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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)

Meeting report

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

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

TABLE OF CONTENTS

I. INTRODUCTION	3
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.....	3
2. ADOPTION OF THE AGENDA	3
3. EXAMINATION AND ADOPTION OF THE REPORT OF THE 54 TH MEETING AND OF THE 55 TH MEETING ..	4
4. INFORMATION PROVIDED BY THE SECRETARIAT OF THE COUNCIL OF EUROPE	4
II. ONGOING ACTIVITIES OF THE CAHDI.....	5
5. COMMITTEE OF MINISTERS' DECISIONS AND ACTIVITIES OF RELEVANCE TO CAHDI'S ACTIVITIES, INCLUDING REQUESTS FOR CAHDI'S OPINION	5
6. IMMUNITIES OF STATES AND INTERNATIONAL ORGANISATIONS.....	6
7. ORGANISATION AND FUNCTIONS OF THE OFFICE OF THE LEGAL ADVISER OF THE MINISTRY OF FOREIGN AFFAIRS	9
8. NATIONAL IMPLEMENTATION MEASURES OF UN SANCTIONS AND RESPECT FOR HUMAN RIGHTS .	10
9. THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS INVOLVING ISSUES OF PUBLIC INTERNATIONAL LAW	10
10. PEACEFUL SETTLEMENT OF DISPUTES	11
11. LAW AND PRACTICE RELATING TO RESERVATIONS AND INTERPRETATIVE DECLARATIONS CONCERNING INTERNATIONAL TREATIES: EUROPEAN OBSERVATORY OF RESERVATIONS TO INTERNATIONAL TREATIES	11
III. GENERAL ISSUES OF PUBLIC INTERNATIONAL LAW	13
12. THE WORK OF THE UNITED NATIONS OFFICE OF LEGAL AFFAIRS (OLA).....	13
13. THE WORK OF THE INTERNATIONAL LAW COMMISSION (ILC)	14
14. CONSIDERATION OF CURRENT ISSUES OF INTERNATIONAL HUMANITARIAN LAW.....	15
15. DEVELOPMENTS CONCERNING THE INTERNATIONAL CRIMINAL COURT (ICC) AND OTHER INTERNATIONAL CRIMINAL TRIBUNALS	16
16. TOPICAL ISSUES OF INTERNATIONAL LAW	17
IV. OTHER	17
17. ELECTION OF THE CHAIR AND VICE-CHAIR OF THE CAHDI.....	17
18. PLACE, DATE AND AGENDA OF THE 57 TH MEETING OF THE CAHDI: STRASBOURG (FRANCE)	17
19. ANY OTHER BUSINESS	17
20. ADOPTION OF THE ABRIDGED REPORT AND CLOSING OF THE 56 TH MEETING	17
APPENDICES	18
APPENDIX I.....	19
APPENDIX II.....	27
APPENDIX III.....	29
APPENDIX IV	31
APPENDIX V	33
APPENDIX VI	34

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**

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) in the Chair. The list of participants is set out in **Appendix I** to this report.

2. The Finnish Minister for Foreign Affairs, H.E. Mr Timo Soini, welcomed CAHDI experts in Finland and mentioned that the venue of the meeting, a landmark building designed by Alvar Aalto, had held many memorable high-level international meetings, such as the 1975 Conference for Security and Co-operation in Europe. The Minister also referred to Finland's forthcoming Presidency of the Committee of Ministers of the Council of Europe, starting on 21 November 2018, and which will focus on strengthening the system of human rights and the rule of law in Europe, which in turn promotes the rules based international co-operation.

3. The Chair opened the meeting and expressed the Committee's deepest gratitude to Mr Soini for having accepted the invitation to open the 56th CAHDI meeting. She further expressed her pleasure at holding this meeting in her home country and welcomed CAHDI's experts, in particular those who were attending the Committee meeting for the first time, wishing them all a pleasant stay in Helsinki.

4. The Chair introduced the new member of the CAHDI Secretariat, Ms Carolina Lasén Diaz, from Spain, who joined the CAHDI Secretariat in July 2018. Ms Lasén Diaz is a law graduate from Madrid's *Complutense* University and holds a Master on European Union law from *Alcalá de Henares* University (Spain). She has worked in different departments of the Council of Europe for the past thirteen years.

5. The Chair thanked all the panellists and CAHDI participants in the seminar "*Managing the International Order – The Functions of Treaty Depositaries*", organised by the Finnish Ministry for Foreign Affairs on 19 September 2018, on the occasion of the 56th CAHDI meeting. The seminar was chaired by Ms Päivi Kaukoranta, and the purpose of the seminar – as she indicated - was to discuss the important functions of treaty depositaries, which are responsible for ensuring the proper execution of all treaty-related actions. In addition, the depositary's duties are international in character, and the depositary is under an obligation to act impartially in the performance of those duties. Subject to any provisions in the treaty itself or as may be agreed by the parties, the functions are listed, but not in an exhaustive manner, in Article 77 of the Vienna Convention on the Law of Treaties (VCLT), which assigns the depositaries with independent rights and duties, underlining the administrative nature of the depositary functions and limiting the discretionary powers of the depositary. The seminar included presentations by Mr Stephen Mathias, Assistant Secretary-General for Legal Affairs of the United Nations; Mr Jörg Polakiewicz, Director of the Directorate of Legal Advice and Public International Law of the Council of Europe; Mr Daniel Klingele, Deputy Director of the Directorate of International Law of the Swiss Federal Department of Foreign Affairs; and Mr Jan Klabbers, Professor of International Law at the University of Helsinki.

6. During the dinner hosted by the CAHDI Presidency, Professor Martti Koskeniemi gave a keynote presentation on "*After globalisation: International Law and the Backlash*", which was followed by a discussion.

2. **Adoption of the agenda**

7. The CAHDI adopted its agenda as set out in **Appendix II** to this report.

3. Examination and adoption of the report of the 54th meeting and of the 55th meeting

8. The CAHDI adopted the report of its 55th meeting (document CAHDI (2018) 16), held in Strasbourg on 22-23 March 2018, and instructed the Secretariat to publish it on the website of the CAHDI.

9. The CAHDI also adopted the report of its 54th meeting (document CAHDI (2017) 23), held in Strasbourg on 21-22 September 2017, and also instructed the Secretariat to publish it on the website of the CAHDI.

10. Following the adoption of the 54th CAHDI Meeting Report, the representative of Azerbaijan thanked the Chair for all her efforts aimed to overcome the difficulties encountered during such adoption. In this respect she underlined that, as mentioned by the delegation of Azerbaijan during the 53rd meeting of the CAHDI, the Declaration made by Azerbaijan in relation to the *Council of Europe Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events* (CETS No. 218) was purported to the conflict between the two countries, which made it for the moment impossible to establish any contact with Armenia and that this Declaration did not limit the scope of the Convention and was done only due to the technical impossibility to fulfil their obligations under the Convention (document CAHDI (2017)14, paragraph 117).

11. Following the adoption of the 54th CAHDI Meeting Report, the representative of Armenia, personally and on behalf of her delegation, thanked the Chair for all her efforts to reach a solution. She underlined that her delegation had accepted the current wording of paragraph 107 of the 54th Meeting Report (document CAHDI (2017)14) related to *Council of Europe Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events* (CETS No. 218) in a spirit of compromise. In this respect, she reiterated that only actual exchanges, positions, comments and outcome of discussions among delegations should be included in the meeting reports. She further pointed out the need to avoid a politicised discussion which would prevent the adoption of the report.

4. Information provided by the Secretariat of the Council of Europe

12. The Director of Legal Advice and Public International Law of the Council of Europe, Mr Jörg Polakiewicz, informed the CAHDI of the latest developments within the Council of Europe since the last meeting of the CAHDI, held on 22-23 March 2018 in Strasbourg (France). In particular, he provided information to the CAHDI in relation to the ministerial session of the Committee of Ministers held in Elsinore (Denmark) on 18 May 2018, when the Danish Chairmanship concluded with the adoption of a number of important decisions, including on securing the long-term effectiveness of the system of the European Convention on Human Rights, which endorsed the [Copenhagen Declaration](#), adopted on the occasion of the High-level Conference held in Copenhagen (Denmark) on 12-13 April 2018. In addition, the Director informed the CAHDI of new developments in treaty law within the framework of the Council of Europe. In particular, he drew the attention of CAHDI's experts to the entry into force of *Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms*, on 1 August 2018, and to the adoption of a *Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (CETS No. 223), which will be opened for signature in Strasbourg (France) on 10 October 2018.

