouraged continuing reflection on the issues raised by the Parliamentary Assembly regarding notably the accountability issues and the responsibility of international organisations.

### **Topical issues of international law**

This brings me to the next group of activities within the mandate of the CAHDI worthwhile sharing with you. These activities relate to certain topical issues of international law extensively discussed by the Legal Advisers since our last meeting in July 2013. As you will note, questions relating to the practical aspects of immunities of States and indeed international organisations take up an important part of our discussions.

At our last meeting in March of this year the CAHDI held an exchange of views on the question related to the settlement of disputes of a private law character to which an international organisation is a party. The discussion dealt in particular with the accountability gap of international organisations in respect of violations of human rights and the need to address this situation with respect to the United Nations by reconsideration the implementation of article 29 of the so-called General Convention on the Privileges and Immunities of the United Nations. The topicality of the question is of course illustrated by the class action lawsuit filed in New York in October 2013 for Haiti cholera victims against the United Nations and, more generally. This is a topic which the UN, in carrying out peace-keeping operations, is increasingly confronted with. Other international organisations are also more often faced with this matter.

The CAHDI has found it important to start discussing this serious issue and has agreed to request its member and observer States to submit replies to specific questions at the next meeting in September 2014.

Another issue on the CAHDI's agenda since its 46<sup>th</sup> meeting in September 2013 concerns the topic of “Immunity of State owned cultural property on loan”.

This exchange of information arose from the *Diag Human* case of the Austrian Supreme Court<sup>1</sup> which highlighted several practical questions to which concrete answers were not clear.

Indeed, recent years have borne testimony to a number of legal disputes involving issues of immunity from seizure of cultural objects belonging to foreign States while on loan abroad. Sometimes, seizure of cultural objects has been connected with a dispute over owners' rights. In other cases, it has been used as a means to secure rights that bear no relation to the seized object itself.

Given the fact that the 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property, which addresses the question of immunity of cultural State property has not entered into force yet, the CAHDI has considered how it could contribute to the ongoing reflection aimed at

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<sup>1</sup> Decision of 16 April 2013

increasing the level of protection for cultural objects on loan. In this context, it has discussed a declaration recognising the customary nature of the pertinent provisions of the UN Convention related to the immunity of these objects.

Furthermore, the CAHDI has elaborated a questionnaire on this topic and will, at its forthcoming September meeting, examine the different replies given by member and observer States.

Another issue discussed by the CAHDI since September last year concerns the question of the “Immunities of special missions”.

This is a matter of great practical importance to all members of the CAHDI and well beyond, as many States have noted a steady increase of this type of missions in recent years and have indicated their wish to exchange information with other States regarding their practices.

The CAHDI has requested its members and observers to share information on domestic law and practice regarding special missions. The replies received will be examined at the next meeting in September.

Finally, regarding topical issues of international law that the CAHDI has examined this year, I would like to mention the exchange of views that was held in March of this year on the international law aspects of the recent events in Ukraine.

This exchange of views took place at the request of the Ukrainian delegation which, together with the delegation of the Russian Federation and the EU presidency (Greece) made statements. Following these statements, many delegations took the floor and expressed their views, expressing concerns regarding the infringement of basic principles of international law, in particular the principles of territorial integrity, the inviolability of borders and the prohibition of the threat or use of force.

### **Review of Council of Europe conventions**

In April 2013 the Committee of Ministers has instructed its steering and ad hoc committees to carry out an examination of several Council of Europe conventions. In respect of the conventions under its responsibility, the CAHDI initiated this so-called reviews exercise at its meeting in March, with the examination of the European Convention for the Peaceful Settlement of Disputes [CETS No. 023].

Following an exchange of views on this Convention, the CAHDI noted that although it was not very well-known, the Convention had been used in the past, in particular to bring a number of cases before the ICJ. It was underlined that there was no need for revision of this Convention as it was considered as a good convention, useful in encouraging resort to the International Court of Justice, but that it would benefit from more promotion in order to improve its visibility and increase the number of ratifications.

The review exercise will continue in 2014 and 2015 with the European Convention on Consular Functions [CETS No. 61] as well as the European Convention on the Abolition of Legalisation of Documents executed by Diplomatic Agents or Consular Officers [CETS No. 63].

### **The CAHDI as a forum for exchange**

In accordance with its terms of reference to “maintain contacts with lawyers and legal services of other entities or international organisations” and as illustrated with the discussions on topical and practical questions of international law, the CAHDI is undoubtedly a key forum for exchanging and liaising between the Council of Europe and different international organisations. The exchange between the CAHDI and your Commission is an outstanding example of that.

The exchange between our bodies is moreover characterised by reciprocity. Each year the CAHDI extends an invitation to an ILC member to inform the CAHDI in its September meeting on recent activities. At the 46<sup>th</sup> meeting the CAHDI has had the pleasure of having an exchange of views with Professor Pavel ŠTURMA, which was greatly valued by the members of CAHDI, as evidenced by the rich discussion that followed.

Other opportunities for exchange in the past year that I would like to mention here include the following:

At its 47<sup>th</sup> meeting in March this year, the CAHDI held a very topical exchange of views with Ms Fatou BENSOUA, Prosecutor of the International Criminal Court, who presented the recent activities of the Office of the Prosecutor as well as the challenges it faced.

Similarly, in the margins of our 47<sup>th</sup> meeting, we organised a seminar on “The immunity *ratione materiae* of State officials from foreign criminal jurisdiction”, which counted with the participation of:

- Ms Concepción ESCOBAR HERNÁNDEZ, Special Rapporteur of the ILC on “Immunity of State officials from foreign criminal jurisdiction” and a former CAHDI member;
- Mr Roger O’KEEFE, Professor at the University of Cambridge;
- Ms Paola GAETA, Professor at the Geneva Academy of International Humanitarian Law and Human Rights;
- Sir Michael WOOD, member of the ILC, also a former CAHDI member.

The proceedings of this seminar are currently being prepared and will be issued as a public document available before the next meeting of the CAHDI.

Ladies and gentlemen,

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 organisation and functions of the Office of the Legal Adviser of the Ministry of Foreign Affairs; and
- The implementation of UN Sanctions and respect for Human Rights.

As we informed you last year, a modernisation of the CAHDI website and the databases has been initiated and partially completed with the launch of the new website at the end of 2013.

We have high hopes for the website and the databases which will be a useful tool on international legal practice and we also hope of course that it will provide precious information to the members of the Commission. The databases will be extended, notably regarding the question of immunities of States and international organisations as this area of law has been extensively discussed by the Legal Advisers in the past months.

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In conclusion, I would like to reiterate that it has been an honour to chair this committee and to have, in this capacity, the pleasure to address your Commission.

The last meeting of my chairmanship will take place on 18-19 September in The Hague and will be followed by a seminar on “The legal aspects of the role of the host State”, which will focus on the relationship between host State and international organisation.

Thus, the agenda of the coming months remains busy and I am confident that my successor will continue the important and fruitful work the Committee has undertaken in the last months, which will notably focus on:

- The responsibility of international organisations,
- The division of responsibility between States and international organisations,
- The so-called “Mutual Legal Assistance (MLA) Initiative”, and
- The issue of the accession of the European Union to the European Convention on Human Rights

I thank you for your attention.