

Strasbourg, 21 September 2018

CAHDI (2018) 26

COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)

List of items discussed and decisions taken Abridged Report

56th meeting

Helsinki (Finland), 20-21 September 2018

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

COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)

56th meeting, Helsinki (Finland), 20-21 September 2018

List of items discussed and decisions taken Abridged Report

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 56th meeting in Helsinki (Finland) on 20-21 September 2018 with Ms Päivi KAUKORANTA (Finland) as Chair. The CAHDI took note of the opening statement of H.E Mr Timo SOINI, Minister for Foreign Affairs of Finland. The CAHDI thanked the Finnish authorities for hosting this meeting and for their warm hospitality.
2. The CAHDI adopted its agenda as set out in **Appendix I** to the present report.
3. The CAHDI examined and adopted the Reports of its 54th meeting (Strasbourg, 21-22 September 2017) and 55th meeting (Strasbourg, 21-22 March 2018).
4. The CAHDI took note of the information provided by the Director of Legal Advice and Public International Law on the **most important recent developments within the Council of Europe** since the last meeting of the Committee.
5. The CAHDI took note of the **decisions of the Committee of Ministers relevant to its activities**. It also took note of the presentation of the CAHDI Chair at the 1319th meeting of the Ministers' Deputies, on 13 June 2018 in Strasbourg. Following the decision of 15 May 2018 of the Committee of Ministers communicating to the CAHDI three PACE Recommendations, for information and possible comments, the CAHDI adopted an opinion on each of them, respectively, as follows: *Recommendation 2125 (2018) of the Parliamentary Assembly of the Council of Europe* "State of emergency: proportionality issues concerning derogations under Article 15 of the European Convention on Human Right"; *Recommendation 2126 (2018) of the Parliamentary Assembly of the Council of Europe* "Humanitarian needs and rights of internally displaced persons in Europe"; and *Recommendation 2130 (2018) of the Parliamentary Assembly of the Council of Europe* "Legal challenges related to hybrid war and human rights obligations". The three CAHDI opinions are contained in **document CAHDI (2018) 27**.
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 19 delegations (namely Albania, Andorra, Armenia, Austria, Belarus, Canada, the Czech Republic, Denmark, Estonia, Germany, Greece, Hungary, Israel, Mexico, Serbia, Slovenia, Spain, Switzerland and the United Kingdom) to the questions contained in the introductory document prepared by the Netherlands on this issue, and invited other delegations to reply in writing to these questions.
 - 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 27 delegations – namely Albania, Andorra, Armenia, Austria, Belarus, Belgium, Canada, Croatia, Cyprus, the Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Mexico, the Netherlands, Norway, Romania, Switzerland, Ukraine, the United Kingdom and the United States of America – to the questionnaire prepared on this topic.

On this issue, the CAHDI took note that no new delegations had signed the "Declaration on Jurisdictional Immunities of State Owned Cultural Property" since the last CAHDI meeting. To date (21 September 2018) the Declaration has 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). This Declaration 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. 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.

c. The CAHDI also addressed the issue of the “*Immunities of special missions*” and examined in this regard the replies submitted by 38 delegations (Albania, Andorra, Armenia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Hungary, Ireland, Israel, Italy, Japan, Latvia, Malta, Mexico, the Republic of Moldova, the Netherlands, Norway, Romania, the Russian Federation, Serbia, Slovenia, Spain, Sweden, Switzerland, Ukraine, the United Kingdom and the United States of America) to the questionnaire prepared on this topic. The CAHDI welcomed the preparation of an analytical report on this topic by **Sir Michael WOOD**, member of the United Nations International Law Commission (ILC) and former Chair of the CAHDI, and **Mr Andrew SANGER** (Faculty of Law, University of Cambridge). The analytical report focuses 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 noted that all replies to the Questionnaire are public and will be included in the forthcoming CAHDI publication by Brill-Nijhoff Publishers.

d. The CAHDI furthermore addressed the issue of “*Service of process on a foreign State*” and examined in this regard the replies submitted by 30 delegations (Albania, Andorra, Austria, Belarus, Belgium, Bosnia and Herzegovina, Canada, Cyprus, the Czech Republic, Finland, France, Germany, Greece, Hungary, Ireland, Israel, Italy, Japan, Latvia, Mexico, the Netherlands, Norway, Portugal, Romania, Serbia, Slovenia, Spain, 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 contributions to the questionnaire, which are treated as confidential.