II. ONGOING ACTIVITIES OF THE CAHDI

5. **Committee of Ministers' decisions and activities of relevance to 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)**

13. The Chair recalled that, on 15 May 2018, the Ministers' Deputies at their 1316th meeting agreed to communicate to the CAHDI, for information and possible comments by 30 September 2018¹, the following three Recommendations of the Parliamentary Assembly of the Council of Europe (PACE):

- Recommendation 2125 (2018) "*State of emergency: proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights*"
- Recommendation 2126 (2018) "*Humanitarian needs and rights of internally displaced persons in Europe*"
- Recommendation 2130 (2018) "*Legal challenges related to hybrid war and human rights obligations*"

14. Three preliminary draft Opinions, prepared by the Chair and Vice-Chair in co-operation with the Secretariat, were circulated to CAHDI experts by email on 23 August 2018 (documents CAHDI (2018) 22 prov *Restricted*, CAHDI (2018) 23 prov *Restricted* and CAHDI (2018) 24 prov *Restricted*), inviting the CAHDI experts to submit their comments on these documents by 5 September 2018. The Secretariat received written comments from a few delegations, as contained in document CAHDI (2018) 25 prov *Confidential Bilingual*, dated 6 September 2018. During the meeting, further comments were made by some delegations.

15. The CAHDI examined the three draft opinions as contained in the above-mentioned documents, in light of the comments submitted by delegations. Following an exchange of views, the CAHDI adopted three Opinions on PACE Recommendations 2125, 2126 and 2130 (2018), as contained in **Appendices III, IV and V**, respectively, to this report. The CAHDI entrusted the Secretariat to transmit these CAHDI Opinions to the Committee of Ministers.

b. **Other Committee of Ministers' decisions and activities of relevance to CAHDI's activities**

16. The Chair presented a compilation of the Committee of Ministers' decisions of relevance to CAHDI's activities (documents CAHDI (2018)18 *Restricted* and CAHDI (2018) 18 Addendum *Restricted*). In particular, the CAHDI noted that the Committee of Ministers examined on 13 June 2018 the Abridged Report of its 55th meeting (Strasbourg, France, 22-23 March 2018). The Chair further recalled that, at the same meeting where the Abridged Report of CAHDI's 55th meeting was examined by the Committee of Ministers, she presented to the Ministers' Deputies the work of the CAHDI and had an exchange of views with them. Her presentation is contained in the document CAHDI (2018) Inf 3 *English only* dated 13 June 2018. The Chair noted that the high appreciation for the work of the CAHDI was reflected in the comments made by the Ambassadors following her intervention. They praised, in particular, the significance of the CAHDI as a laboratory of ideas in the field of international law with a reach well beyond the framework of the Council of Europe.

¹ The Ministers' Deputies specifically indicated in their decision that they agreed to communicate Recommendations 2125 (2018) and 2126 (2018) to the Committee of Legal Advisers on Public International Law (CAHDI), "for information and possible comments by 29 June 2018". However, taking into account that the 56th meeting of the CAHDI would take place on 20 and 21 September, it was agreed to send these CAHDI opinions to the Secretariat of the Committee of Ministers on 30 September 2018, together with the Opinion on Recommendation 2130 (2018), which had been requested by that date.

17. The Chair underlined that the document containing the Committee of Ministers' decisions of relevance for CAHDI's activities, which is prepared for each meeting, already includes hyperlinks and references to the full texts of all the documents and decisions that it refers to. It was therefore agreed to discontinue the preparation of the Addendum under this agenda item in future meetings.

6. Immunities of States and international organisations

a. Topical issues related to immunities of States and international organisations

i. Settlement of disputes of a private character to which an international organisation is a party

18. The Chair presented the topic "*Settlement of disputes of a private character to which an international organisation is a party*" which had been included to the agenda of the CAHDI at the 47th meeting in March 2014 at the request of the delegation of the Netherlands. The delegation of the Netherlands had prepared a document in this respect (document CAHDI (2014) 5 *Confidential*) aimed in particular at facilitating a discussion on the topical questions related to the settlement of third-party claims for bodily injury or death and for loss of property or damage allegedly caused by an international organisation, as well as on the effective remedies available to claimants in these situations. The document contains five questions addressed to members of the CAHDI.

19. The contributions of 20 delegations (Albania, Andorra, Armenia, Austria, Belarus, Belgium, Canada, the Czech Republic, Denmark, Estonia, Germany, Greece, Hungary, Israel, Mexico, Serbia, Slovenia, Spain, Switzerland and the United Kingdom) are contained in document CAHDI (2018) 4 *prov Confidential Bilingual*. Since the last meeting, two new contributions - from Estonia and Belgium - had been submitted to the Secretariat. The Chair invited delegations which had not yet done so to submit their replies in writing.

20. The Chair recalled that, at the CAHDI meeting in September 2017, the representative of the Netherlands presented a document (CAHDI (2017) 21 *Confidential*) summarising the main trends of the replies from States and further examining this issue in the context of peacekeeping and police operations.

21. The representative of the Netherlands thanked the delegations who had provided new contributions and noted that, in relation to the possibility of drafting a resolution on this issue for the consideration of the UN General Assembly, this was currently on hold but he would provide more information at the next CAHDI meeting.

22. The representative of Belgium pointed out that his country's reply to these questions reflected the importance to improve alternative remedies for the settlement of disputes accessible to individuals within international organisations. Nevertheless, he underlined the need to adopt a cautious approach regarding the operational activities of international organisations, in order to preserve their independence and effectiveness.

23. The Chair welcomed further written contributions of CAHDI delegations on the five questions on this issue. The Chair also reminded delegations that contributions remain confidential as the discussions are still in an embryonic phase and the replies are only used, at this stage, as a basis for the examination of this issue by the CAHDI.

ii. Immunity of State owned cultural property on loan

24. The Chair introduced the sub-theme concerning the Immunity of state owned cultural property on loan for which a Declaration and a Questionnaire exist.

- Declaration on Jurisdictional Immunities of State Owned cultural Property

25. The Chair recalled that this topic was included in CAHDI's agenda at its 45th meeting, in March 2013, following a joint initiative of the delegations of the Czech Republic and Austria to prepare a Declaration in support of the recognition of the customary nature of the relevant provisions of the *United Nations Convention on Jurisdictional Immunities of States and Their Property* (2004) in order to guarantee the immunity of State cultural property on loan. The [Declaration on Jurisdictional Immunities of State Owned Cultural Property](#) had been elaborated as a legally non-binding document expressing a common understanding of *opinio juris* on the basic rule that certain kind of State property (cultural property on exhibition) enjoys jurisdictional immunity.

26. The Chair informed the delegations that, since the last CAHDI meeting, there had been no new signatures of the Declaration. The Declaration had hence already 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).

27. 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 in English and French on the [website of the CAHDI](#).

- Questionnaire on the Immunity of State Owned Cultural Property on Loan

28. The Chair recalled that, besides the Declaration, this issue is mirrored in the CAHDI activities in the form of a questionnaire on national laws and practices concerning the topic of "*Immunity of State Owned Cultural Property on Loan*", drafted by the Secretariat and the Presidency of the 47th CAHDI meeting in March 2014.

29. The CAHDI welcomed the replies submitted by 27 delegations (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, Spain, Switzerland, Ukraine, the United Kingdom and the United States of America) to this questionnaire (document CAHDI (2018) 5 prov *Confidential Bilingual*). Since the last meeting, Spain, Ukraine, Belarus and Estonia submitted a contribution to this questionnaire.

iii. Immunities of special missions

30. Delegations were reminded that the topic of "*Immunities of special missions*" was included in September 2013 in the agenda of the CAHDI, during its 46th meeting, at the request of the delegation of the United Kingdom, which provided a document in this regard (document CAHDI (2013) 15 *Restricted*). Following this meeting, the Secretariat and the Chair drafted a questionnaire aimed at establishing an overview of the legislation and specific national practices in this field.

31. The Chair recalled that the CAHDI agreed at its 54th meeting, in September 2017, 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 welcomed the preparation of this analytical report 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).

32. The CAHDI noted that 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 (as contained in

document CAHDI (2018) 6 prov *Bilingual*), will be included in the forthcoming CAHDI publication by Brill-Nijhoff Publishers.

33. The representative of Belarus informed the CAHDI that, in accordance with the UN Convention on Special Missions, they grant privileges and immunities to OSCE officials who travel through Belarus.

iv. Service of process on a foreign state

34. Delegations were reminded that the discussion on the topic “*Service of process on a foreign State*” was initiated at the 44th meeting of the CAHDI in September 2012, following which a questionnaire on this topic had been prepared. Up to this meeting, 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) have submitted their replies. These contributions were reproduced in the document CAHDI (2018) 7 prov *Confidential Bilingual*.

35. Since the last CAHDI meeting, there have been no new or updated contributions. The Chair encouraged delegations which had not yet done so, to submit or update their contributions to the questionnaire, which are treated as confidential.

36. The Chair further recalled that the Secretariat also prepared a summary of the replies received, as contained in document CAHDI (2014) 15 *Confidential*. The purpose of this document was to highlight the main practices and procedures of States in relation to the service of documents initiating proceedings in a foreign State.

