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

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List of items discussed and decisions taken  
Abridged report

**53<sup>rd</sup> meeting**  
Strasbourg (France), 23-24 March 2017

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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)**

**53<sup>rd</sup> meeting, Strasbourg (France), 23-24 March 2017**

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

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 53<sup>rd</sup> meeting in Strasbourg (France) on 23-24 March 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 52<sup>nd</sup> meeting (Brussels, 15-16 September 2016) 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 CAHDI took note of the priorities of the Cypriot Chairmanship of the Committee of Ministers. With regard to the *European Convention on Human Rights*, the CAHDI took note of the extension of the declarations of France, Turkey and Ukraine under Article 15 of the Convention. Furthermore, the CAHDI took also note of information concerning the Committee of Ministers decisions on the stage of execution of some judgments of the European Court of Human Rights (ECHR)<sup>1</sup>. Moreover, the Director of Legal Advice and Public International Law informed the CAHDI of recent developments concerning negotiations for new or revised conventions and protocols prepared within the Council of Europe.
5. The CAHDI took note of the **decisions of the Committee of Ministers relevant to its work** and in particular the decision of 8-9 February 2017 adopting the reply to *Recommendation 2095 (2016) of the Parliamentary Assembly of the Council of Europe – “Parliamentary immunity: challenges to the scope of the privileges and immunities enjoyed by members of the Parliamentary Assembly”* on which the CAHDI had adopted an opinion at its 52<sup>nd</sup> meeting as requested by the Committee of Ministers on 6 July 2016.
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”*, and in particular on the questions contained in the document presented to the CAHDI by the delegation of the Netherlands. This document aimed in particular at facilitating a discussion on the topical questions related to the settlement of third-party claims for personal injuries or death and property loss or damages allegedly caused by an international organisation and the effective remedies available for claimants in these situations.

The CAHDI took note of the written comments submitted by 16 delegations – namely Albania, Andorra, Armenia, Austria, Belarus, Canada, the Czech Republic, Denmark, Germany, Greece, Hungary, Israel, Mexico, Slovenia, Switzerland and the United Kingdom – to the questions contained in the document and invited also other delegations to reply in writing to these questions.

In relation to this subject, it was agreed that the delegation of the Netherlands will prepare a new document summarising the main trends of the replies already received from the States to the questions and to further examine this issue in the context of peacekeeping and police operations.

The CAHDI took further note of the overview given by the Dutch delegation on a Report on “Responsibilities of international organisations” issued by the *Dutch Advisory Committee on Issues of*

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<sup>1</sup> In particular see the Committee of Ministers decision at the 1280<sup>th</sup> meeting, 7-10 March 2017 (DH), [CM/Del/Dec\(2017\)1280/H46-2](#). and the Committee of Ministers decision at the 1280<sup>th</sup> meeting, 7-10 March 2017 (DH), [CM/Del/Dec\(2017\)1280/H-46-26](#)

*Public International Law (CAVV)* in December 2015 at the request of the Dutch Ministry of Foreign Affairs.

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 encouraged delegations which had not yet done so to consider signing the “*Declaration on Jurisdictional Immunities of State Owned Cultural Property*” which to date (24 March 2017) had been signed by the Ministers of Foreign Affairs of 19 States (Albania, Armenia, Austria, Belarus, Belgium, the Czech Republic, Estonia, Finland, France, Georgia, Hungary, Ireland, Latvia, Luxembourg, the Netherlands, Portugal, Romania, the Russian Federation and the Slovak Republic). 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 considered the dissemination of the Declaration in the United Nations.

c. The CAHDI also addressed the issue of the “*Immunities of special missions*” and examined in this regard the replies submitted by 24 delegations (Albania, Andorra, Armenia, Austria, Belarus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Ireland, Italy, Latvia, Mexico, the Netherlands, Norway, Romania, Serbia, Sweden, Switzerland, the United Kingdom and the United States of America) to the questionnaire prepared on this topic. Considering the topicality and importance of this issue, the CAHDI agreed that an analysis outlining the main trends arising from these replies could be prepared by a specialist on this matter which could ultimately become a publication similar to the previous CAHDI publications. The CAHDI agreed to disclose the replies to this questionnaire after the Secretariat would first send to all delegations their current contributions in order that they have the opportunity to update or modify them before making them public.

d. The CAHDI furthermore addressed the issue of “*Service of process on a foreign State*” and examined in this regard the replies submitted by 27 delegations (Albania, 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 (24 March 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 (24 March 2017), 29 delegations (Albania, Austria, Belgium, Canada, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Israel, Italy, Japan, Latvia, Luxembourg, 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.