e. The CAHDI took note that since its last meeting no State represented in the Committee had signed, ratified, accepted, approved or acceded to the *United Nations Convention on Jurisdictional Immunities of States and Their Property*, which now has 22 Parties since Equatorial Guinea acceded to the Convention in May 2018.

f. With regard to its *Database on “State practice regarding State Immunities”*, the CAHDI noted that to date (21 September 2018), 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 (21 September 2018), 30 delegations had replied to the questionnaire on this matter (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). 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*”, the CAHDI examined the replies submitted by 39 delegations (Albania, Andorra, Armenia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Canada, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, 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. 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 the information on the work of the *Drafting Group on the place of the European Convention on Human Rights in the European and International Legal Order* (DH-SYSC-II) provided by the CAHDI representative in this Group. Furthermore, the CAHDI agreed to discontinue its participation in this Group after its 4th meeting following the examination of the issues related to CAHDI’s mandate (i.e. “Theme 1: the challenge of the interaction between the Convention and other branches of international law, including international customary law”). Finally, the CAHDI underlined that in accordance with its Terms of Reference, any CAHDI opinion on the final outcome of this work should be requested by the Committee of Ministers or at the request of the Steering Committee for Human Rights (CDDH), transmitted via the Committee of Ministers.

10. The CAHDI agreed to hold an exchange of views on issues relating to the **peaceful settlement of disputes** at its next meeting.

11. Within the framework of its activity as the **European Observatory of Reservations to International Treaties**, the CAHDI examined a list of 16 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 (2018) 19 Addendum prov confidential bilingual*.

12. The CAHDI welcomed the presentation of the work of the United Nations Office of Legal Affairs by **Mr Stephan MATHIAS**, Assistant Secretary-General for Legal Affairs of the United Nations.

13. The CAHDI welcomed the presentation of the work of the International Law Commission (ILC) by **Mr Pavel ŠTURMA**, First Vice Chairman of the ILC.

Furthermore, the CAHDI took note of the exchange of views which took place on 19 July 2018 in Geneva (Switzerland) between the members of the ILC, the Chair of the CAHDI and the Secretary to the CAHDI.

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

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

16. With regard to the examination of **topical issues of international law**, no further information was provided.

17. In accordance with *Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods*, the CAHDI elected Mr **Petr VÁLEK** (Czech Republic) and Ms **Elinor HAMMARSKJÖLD** (Sweden), respectively, as **Chair and Vice-Chair of the Committee**, for a term of one year, as from 1 January 2019.

18. The CAHDI decided to hold its **57th meeting** in Strasbourg (France), on 21-22 March 2019. The CAHDI instructed the Secretariat, in liaison with the Chair of the CAHDI, to prepare in due course the provisional agenda of this meeting.

19. Under “Any other business”, the CAHDI took note of the information provided by the Polish delegation in relation to the “**29th Informal Meeting of Legal Advisers of Ministries of Foreign Affairs**” in the framework of the “International Law Week” at the forthcoming 73rd Session of the Sixth Committee of the United Nations General Assembly to be held in New York on 22-23 October 2018.

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

APPENDIX I

I. INTRODUCTION

- 1. Opening of the meeting by H.E Mr Timo SOINI, Minister for Foreign Affairs of Finland, followed by introductory remarks by the Chair of the CAHDI, Ms Päivi KAUKORANTA**
- 2. Adoption of the agenda**
- 3. Adoption of the report of the 55th meeting
Adoption of the report of the 54th 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. Opinions of the CAHDI on Recommendations 2125, 2126 and 2130 of the Parliamentary Assembly of the Council of Europe (PACE)*
 - b. Other Committee of Ministers' decisions and activities of relevance to the CAHDI's activities*
- 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 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 United Nations Office of Legal Affairs (OLA)

- Presentation of the work of the United Nations Office of Legal Affairs by **Mr Stephen MATHIAS**, Assistant Secretary-General for Legal Affairs of the United Nations

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

- Presentation of the work of the International Law Commission (ILC) by **Mr Pavel ŠTURMA**, First Vice Chairperson of the ILC
- Exchange of views between the ILC, the Chair of the CAHDI and the Secretary to the CAHDI, Geneva (Switzerland), 19 July 2018

14. Consideration of current issues of international humanitarian law**15. Developments concerning the International Criminal Court (ICC) and other international criminal tribunals****16. Topical issues of international law****IV. OTHER****17. Election of the Chair and Vice-Chair of the CAHDI****18. Place, date and agenda of the 57th meeting of the CAHDI: Strasbourg (France), 21-22 March 2019****19. Any other business****20. Adoption of the Abridged Report and closing of the 56th meeting**