37. The representative of Belarus informed the CAHDI about a Commercial Court decision against a foreign embassy in Minsk. He further explained that the Court had requested the opinion of the Ministry of Foreign Affairs in relation to its jurisdiction, and the Ministry had given a positive answer as the case concerned a supply contract for which the Embassy had agreed on the jurisdiction.

b. UN Convention on Jurisdictional Immunities of States and Their Property

38. The Chair reminded the Committee that the CAHDI followed the status of ratifications and signatures to the *United Nations Convention on Jurisdictional Immunities of States and Their Property* (2004) (henceforth the 2004 UN Convention) since its 29th meeting in March 2009. In this respect, she informed the Committee that, since its last meeting, no State represented within the CAHDI had signed, ratified, accepted, approved or acceded to the 2004 UN Convention. She furthermore underlined that, up to this CAHDI meeting, 22 States had ratified, accepted, approved or acceded to the 2004 UN Convention, as Equatorial Guinea acceded to the Convention in May 2018. Finally she pointed out that in order for the 2004 UN Convention to enter into force, the deposit of 30 instruments of ratification, acceptance, approval or accession with the Secretary General of the United Nations are needed.

c. State practice, case law and updates of the website entries

39. The CAHDI noted that, up to this meeting, 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 the database on “*The Immunities of States and International Organisations*”. CAHDI experts were encouraged to submit information to the database so that it

provides a picture as accurate and varied as possible of the current State practice regarding State immunities.

40. The representative of Belgium provided information on a judgment of the Court Appeal of Brussels, in June 2018, in the context of Ruanda's genocide in 1994 which will be shortly published in the CAHDI website. This judgement relates to the massacre of Tutsi refugees in a technical school in Kigali in the area which was under the protection of the peacekeeping troops of UNAMIR, including the Belgian contingent. The relatives of the victims had filed a compensation claim against the government of Belgium and three Belgian officers for the damage suffered. However, the Court of Appeal of Brussels found that the Belgian troops had been under UN mandate (UNAMIR) and therefore had acted as an UN body, benefitting from jurisdictional immunity.

41. The representative of France raised the issue of the consequences of the immunity from execution in regard to labour disputes involving staff of embassies or international organisations. He further informed the CAHDI about the development of French case law in the framework of the administrative jurisdiction ("*Le Conseil d'Etat*") according to which the French State would replace the debtor (e.g. foreign states or international organisations) enjoying immunities. Finally, he inquired about the practice of other states regarding this issue, specifically whether they had means of compensation or alternative systems.

42. The Chair referred to the document on 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 (document CAHDI (2018) 8 prov *Confidential Bilingual*), and noted that, up to this CAHDI meeting, 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. Since the last meeting, no new contributions had been sent to the Secretariat. The Chair invited delegations which had not yet done so to submit or update their replies to the questionnaire.

7. Organisation and functions of the Office of the Legal Adviser of the Ministry of Foreign Affairs

43. The Chair introduced the document CAHDI (2018) 9 prov *Bilingual* on the "*Organisation and functions of the Office of Legal Adviser of the Ministry of Foreign Affairs*" and welcomed the replies of 39 States and one Organisation (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 the revised questionnaire containing additional questions on gender equality in conformity with the *Council of Europe Gender Equality Strategy*. Since the last meeting, new or revised contributions were received from Belgium, Belarus, Ireland and Sweden. The CAHDI invited delegations to send to the Secretariat any further information in order to complete their replies.

44. The Chair reminded delegations that the replies to this questionnaire can equally be found in the relevant online database, where delegations can update existing contributions and insert new ones, as well as consult the replies from other delegations.

45. The representative of Canada informed the CAHDI that they would soon update their contribution.

46. The Chair made a call to the 13 delegations (Azerbaijan, Bulgaria, Iceland, Japan, the Netherlands, Poland, Portugal, the Russian Federation, the Slovak Republic, Spain, "The former

Yugoslav Republic of Macedonia”, Ukraine and Interpol) who replied to the original questionnaire on this issue but who have not replied to the revised one yet, to send to the Secretariat the supplementary information concerning gender equality in order to have a complete overview of the organisation and functions of the Offices of the Legal Adviser of the 52 States and Organisations which have replied so far.

47. The Chair pointed out that almost every delegation had replied to this questionnaire in its original or revised form and congratulated all the delegations for this comprehensive information about the Offices of the Legal Adviser.

8. National implementation measures of UN sanctions and respect for human rights

48. The Chair introduced document CAHDI (2018) 10 *prov Confidential Bilingual* on “Cases that have been submitted to national tribunals by persons or entities included in or removed from the lists established by the UN Security Council Sanctions Committees”. Up to this meeting, 37 States and one Organisation have sent contributions to the database (Albania, Armenia, Austria, Azerbaijan, Belgium, Bulgaria, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Mexico, the Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, “the former Yugoslav Republic of Macedonia”, Turkey, Ukraine, United Kingdom, the United States of America and the European Union).

49. The representative of Switzerland referred to the case of *Al-Dulimi and Montana management Inc. v. Switzerland*², where the ECtHR ruled in June 2016 that States had the obligation to ensure a minimum standard of treatment when enforcing Resolutions of the UN Security Council as regards sanctions. Following the judgment by the ECtHR, a request to review the original decision by the UN Sanctions Committee to include Mr Al-Dulimi in the list of persons whose financial assets were to be confiscated, was admitted by the Swiss Federal Court in May 2018. The Federal Court has submitted the case to the Swiss Federal Department of Economy, Training and Research asking them to examine whether or not the inscription in the list was arbitrary. The representative of Switzerland indicated that he would provide further information on this issue at the next CAHDI meeting.

9. The European Convention on Human Rights and the case law of the European Court of Human Rights involving issues of public international law

50. The Chair recalled that the CAHDI, at its 54th meeting, appointed Mr Petr Válek (Czech Republic) to represent the Committee in the Drafting Group on the place of the European Convention on Human Rights in the European and International Legal Order (DH-SYSC-II).

51. The CAHDI representative in DH-SYSC-II informed about the work of this Group, which would hold its 4th meeting in Strasbourg on 25-28 September 2018. The CAHDI representative recalled that he participates in this Drafting Group in a personal capacity and that the observations put forward by him at the DH-SYSC-II meetings do not necessarily reflect the opinion of the CAHDI. Furthermore, he drew attention to the public international law issues to be addressed by the Drafting Group at its 4th meeting, and which are related to CAHDI’s mandate. In particular, Theme I of the report under preparation will cover “the challenge of the interaction between the Convention and other branches of international law, including international customary law”, which includes four sub-themes: i) Methodology of interpretation by the ECtHR and its approach to international law; ii) State responsibility and extraterritorial application of the ECHR; iii) Interaction between the resolutions of the UN Security Council and the ECHR; and iv) Interaction between international humanitarian law and the ECHR. Furthermore, the CAHDI representative in the Drafting Group explained that the draft report under preparation by the DH-SYSC-II should be

² ECtHR, [Al-Dulimi and Montana Management Inc. v Switzerland](#), case no. 5809/08, Grand Chamber judgment of 21 June 2016.

finalised at its 7th meeting in September 2019 and transmitted for examination and adoption to the Committee of experts on the system of the European Convention on Human Rights (DH-SYSC), in October 2019, and the Steering Committee for Human Rights (CDDH), in November 2019.

52. The CAHDI representative at the DH-SYSC-II Drafting Group also drew the attention of CAHDI's experts to the fact that most of the members of this Drafting Group are officials of the Ministries of Justice. Therefore, he encouraged CAHDI members to contact their counterparts in the Drafting Group in order to discuss this work, in particular as regards public international law issues.

53. The CAHDI held an exchange of views on its future role regarding the public international law elements which are under consideration by the above-mentioned Drafting Group. In this respect, it was underlined that two further Committees - DH-SYSC and the CDDH – have to examine, review and adopt the final draft to be prepared by the Drafting Group.

54. Therefore, 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" of the report under preparation). Finally, the CAHDI further 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 CDDH, transmitted via the Committee of Ministers.

55. Due to time constraints, the Chair indicated that the usual exchange of views taking place at each CAHDI meeting, on the judgments and decisions regarding cases before the ECtHR, would be postponed to the next CAHDI meeting. Furthermore, she informed the CAHDI that, as previously agreed, the Secretariat will prepare the 2018 annual Appendix of the document "*Case law of the European Court on Human Rights related to public international law*" (document PIL (2018) Case Law) for the 57th CAHDI meeting in 2019.

10. Peaceful settlement of disputes

56. The Chair drew the attention of CAHDI's experts to the new document prepared by the Secretariat on "*Peaceful settlement of disputes*" (document CAHDI (2018) 20 *Restricted*). Due to time constraints, this document could not be examined. The CAHDI agreed to hold an exchange of views on issues relating to the peaceful settlement of disputes at its next meeting.

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

57. In the framework of its activity as the *European Observatory of Reservations to International Treaties*, the CAHDI examined a list of outstanding reservations and declarations to international treaties. The Chair presented the documents containing these reservations and declarations which are subject to objections (documents CAHDI (2018) 19 *prov Confidential* and CAHDI (2018) 19 *Addendum prov Confidential Bilingual*) and opened the discussion. The Chair also drew the attention of the delegations to document CAHDI (2018) Inf 2 containing reactions to reservations and declarations to international treaties previously examined by the CAHDI and for which the deadline for objecting had already expired.