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 37 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, Montenegro, Norway, Romania, Serbia, Slovenia, Sweden, Switzerland, Turkey, the United Kingdom, the United States of America and NATO) to this revised questionnaire. 15 further delegations (Azerbaijan, Bulgaria, Iceland, Ireland, Japan, the Republic of Moldova, 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 Committee.

9. The CAHDI welcomed the presentation on the recent case-law of the European Court of Human Rights (ECHR) related to public international law by the **special guest Mr Guido Raimondi**, President of the ECHR. The CAHDI also welcomed the revised and updated **publication** containing the jurisprudence of the ECHR related to public international law. The CAHDI took further note of information provided by the delegations on cases brought before the ECHR involving issues of public international law.

10. The CAHDI welcomed the presentation on the recent developments at the International Court of Justice (ICJ) by the **special guest Mr Ronny Abraham**, President of the ICJ. In this context, the CAHDI held an exchange of views on issues relating to the **peaceful settlement of disputes**.

11. Within the framework of its activity as the **European Observatory of Reservations to International Treaties**, the CAHDI examined a list of 22 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) 11 Addendum prov confidential bilingual*.

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12. With regard to the **consideration of current issues of international humanitarian law**, the CAHDI took note of the information provided by several delegations.
13. The CAHDI took note of the recent **developments concerning the International Criminal Court (ICC) and other international criminal tribunals**.
14. With regard to the examination of **topical issues of international law**, the CAHDI took note of the comments made by delegations.
15. The CAHDI decided to hold its **54<sup>th</sup> meeting** in Strasbourg (France), on 21-22 September 2017. The CAHDI instructed the Secretariat, in liaison with the Chair of the CAHDI, to prepare in due course the provisional agenda of this meeting.
16. a. The CAHDI re-examined the ***“Draft model final clauses for conventions, additional protocols and amending protocols concluded within the Council of Europe”*** prepared by the Treaty Office of the Council of Europe in the light of the alternative proposals submitted by CAHDI delegations. Following this examination, the CAHDI agreed on a revised version of the draft model clauses – as contained in the document CAHDI (2017) 1 rev restricted – to be submitted to the Committee of Ministers for adoption.
- b. The CAHDI took note of the presentation on the *“Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS)”* and on the **OECD** Report on *“International Regulatory Cooperation: the Role of International Organisations in Fostering Better Rules of Globalisation”* by representatives of the OECD.

## APPENDIX I

### AGENDA

#### I. INTRODUCTION

1. **Opening of the meeting by the Chair, Ms Päivi Kaukoranta**
2. **Adoption of the agenda**
3. **Adoption of the report of the 52<sup>nd</sup> 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. **Cases before the European Court of Human Rights (ECHR) involving issues of public international law**
  - Exchange of views with Mr Guido Raimondi, President of the European Court of Human Rights (ECHR)
10. **Peaceful settlement of disputes: The International Court of Justice (ICJ)**
  - Exchange of views with Mr Ronny Abraham, President of the International Court of Justice (ICJ)

**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. Consideration of current issues of international humanitarian law**

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

**14. Topical issues of international law**

**IV. OTHER**

**15. Place, date and agenda of the 54<sup>th</sup> meeting of the CAHDI: Strasbourg, 21-22 September 2017**

**16. Other business**

- a. *Exchange of views on the “Draft model final clauses for conventions, additional protocols and amending protocols concluded within the Council of Europe”, prepared by the Treaty Office of the Council of Europe*
- b. *OECD presentation on the “Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS)” and on the OECD Report on “International Regulatory Cooperation: the Role of International Organisations in Fostering Better Rules of Globalisation”*