58. The Chair underlined that the reservations and declarations to international treaties still subject to objection are contained in the list prepared by the CAHDI Secretariat in the document CAHDI (2018) 19 *prov Confidential* contained 16 reservations and declarations. Ten of them were made with regard to treaties concluded outside the Council of Europe (Part I of the document) and six of them concerned treaties concluded within the Council of Europe (Part II of the document). No problematic partial withdrawals had been identified since the last meeting of the CAHDI. Therefore,

no Part III was included in the document (CAHDI (2018) 19 prov *Confidential*). The Chair further noted that nine of these reservations and declarations had already been discussed at the 55th CAHDI meeting in March 2018 and seven had been newly added since then.

59. With regard to the **declaration made by Azerbaijan** to the *Framework Agreement on Facilitation of Cross Border Paperless Trade in Asia and the Pacific*, the representative of Armenia indicated that her authorities are currently assessing the nature of this Declaration and considering whether it amounts to a reservation, which the Agreement does not allow for. She further indicated that the Armenian authorities are envisaging contacting the depositary of the Agreement to explore what can be done in this case. The representative of Azerbaijan replied that this Declaration does not amount to a reservation and that it was made as the two countries have no diplomatic relations and no co-operation in any field. She further explained that this Declaration does not purport to modify or change the treaty or its specific provisions, but rather to specify and clarify the scope of application of this treaty for Azerbaijan, in light of the fact that the two states cannot co-operate within the framework of this Agreement.

60. With regard to the **interpretative declaration made by Kazakhstan** to the *Arms Trade Treaty*, in which it is specified that under Article 28 Kazakhstan will interpret “diversion” as “illegal diversion”, no comments were made by delegations.

61. With regard to the **declaration made by Venezuela** to the *Doha Amendment to the Kyoto Protocol*, the representative of the Czech Republic informed the CAHDI that his delegation was considering objecting to this Declaration.

62. With regard to the **declaration made by Turkey** concerning the *Optional Protocol to the Convention on the Rights of the Child on a Communication Procedure*, the representative of Cyprus informed the CAHDI that her delegation had objected on 14 September 2018. The representative of Turkey informed the CAHDI that his statement during the 55th CAHDI meeting remains valid (see paragraph 109 of the Report of the 55th CAHDI meeting, document CAHDI (2018) 16).

63. With regard to the **declaration made by Libya** to the *Convention on the Rights of Persons with Disabilities*, the representative of Austria informed the CAHDI that his country has already objected on 6 July 2018. In addition, six delegations – namely Belgium, the Czech Republic, Finland, France, the Netherlands and Portugal – stated that they will object. Furthermore, five delegations - Greece, Hungary, Ireland, Belarus and Canada - informed the CAHDI that they were considering objecting to this Declaration.

64. With regard to the **reservations made by Jordan** to the *Protocol on the Privileged and Immunities of the International Seabed Authority*, in relation to Article 14 of the Protocol concerning the established compulsory mechanism of settlement of disputes, no comments were made by delegations.

65. With regard to the **reservations made by Bahamas** to *the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, no comments were made by delegations.

66. With regard to the **declaration made by Myanmar** to the *International Covenant on Economic, Social and Cultural Rights*, the representatives of Austria and Portugal stated that they had already objected, on 16 May and 7 September 2018, respectively. In addition, the representative of Finland informed the CAHDI that their objection was on its way. Furthermore, eight delegations – namely Canada, the Czech Republic, France, Germany, Ireland, the Netherlands, Norway and Sweden – stated that they intended to object.

67. With regard to the **reservation and statement made by Qatar** to the *International Covenant on Economic, Social and Cultural Rights*, 12 delegations – namely Austria, Belarus,

Belgium, Canada, Czech Republic, Finland, France, Germany, Ireland, Italy, the Netherlands and Portugal - stated that they are considering to object to this reservation to Article 3 (ensure equal rights between men and women), where Qatar states that it contravenes the Islamic Sharia.

68. With regard to the **reservations and statement made by Qatar** to the *International Covenant on Civil and Political Rights*, the representative of the Netherlands stated that they will object, while 11 further delegations – namely Austria, Belarus, Belgium, Canada, Czech Republic, Finland, France, Germany, Ireland, Italy and Portugal – stated that they are considering objecting. These reservations concern the non-application of equal rights between women and men on the grounds that it contravenes the Islamic Sharia. Three of Qatar’s five interpretative statements on the Covenant are related to the application of the Islamic Sharia, while the other two relate to trade unions and the practice of religion.

69. With regard to the **reservation made by Poland upon ratification** to the *Council of Europe Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events* (CETS No. 218), confirming the reservation made at the time of signature in which Poland reserves the right to apply Article 5 paragraph 2 of the Convention, no comments were made by delegations.

70. With regard to the **declaration made by Turkey** to the *Council of Europe Convention on the Counterfeiting of Medical Products and Similar Crimes Involving Threats to Public Health* (CETS No. 211), the representative of Cyprus informed the CAHDI that her delegation had already filed an objection on 7 November 2017. The representative of Greece informed the CAHDI that her country is considering signing this Convention and also objecting to this Declaration at the time of signature.

71. With regard to the **interpretative declaration made by Croatia** to the *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence* (ETS No. 210), the representative of Austria underlined that such declaration can be helpful in other contexts and serve as an example for other countries.

72. With regard to the **reservations and declarations made by Greece** to the *Council of Europe Convention on Laundering Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism* (CETS No. 198), no comments were made by delegations.

73. With regard to the **six reservations made by Argentina** to the *Convention on Cybercrime* (ETS No. 185), one of them is allowed by the Convention (in relation to Article 29.4). With regard to the other five (related to Articles 6.1.b; 9.1.d, 9.2.b, 9.2.c and 22.1), Argentina stated that they “are not transposable to its jurisdiction” for different reasons of alleged incompatibility with Argentina’s criminal law system. The representative of Canada welcomed Argentina’s ratification of this Convention.

74. With regard to the **declaration made by Turkey** to the *European Convention for the protection of Animals Kept for Farming Purposes* (ETS No.87), the representative of Cyprus informed the CAHDI that her delegation had already filed an objection, on 25 July 2018. The representative of Greece stated that they are considering objecting.

III. GENERAL ISSUES OF PUBLIC INTERNATIONAL LAW

12. The work of the United Nations Office of Legal Affairs (OLA)

75. The Chair welcomed and thanked Mr Stephen Mathias, Assistant Secretary-General for Legal Affairs of the United Nations, for having accepted the invitation of the CAHDI. She recalled that Mr Mathias had already participated in the 42nd CAHDI meeting, in 2011. She underlined that it was a pleasure and a privilege for the Council of Europe and the CAHDI to count with his presence.

76. Mr Mathias provided the CAHDI with greetings from UN Under-Secretary-General for Legal Affairs and UN Legal Counsel Miguel de Serpa Soares, and gave an overview of current issues being addressed by the UN Office of Legal Affairs. With respect to accountability for the most serious crimes under international law, Mr Mathias addressed the need, when establishing international criminal tribunals, to consider such issues as residual functions, long-term costs, and governance. He also discussed issues arising with respect to the recently created mechanisms for the collection of evidence. In this regard, he drew attention to the UN policy that UN investigative mechanisms mandated to share information with national courts and tribunals should do so only with jurisdictions that respect international human rights law and standards, including the right to a fair trial, and only for use in criminal proceedings in which capital punishment will not be imposed or carried out. Mr Mathias also addressed challenges related to the “protection of civilians” mandate in UN peacekeeping operations; requests by the General Assembly for advisory opinions of the International Court of Justice; and the UN System’s approach to the European Union’s General Data Protection Regulation. He made a brief reference to the recently concluded first session of the Intergovernmental Conference on an internationally legally binding instrument under the United Nations Convention on the Law of the Sea, on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, noting the roles of the *UN Legal Counsel* and the *Division for Ocean Affairs and the Law of the Sea*, which is part of the *Office of Legal Affairs*, in the on-going process, and citing it as an example of continued commitment to efforts to develop multilateral instruments within the UN framework.

77. In reply to the questions of several delegations, Mr Mathias underlined the important issue of the investigation of crimes committed against UN personnel and the need to co-operate with national authorities and the International Criminal Court to seek justice as regards attacks against UN personnel in peacekeeping operations. He also stressed that the training of UN peacekeepers on international humanitarian law has significantly improved but the challenge remains how to affect the conduct of armed groups and promote compliance of international humanitarian law as regards healthcare and educational facilities on the ground.

78. Lastly, in reply to a question from one delegation, Mr Mathias explained that each UN peacekeeping mission has its own rules of engagement, which are under the responsibility of the military office, and they are very clear as to the use of force to protect civilians. He was confident that high-level commitment to take concrete steps to protect civilians will increase, in line with the Secretary General’s emphasis on a victim-oriented approach.

79. The Chair of the CAHDI thanked Mr Mathias for the interesting and fruitful exchange of views.

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

80. The Chair welcomed and thanked Mr Pavel Šturma, First Vice Chair of the ILC, for having accepted the invitation of the CAHDI. She recalled that Mr Šturma had participated in the 46th CAHDI meeting, in 2013. She further underlined that it was a pleasure and a privilege for the CAHDI to count with his presence.

81. Mr Šturma presented an overview of the work of the ILC at its 70th session, a landmark anniversary year under the theme “70 years of the ILC – Drawing a balance for the future”. He highlighted the main outcomes of this intense productive session, namely the finalisation of draft conclusions on two topics: “Subsequent agreements and subsequent practice in relation to the interpretation of treaties” and “Identification of customary international law”. The ILC recommended that the UN General Assembly take note of the above-mentioned draft conclusions and ensure their widest dissemination. Furthermore, Mr Šturma thanked the Secretariat of the CAHDI for providing comments to the Secretariat of the ILC with respect to the availability of evidence of customary international law. He also referred to the two topics on which the ILC concluded a first reading: “Protection of the atmosphere” and “Provisional application of treaties”. Mr Šturma informed the CAHDI about the four topics whose consideration by the ILC continued at the 70th

session: “Peremptory norms of general international law (*jus cogens*)”; “Protection of the environment in relation to armed conflicts”; “Succession of States in respect of State responsibility”; and “Immunity of State officials from foreign criminal jurisdiction”. In addition, Mr Šturma referred to the draft articles on “Crimes against humanity”, which will be considered by the ILC in second reading next year. He encouraged States to submit their comments and observations on these draft articles by 1 December 2018. He also informed the CAHDI about a new topic which has been included this year in the Commission’s programme of work: “General principles of law”. This future work will complement the analysis by the ILC of the first two categories of sources of international law listed in Article 38 of the Statute of the International Court of Justice: international conventions and international custom. Furthermore, two new topics have been included in the Commission’s long-term programme of work: “Universal criminal jurisdiction” and “Sea-level rise in relation to international law”. Finally, Mr Šturma underlined the importance that the ILC attaches to its exchanges with the CAHDI and appreciated that they mutually benefit from each other’s work and regular interactions. The full speech of Mr Šturma can be found in **Appendix VI** to this report.

82. In reply to comments and questions from several delegations, Mr Šturma answered that, due to constant evolution, he does not think it would be advisable to qualify each ILC commentary as either codification of international law or progressive development of international law. He added that sometimes it may be important to distinguish between the two concepts, but he advised against systematically stating whether it is one or the other, precisely for reasons of evolution. Furthermore, Mr Šturma addressed the issue of the working methods of the ILC in relation to its work on *jus cogens*, taking note of the concerns expressed as regards the lack of interaction in the plenary concerning the draft conclusions on this topic provisionally adopted by the Drafting Committee. Mr Šturma explained the reasons behind this situation and informed the CAHDI that a working group on the long-term programme of the Commission has been set up, alongside another working group on the method of work which will issue a report with recommendations next year. The question of balance between the time for deliberation on complex issues and the level of productivity and efficiency of the Commission needs to be considered. Finally, Mr Šturma commented on the interactions between the ILC and the Sixth Committee, taking into account their sessions in Geneva and New York, respectively.

83. The CAHDI welcomed the presentation of the work of the ILC by Mr Šturma. 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. Their statements are contained in documents CAHDI (2018) Inf 4 and CAHDI (2018) Inf 5 *English only*.

14. Consideration of current issues of International Humanitarian Law

84. The Chair invited the delegations to take the floor on current issues concerning International Humanitarian Law (IHL) and to present any relevant information on this topic, including forthcoming events.

85. The representative of the International Committee of the Red Cross (ICRC) provided the CAHDI with updated information on the intergovernmental process on “*Strengthening Respect for International Humanitarian Law*” which is jointly facilitated by the ICRC and Switzerland. In this context, she announced that the fourth Formal Meeting since the 32nd *International Conference of the Red Cross and the Red Crescent* in 2015 was held in Geneva in May 2018, with the participation of 108 States. The purpose of this meeting was for participating States to discuss broad converging elements that could serve as guidance for constructing a specific outcome of the intergovernmental process. An open-ended consultation with 80 states to discuss new and updated proposals took place in September 2018, where the feedback received was positive. The representative of the ICRC further informed the CAHDI about the next steps, including an informal meeting on 18 October 2018 in order to prepare the fifth Formal Meeting, which is scheduled for 3-5 December 2018 in Geneva (Switzerland). A draft discussion paper will be circulated in early October. The main aim of the fifth Formal Meeting is to develop proposals to strengthen respect for

international humanitarian law, based on converging elements and discussions, and to identify the main proposals to be further pursued. Currently, there are ideas on how to reinforce IHL at the International Conference (IC) itself, among all members of the Conference, including National Societies, the ICRC and the International Federation. For the ICRC, it is essential that all members of the IC can participate in all discussions on IHL at the IC. There are also ideas on how a dialogue among States on IHL, linked to the IC, could occur, including between Conferences, ideas on how the work of IHL regional fora and also National IHL committees could be profiled; and also ideas on how technology can contribute, via the creation of a web platform for exchange among States on IHL or a repository of State practice on IHL. The representative of the ICRC called on CAHDI members to provide feedback on the concept note for the *33rd International Conference of the Red Cross and Red Crescent "Act today, shape tomorrow"*, which will be held in Geneva on 9-12 December 2018. The deadline for feedback to the conference concept note was 12 October 2018. The representative of the ICRC provided the following further information: in July 2018, the ICRC convened a meeting of government experts on how States can ensure humane treatment and conditions of detention during the early stages of detention close to hostilities and during short-term detention. The meeting was attended by 65 States, many represented by military or legal experts from capitals. The ICRC legal division has recently published a report on [The Principle of Proportionality in the Rules Governing the Conduct of Hostilities under International Humanitarian Law](#). In June 2018, the ICRC published a report on [The Roots of Restraint in War](#).

86. The representative of Switzerland referred to the [Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies \(PMSCs\) during armed conflict](#), adopted in 2008, and the 4th meeting of the [Montreux Document Forum](#) on 6-7 June 2018. Furthermore, he informed the CAHDI that consultations were under way to discuss plans to establish a Fund.

87. The representative of Romania informed the CAHDI that a regional conference for Central and South-East European countries took place in Bucharest, on 27-28 March 2018, co-organised by Romania's National Committee on International Humanitarian Law and the International Committee of the Red Cross. The event was aimed at promoting international humanitarian law in the region, including through boosting peer to peer co-operation. Furthermore, the representative of Romania informed the CAHDI that she will circulate, through the Secretariat, a document containing detailed information on this event.

88. The representative of Canada informed the CAHDI that the [Communiqué](#) issued by the G7 Foreign Affairs Ministers at a meeting on 22-23 April 2018 referred to their intention to redouble efforts to achieve greater awareness of and respect for international humanitarian law among national and international partners.

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

89. The Chair drew the attention of CAHDI experts to the document on the "*Developments concerning the International Criminal Court and other International Criminal Tribunals*" (document CAHDI (2018) 13 prov), containing recent developments concerning the International Criminal Court (ICC) and other international criminal tribunals.

90. The representative of Switzerland informed the CAHDI about a Swiss proposal put forward to the Working Group on Amendments of the Assembly of States Parties to the Rome Statute of the ICC, to include starvation as a war crime in internal armed conflicts in order to strengthen the protection of civilians in armed conflicts. The non-paper by Switzerland would be sent to the Secretariat for distribution to CAHDI's experts.

16. Topical issues of international law

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

IV. OTHER

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

92. 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 Hammar skjöld (Sweden), respectively as Chair and Vice-Chair of the Committee, for a term of one year, as from 1 January 2019.

93. Ms Päivi Kaukoranta congratulated the newly elected Chair and Vice-Chair of the CAHDI and wished them the best for their future endeavours in their new roles as of 2019.

18. Place, date and agenda of the 57th meeting of the CAHDI: Strasbourg (France)

94. The CAHDI decided to hold its 57th meeting in Strasbourg (France) on 21-22 March 2019. The CAHDI instructed the Secretariat, in consultation with the Chair and the Vice-Chair of the CAHDI, to prepare the draft agenda of this meeting and to send it to all CAHDI experts in due time.

19. Any other business

95. The representative of Poland informed the CAHDI experts about the “29th Informal Meeting of Legal Advisers of Ministries of Foreign Affairs”, which will be held in the framework of the “International Law Week” at the forthcoming 73rd Session of the Sixth Committee of the United Nations General Assembly. The Informal Meeting will take place in New York on 22-23 October 2018.

20. Adoption of the Abridged Report and closing of the 56th meeting

96. The CAHDI adopted the Abridged Report of its 56th meeting as contained in document CAHDI (2018) 26 and instructed the Secretariat to submit it to the Committee of Ministers for information.

97. Before closing the meeting, the Chair thanked all CAHDI experts for their kind and efficient co-operation in the good functioning of the meeting and expressed her pleasure to have acted as the Committee’s Chair at such an interesting and effective meeting, as well as throughout all her CAHDI Chairmanship. She expressed her happiness at leaving CAHDI’s Chairmanship in the able hands of her successor, Mr Petr Válek (Czech Republic). The Chair also thanked the CAHDI Secretariat and the interpreters for their invaluable assistance.

APPENDICES

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[Apologised / *Excusé*]

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[Apologised / *Excusé*]

NEW ZEALAND / NOUVELLE ZELANDE

[Apologised / *Excusé*]

UNITED NATIONS / NATIONS UNIES

[Apologised / *Excusé*]

**ORGANISATION FOR ECONOMIC CO-
OPERATION AND DEVELOPMENT (OECD) /
ORGANISATION DE COOPERATION ET DE
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[Apologised / *Excusé*]

**EUROPEAN ORGANISATION FOR NUCLEAR
RESEARCH (CERN) / ORGANISATION
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[Apologised / *Excusé*]

**THE HAGUE CONFERENCE ON PRIVATE
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[Apologised / *Excusé*]

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Mr Kennedy GASTORN

Secretary General

[Apologised / *Excusé*]

SPECIAL GUESTS / INVITES SPECIAUX

Mr Stephen MATHIAS, Assistant Secretary-General for Legal Affairs of the United Nations (OLA) / *Sous-Secrétaire général aux affaires juridiques des Nations Unies (OLA)*

Mr Pavel ŠTURMA

First Vice-Chairman of the International Law Commission of the United Nations (ILC) / *Premier Vice-Président de la Commission du droit international des Nations Unies (CDI)*

SECRETARIAT GENERAL

DIRECTORATE OF LEGAL ADVICE AND PUBLIC INTERNATIONAL LAW / DIRECTION DU CONSEIL JURIDIQUE ET DU DROIT INTERNATIONAL PUBLIC

Mr Jörg POLAKIEWICZ

Director / *Directeur*

CAHDI SECRETARIAT / SECRETARIAT DU CAHDI

Ms Marta REQUENA

Secretary to the CAHDI / *Secrétaire du CAHDI*

Head of Division / *Chef de Division*

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Ms Carolina LASÉN DIAZ

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INTERPRETERS / INTERPRETES

Ms Chloé CHENETIER-KIPPING

Ms Corinne MC GEORGE-MAGALLON

APPENDIX II

AGENDA

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. The European Convention on Human rights and 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 Unites Nations Office of Legal Affairs (OLA)

- Presentation of the work of the Unites 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

APPENDIX III

OPINION OF THE CAHDI

on 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 Rights”

1. On 15 May 2018, the Ministers’ Deputies at their 1316th meeting agreed to communicate [Recommendation 2125 \(2018\)](#) of the Parliamentary Assembly of the Council of Europe (PACE) on “*State of Emergency: Proportionality Issues concerning Derogations under Article 15 of the European Convention on Human Rights*” to the Committee of Legal Advisers on Public International Law (CAHDI), for information and possible comments by the end of September 2018¹. PACE [Resolution 2209 \(2018\)](#), on the same topic, is associated to it.

2. The CAHDI examined the above-mentioned Recommendation at its 56th meeting (Helsinki, Finland, 20-21 September 2018) and made the following comments concerning those aspects of Recommendation 2125 (2018) of particular relevance to the Terms of Reference of the CAHDI.

3. From the outset, the CAHDI agrees with the PACE on the need to respect the principle of proportionality when adopting and implementing national emergency measures under Article 15 of the European Convention on Human Rights (ECHR) as well as on the need to ensure that they do not conflict with other obligations under international law. Indeed Article 15 of the ECHR states that “*In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law*”. In this respect, the CAHDI underlines that Article 15 of the ECHR allows States Parties to derogate, in exceptional circumstances, and in a limited and supervised manner, from their obligations to secure certain rights and freedoms under the ECHR and only for such time as is strictly required by the exigencies of the situation. Some rights, however, do not allow any derogation by Article 15: the right to life, except in the context of lawful acts of war (Article 2 ECHR), the prohibition of torture and inhuman or degrading treatment or punishment (Article 3 ECHR), the prohibition of slavery and servitude (Article 4 paragraph 1 ECHR), and the rule of “no punishment without law” (Article 7 ECHR).² Similarly, there can be no derogation from Article 1 of Protocol No. 6 (abolishing the death penalty in peacetime) to the ECHR, Article 1 of Protocol No. 13 (abolishing the death penalty in all circumstances) to the ECHR and Article 4 (the right not to be tried or punished twice) of Protocol No. 7 to the ECHR.

4. The CAHDI furthermore points out that if a State Party wishes to use its right of derogation in time of emergency under Article 15 paragraph 1 ECHR, the State in question shall “*keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor*”³. According to the case law of the European Court of Human Rights (ECtHR),

¹ The Ministers’ Deputies specifically indicated in their decision that they “agreed to communicate it [Recommendation 2125 (2018)] to the Committee of Legal Advisers on Public International Law (CAHDI), for information and possible comments by 29 June 2018”. However, taking into account that the 56th meeting of the CAHDI would take place on 20 and 21 September, it was agreed to send the CAHDI opinion to the Secretariat of the Committee of Ministers on 30 September 2018.

This PACE Recommendation 2125 was also communicated to the Steering Committee for Human Rights (CDDH) for information and possible comments.

² Paragraph 2 of Article 15 ECHR: “*No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision*”.

³ See ECtHR, [Hassan v. the United Kingdom application no. 29750/09](#), Grand Chamber judgment of 16 September 2014. The Grand Chamber held at paragraph 103 that “*the lack of a formal derogation under Article 15 does not prevent the Court from taking account of the context and provisions of international humanitarian law when interpreting and applying Article 5 in this case*”.

Article 15 ECHR requires some formal and public act of derogation⁴. The practice of States Parties to provide translations and/or summaries of the relevant domestic legislation is welcomed. Under Article 15 paragraph 3 any Contracting Party “*shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.*”

5. The CAHDI furthermore underlines that, as mentioned in the PACE Report, the ECHR continues to apply -with the indicated restrictions due to derogations in time of emergency- at national level in the country concerned. Therefore, the individuals under the jurisdiction of any such country continue to have the right to apply to the European Court of Human Rights in conformity with Article 34 of the ECHR.

6. The CAHDI also recalls that the ECtHR is competent to determine whether the measures taken by a State Party under Article 15 are strictly required by the exigencies of the situation and consistent with other obligations under international law. The European Court proceeds to such evaluation when examining the applicant’s complaints on the merits in a case submitted to it⁵.

7. The CAHDI finally underlines that the discretionary powers granted to the Secretary General of the Council of Europe by Article 52 of the ECHR to launch inquiries on “the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention” were in principle not conceived in the ECHR system to address the exceptional circumstances of a time of emergency. In this respect, it should be underlined that on the few occasions when the successive Secretaries Generals have used such powers, it was never in connection with measures adopted under Article 15 of the ECHR.

8. Finally, the CAHDI recalls that the Press Unit of the European Court of Human Rights has prepared a [“Factsheet – Derogation in time of emergency”](#) which is kept up-to-date and which contains a lot of information on this matter, including all relevant related case law.

9. Taking into account the above-mentioned considerations and the described competences of the European Court of Human Rights on this matter, the CAHDI consequently considers that the proposal of the PACE related to the identification of legal standards and good practice and the adoption of “a recommendation to member States on the matter” would not be necessary.

⁴ See the Commission’s conclusion in the case of [Cyprus v. Turkey](#), applications nos. 6780/74 and 6950/75 (Commission report of 10 July 1976, § 527): “Article 15 requires some formal and public act of derogation, such as a declaration of martial law or state of emergency, and that, where no such act has been proclaimed by the High Contracting Party concerned, although it was not in the circumstances prevented from doing so, Article 15 cannot apply.” See also the Commission report of 4 October 1983 in the case [Cyprus v. Turkey](#), application no. 8007/77, paragraph 67.

⁵ See ECtHR, [Sahin Alpay v. Turkey, application no.16538/17](#), final Chamber judgment of 20 March 2018, paragraph 78: “. As to whether the measures taken in the present case were strictly required by the exigencies of the situation and consistent with the other obligations under international law, the Court considers it necessary to examine the applicant’s complaints on the merits, and will do so below”. See also ECtHR [Mehmet Hasan Altan v. Turkey, application no.13237/17](#), Chamber judgement of 20 March 2018, paragraph 94.

APPENDIX IV

OPINION OF THE CAHDI

On Recommendation 2126 (2018) of the Parliamentary Assembly of the Council of Europe – “Humanitarian needs and rights of internally displaced persons in Europe”

1. On 15 May 2018, the Ministers’ Deputies at their 1316th meeting agreed to communicate [Recommendation 2126 \(2018\)](#) of the Parliamentary Assembly of the Council of Europe (PACE) on “*Humanitarian needs and rights of internally displaced persons in Europe*” to the Committee of Legal Advisers on Public International Law (CAHDI), for information and possible comments¹. The Ministers’ Deputies also communicated this Recommendation to the Steering Committee for Human Rights (CDDH). PACE [Resolution 2214 \(2018\)](#), on the same topic, subject, is associated to it.
2. The CAHDI examined the abovementioned Recommendation at its 56th meeting (Helsinki, Finland, 20-21 September 2018) and made the following comments which concern aspects of the Recommendation which are of particular relevance to the Terms of Reference of the CAHDI.
3. The CAHDI underlines the need to apply all relevant obligations under international humanitarian law in situations of armed conflict as well as international human rights law, including the *European Convention on Human Rights* (ECHR) and to take account of related case-law, to internally displaced persons in member States. The CAHDI further recalls that, in accordance with Article 1 of the ECHR, Parties must secure the rights and freedoms of everyone within their jurisdiction.
4. The CAHDI further recalls that the primary responsibility for protecting internally displaced persons and their rights, as well as for providing them with humanitarian assistance, lies with the state concerned as stated in the Committee of Ministers *Recommendation Rec(2006)6 on internally displaced persons*².
5. The CAHDI further recalls that internally displaced persons are entitled to the enjoyment of their property and possessions or to receive adequate compensation in accordance with human rights law as stated in the Committee of Ministers *Recommendation Rec(2006)6 on internally displaced persons*³.
6. The CAHDI points out that the ECHR sets up a well-established system for securing the execution of the judgments of the European Court of Human Rights (ECtHR), including the Parties’ obligation to abide by the final judgments of the ECtHR and the role of the Committee of Ministers in the supervision of the execution of such judgments. The CAHDI further points out that, under Article 46(4) of the Convention, if the Committee of Ministers considers that a Party to the ECHR refuses to abide by a final judgment in a case to which it is a party, it may refer to the Court the question of whether the Party concerned has failed to fulfil its obligation in relation to the binding force and execution of judgments of the ECtHR.

¹ The Ministers’ Deputies specifically indicated in their decision that they “agreed to communicate it [Recommendation 2126 (2018)] to the Committee of Legal Advisers on Public International Law (CAHDI), for information and possible comments by 29 June 2018.” However, taking into account that the 56th meeting of the CAHDI would take place on 20 and 21 September, it was agreed to send the CAHDI opinion to the Secretariat of the Committee of Ministers on 30 September 2018.

² See paragraph 4 of [Committee of Ministers Recommendation Rec\(2006\)6 on internally displaced persons](#), adopted on 5 April 2006.

³ Paragraph 8 of [Committee of Ministers Recommendation Rec\(2006\)6 on internally displaced persons](#), adopted on 5 April 2006: “*Internally displaced persons are entitled to the enjoyment of their property and possessions in accordance with human rights law. In particular, internally displaced persons have the right to repossess the property left behind following their displacement. If internally displaced persons are deprived of their property, such deprivation should give rise to adequate compensation*”.

7. The CAHDI notes the need to improve the capacity of the Convention's system to provide better support to States in addressing complex execution processes, including in situations relating to unresolved conflict zones⁴.

8. Taking into account the above-mentioned arguments, the CAHDI considers that the measures proposed in paragraph 3 of the Parliamentary Assembly's Recommendation 2126 (2018), namely the development of "guidelines for the recognition and enforcement by domestic courts in other member states of judgments of the European Court of Human Rights awarding financial compensation to internally displaced persons, if a respondent State refuses to execute such a judgment", lies outside its purview.

⁴ [11th Annual Report of the Committee of Ministers 2017 on the Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights](#), p.10.

APPENDIX V

OPINION OF THE CAHDI

On Recommendation 2130 (2018) of the Parliamentary Assembly of the Council of Europe – “Legal Challenges Related to Hybrid War and Human Rights Obligations”

1. On 15 May 2018, the Ministers’ Deputies at their 1316th meeting agreed to communicate [Recommendation 2130 \(2018\)](#) of the Parliamentary Assembly of the Council of Europe (PACE) on “*Legal Challenges Related to Hybrid War and Human Rights Obligations*” to the Committee of Legal Advisers on Public International Law (CAHDI), for information and possible comments by 30 September 2018. The Ministers’ Deputies also communicated this Recommendation to the Steering Committee for Human Rights (CDDH), the Committee on Counter-terrorism (CDCT), the Cybercrime Convention Committee (TC-Y), and the Steering Committee on Media and Information Society (CDMSI). PACE [Resolution 2217 \(2018\)](#), on the same topic, is associated to it.
2. The CAHDI examined the abovementioned Recommendation at its 56th meeting (Helsinki, Finland, 20-21 September 2018) and made the following comments which concern aspects of the Recommendation which are of particular relevance to the Terms of Reference of the CAHDI.
3. The CAHDI takes due note of the Parliamentary Assembly’s findings in Resolution 2217 (2018) as regards the main elements of “hybrid war”, at the same time pointing out the absence of a universally agreed definition. The CAHDI shares the concerns of the Parliamentary Assembly about the legal challenges related to “hybrid war” and hybrid influencing, and agrees to underline that relevant national and international legal regimes apply to the military and non-military means of “hybrid war”. Each action should be assessed individually according to the relevant legal regime. If the actions amount to an armed conflict, be it international or non-international, International Humanitarian Law applies. The CAHDI would also like to recall that international human rights law is relevant to both military and non-military actions carried out as part of a “hybrid war”, including in particular the case law of the European Court of Human Rights as regards restrictions on certain human rights.
4. The CAHDI considers that many political and legal issues are raised by the activities referred to as a “hybrid war”. Furthermore, the CAHDI points out that some of these legal challenges are already addressed by existing binding international legal instruments as well as by several international entities and committees within the Council of Europe and beyond. In the Council of Europe these include, for instance, the *Convention on Cybercrime (ETS No. 185)*; the *Council of Europe Convention on the Prevention of Terrorism (CETS No. 196)* and its Protocol; the Steering Committee on Media and Information Society (CDMSI) and the Steering Committee on Human Rights (CDDH).
5. The CAHDI consequently considers that the proposal of the Parliamentary Assembly concerning the development of new legal standards to prevent and combat the threats of “hybrid war”, in the absence of a common understanding as to what “hybrid war” entails and in the context of on-going work by different sectors, would be premature at this stage.

APPENDIX VI

Presentation by Mr Pavel ŠTURMA, Vice Chair of the International Law Commission, to the 56th meeting of the Committee of Legal Advisers on Public International Law (CAHDI) of the Council of Europe

(Helsinki, 21 September 2018)

“Report on the 70th session (2018) of the International Law Commission”

Madam Chair,
Members of the Committee of Legal Advisers on Public International Law,
Ladies and Gentlemen,

It is a great honour and a privilege for me to address the Committee of Legal Advisers on Public International Law of the Council of Europe (CAHDI) in my capacity as the Vice-Chair of the International Law Commission. I would like to thank the CAHDI for this opportunity to present the work of the Commission at its seventieth session, which just ended in August.

During this session, the Commission had the honour to receive the Chair of the CAHDI, as well as its Secretary, for a traditional exchange of views. This highlighted the important contribution of the CAHDI to the development of international law, as well as to the work of the Commission and of the Sixth Committee of the General Assembly. I am therefore extremely honoured to follow this tradition by continuing the substantive dialogue between our two institutions.

This was a landmark year for the International Law Commission, which celebrated its seventieth anniversary with events organized in New York and Geneva under the overarching theme “70 years of the International Law Commission — Drawing a balance for the future”. In New York, the Commission convened a solemn half-day meeting, which was followed by a half-day conversation with representatives of the Sixth Committee of the General Assembly. The event in Geneva consisted of a solemn meeting and a meeting with legal advisers from States and other international law experts, focusing on various aspects of the work of the Commission in the progressive development of international law and its codification. The commemorative events in New York and Geneva were enriched by a large number of side events, in which the members of the Commission and representatives of States, international organizations and academic institutions participated.

This celebration provided an opportunity to reflect on the achievements and prospects of the Commission since its first session in 1949. Its function, as we all know, is to assist the General Assembly in the implementation of Article 13, paragraph 1, of the Charter of the United Nations by initiating studies and making recommendations to encourage the progressive development of international law and its codification.

Historically, it was considered that the ultimate goal of each topic considered by the Commission should be a multilateral treaty enshrining the results of its work. The most recent experience, however, has shown that the Commission may also fulfil its mandate by other means. Indeed, some of the most authoritative and frequently relied upon instruments arising from the work of the Commission are today in the form of texts that have not, so far, become multilateral treaties or were never intended to be. The Guide to Practice on Reservations to Treaties, for instance, is a significant example of the real impact of the output of the Commission and of its usefulness for institutions such as the CAHDI, which examine reservations and declarations subject to objection, thereby monitoring the States’ adherence to rules of international law in the field of treaty law.

I should stress that the variety of forms of codification does not imply that the Commission is not intending to contribute to the adoption of new multilateral treaties. In recent years, it has recommended to the General Assembly the adoption of conventions on the basis of its draft articles. This was the case recently for the topic “Protection of Persons in the Event of Disasters”, which will be considered by the General Assembly this Fall, and it may be the case in relation to the topic Crimes against humanity that will be considered next year in second reading.

Madam Chair,

The 70th session of the Commission was especially intense and productive: the Commission concluded the second reading of two topics by adopting two full sets of draft conclusions and commentaries thereto, as well as its work on two other topics on first reading. It also continued its consideration of four other topics.

The topic “**Subsequent agreements and subsequent practice in relation to the interpretation of treaties**” is the first topic concluded on second reading at this session, with the adoption of a set of 13 draft conclusions, and commentaries thereto. This was the culmination of ten years of work of the Commission since its decision to include the topic “Treaties over time” in its programme of work in 2008 under the guidance of Mr. Georg Nolte. The purpose of these draft conclusions, which are based on the 1969 Vienna Convention on the Law of Treaties, is to facilitate the work of those who are called on to interpret treaties, States, international organizations, and courts and tribunals at the international and national levels.

At this session, the Commission re-examined the texts adopted in 2016 on first reading in light of the comments and observations made by States. The draft conclusions were subsequently amended, although not significantly, by the Drafting Committee before the Commission could adopt them on second reading together with the corresponding commentaries.

At the conclusion of its work, the Commission paid tribute to the Special Rapporteur, Mr. Georg Nolte, for his outstanding contribution, and recommended that the General Assembly take note in a resolution of the draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties, annex the draft conclusions to the resolution, and ensure their widest dissemination; and commend the draft conclusions, together with the commentaries thereto, to the attention of States and all who may be called upon to interpret treaties.

Madam Chair,

The topic “**Identification of customary international law**” is the second topic concluded on second reading at this session. Work on this topic began in 2012 when the Commission decided to include it in its programme of work and appointed Sir Michael Wood as Special Rapporteur.

As in the case of the topic “Subsequent agreements and subsequent practice in relation to the interpretation of treaties”, the purpose of this topic is not to set forth rules aiming at the conclusion of a new convention. These draft conclusions rather concern the methodology for identifying rules of customary international law. Their purpose is to offer practical guidance on how the existence of rules of customary international law, and their content, are to be determined, and to assist non-specialist in such endeavour. As a recent example, I would like to note the judgment of the Court of Appeal of England and Wales in the case *Freedom and Justice Party v. Secretary of State for Foreign and Commonwealth Affairs*. In this case, the Court relied extensively on the work of the Commission on this topic for identifying a specific rule of customary international law relating to immunities of members of a special mission.

In addition to the comments by Governments and the fifth report by the Special Rapporteur, the Commission had before it an updated bibliography on the topic, as well as a memorandum by the Secretariat on the ways and means for making the evidence of customary international law more readily available. I would like to thank the Secretariat of the CAHDI for providing information to the Secretariat of the Commission. Indeed, as you may see, the memorandum highlights the great

importance of the work of the CAHDI with respect to the availability of evidence of customary international law.

On the basis of comments and observations by Governments, the Commission adopted, on second reading, a set of 16 draft conclusions on identification of customary international law, with commentaries thereto. Here too, the second reading text is not very far from that adopted in 2016, although the commentaries have been refined to reflect the useful observations made since then.

The Commission paid tribute to the Special Rapporteur, Sir Michael Wood, for his outstanding contribution and recommended that the General Assembly, *inter alia*, take note in a resolution of the draft conclusions on identification of customary international law, annex the draft conclusions to the resolution, and ensure their widest dissemination; commend the draft conclusions, together with the commentaries thereto, to the attention of States and all who may be called upon to identify rules of customary international law; and follow up the suggestions in the Secretariat memorandum.

Madam Chair,

As I already mentioned, the Commission also concluded the first reading of two other topics, namely "Protection of the atmosphere" and "Provisional application of treaties".

Let me now turn to the topic "**Protection of the atmosphere**". It is acknowledged that both the human and natural environments can be adversely affected by certain changes in the condition of the atmosphere mainly caused by the introduction of harmful substances, causing transboundary air pollution, ozone depletion, as well as changes in the atmospheric conditions leading to climate change. In this topic, the Commission is seeking to assist the international community as it addresses critical questions relating to transboundary and global protection of the atmosphere.

At the seventieth session, the Commission considered questions concerning implementation, compliance and dispute settlement and adopted three additional draft guidelines on those issues. It thus concluded its consideration of the topic on first reading with the adoption of a draft preamble and 12 draft guidelines, together with commentaries thereto. Governments and international organizations are now being consulted for comments and observations, before the Commission considers those texts on second reading in 2020.

The Commission also concluded its first reading in the topic "**Provisional application of treaties**", with the adoption of the draft Guide to Provisional Application of Treaties, which comprises a set of 12 draft guidelines with commentaries. The purpose of the Guide is to assist States, international organizations and other users concerning the law and practice on the provisional application of treaties by providing answers that are consistent with existing rules and most appropriate for contemporary practice.

The consideration of this topic was based on the fifth report of the Special Rapporteur which provided additional information on the practice of international organizations, and addressed the topics of termination or suspension of the provisional application of a treaty as a consequence of its breach, and formulation of reservations and amendments. It also included a bibliography on the topic. In addition, the Commission had before it the memorandum by the Secretariat reviewing State practice in respect of treaties (bilateral and multilateral), deposited or registered in the last 20 years with the Secretary-General, that provide for provisional application, including treaty actions related thereto.

The draft Guide to Provisional Application of Treaties was also transmitted to Governments and international organizations for comments and observations in view of its consideration on second reading in 2020.

Madam Chair,

As I mentioned earlier, the Commission also continued its work on four other topics.

With respect to the topic “**Peremptory norms of general international law (*jus cogens*)**”, the Commission discussed the consequences of peremptory norms of general international law (*jus cogens*) in general, for treaty law and for the law of State responsibility, as well as other effects of peremptory norms of general international law (*jus cogens*). The Commission decided to refer 14 additional draft conclusions to the Drafting Committee, which provisionally adopted only 7 additional draft conclusions for a lack of time.

The Commission also resumed its work on the topic “**Protection of the environment in relation to armed conflicts**”, under the able leadership of the new Special Rapporteur, Ms. Marja Lehto. The Commission discussed issues related to the protection of the environment in situations of occupation. The Drafting Committee provisionally adopted a new Part Four on Principles applicable in situations of occupations. This Part comprises three draft principles relating respectively to the general obligation of an Occupying Power, to the sustainable use of natural resources and to due diligence. The Commission also adopted 9 draft principles on the basis of the work accomplished in 2016, as well as the corresponding commentaries.

As to the topic “**Succession of States in respect of State responsibility**”, for which I have the privilege to serve as Special Rapporteur, the Commission considered my second report, which addressed the legality of succession, the general rules on succession of States in respect of State responsibility, and certain special categories of State succession to the obligations arising from responsibility. Seven additional draft articles were referred to the Drafting Committee, which provisionally adopted two draft articles as well as an additional paragraph to a third draft article, this was again for a lack of time.

Finally, the Commission began its debate on the sixth report on “**Immunity of State officials from foreign criminal jurisdiction**”, which was devoted to addressing procedural aspects of immunity from foreign criminal jurisdiction. The debate on this report was partial since the report issued at the very end of the session and will resume at the next session.

Madam Chair,

Before I conclude, allow me to say a few words about our future work. As I just mentioned, the Commission concluded its work on the topics “Subsequent agreements and subsequent practice in relation to the interpretation of treaties” and “Identification of customary international law”. The topic “Crimes against humanity” was not considered this year since States and international organizations are currently studying the texts adopted on first reading in 2017. On this basis, the Commission will consider the draft articles on crimes against humanity on second reading next year and should conclude its work at this session. I encourage States that have not yet done so to submit their comments and observations on the draft articles adopted on first reading to the UN Secretariat by 1 December 2018.

This year, the Commission has decided to include a new topic in its programme of work, namely the topic “General principles of law” and has appointed Mr. Marcelo Vázquez-Bermúdez as Special Rapporteur. Over the years, the work of the Commission has contributed to analysis of the first two category of sources of international law enumerated in Article 38 of the Statute of the International Court of Justice, international conventions and international custom. The Commission considered that it would be useful and appropriate to turn to the third category of sources, general principles of law.

In addition, the Commission has included two new topics in its long-term programme of work, namely “Universal criminal jurisdiction” and “Sea-level rise in relation to international law”. The Commission considered that work on the two topics would constitute useful contributions to the progressive development of international law and its codification and would welcome the views of States on those topics.

Finally, I would like to inform you that the Commission has recommended the seventy-first session of the Commission would be held in Geneva from 29 April to 7 June and from 8 July to 9 August 2019.

Madam Chair,

Let me conclude my presentation by reiterating the importance that the Commission gives to its interaction with the CAHDI. The focus of the work of our respective institutions is similar to a large extent although we operate in different contexts. Experience has shown that we benefit greatly from each other's work and from our regular interactions, and I would like to express my gratitude one more time for allowing me to address you today.

I thank you for your attention.