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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW

(CAHDI)

Meeting report

58th meeting
Strasbourg (France), 26-27 September 2019

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

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I. INTRODUCTION

1. Opening of the meeting by the Chair of the CAHDI, Mr Petr VÁLEK

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 58th meeting in Strasbourg (France) on 26-27 September 2019, with Mr Petr Válek (Czech Republic) in the Chair. The list of participants is set out in **Appendix I** to this report.

2. The Chair opened the meeting and welcomed the experts who were attending the CAHDI for the first time, and in particular the new legal advisers from Albania, Iceland, Japan and Poland.

3. The Chair introduced the new member of the CAHDI Secretariat, the trainee of the Public International Law Division, Ms Juliette Guittard, a national of France who is a law graduate and holds a master degree in International and European Law from the University of Lille (France).

4. The Chair informed the CAHDI that the Vice-Chair of the Committee, Ms Elinor Hammarskjöld, was no longer the Director General of Legal Affairs of the Swedish Ministry of Foreign Affairs as she had been appointed Director General for Political Affairs. The Chair explained that Ms Hammarskjöld continued to be the Vice-Chair of the CAHDI for the 58th meeting, but the CAHDI needed to elect a new Vice-Chair for the next term. He further drew the attention of CAHDI members to the rules governing the elections of Chair and Vice-Chair, scheduled to take place the following morning (see agenda item 16).

2. Adoption of the agenda

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

3. Examination and adoption of the report of the 57th meeting

6. The CAHDI examined the report of its 57th meeting (document CAHDI (2019) 13 prov), held in Strasbourg (France) on 21-22 March 2019. The representative from Turkey requested amending paragraph 60 of the draft meeting report to replace the word “illegal” with “terrorist” in relation to the Kurdistan Workers Party (PKK). The Secretariat further explained that the changes that had been requested by Turkey in relation to the 2018 annual Appendix of case-law of the European Court of Human Rights related to public international law, would be made after this meeting.

7. The CAHDI adopted, as amended, the report of its 57th meeting (document CAHDI (2019) 13 prov) and instructed the Secretariat to publish it on the website of the CAHDI.

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

8. 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 21-22 March 2019 in Strasbourg (France). In particular, he provided information to the CAHDI in relation to the main outcomes of the Ministerial Session held in Helsinki in May 2019; the commemorations marking the 70th anniversary of the Council of Europe; the end of the institutional crisis in the Organisation, leading to the decision not to implement the three-year “Contingency Plan”; the election of the new Secretary General; the setting up of a new intergovernmental committee (the *Ad hoc Committee on Artificial Intelligence*) which will hold its first meeting before the end of the year; the entry into force on 1 September 2019 of the *Council of Europe Convention on the Manipulation of Sports Competitions* (CETS No.215); and his participation in a conference on the conclusion, observance and interpretation of international treaties, jointly organised by the Ministry of Foreign Affairs of Belarus and the Council of Europe, which was held in Minsk (Belarus) on 19-20 September 2019. He further called on member States to sign and ratify the *Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (CETS No. 223) so that it can promptly enter into force.

9. The representative of Belarus thanked the Director of Legal Advice and Public International Law for his participation in the above-mentioned Minsk seminar and for the presentation he delivered on that occasion. He further thanked the Director of the Legal and Treaty Department of Poland's Ministry of Foreign Affairs, Mr Konrad Marciniak, for taking part in the seminar and sharing his country experience.

10. The representative of Cyprus informed the CAHDI that the internal procedure in relation to the ratification of the *Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (CETS No. 223), is expected to be completed shortly.

11. The CAHDI took note of the information provided by the Director of Legal Advice and Public International Law of the Council of Europe about the most important developments within the Council of Europe since the last meeting of the Committee.

II. ONGOING ACTIVITIES OF THE CAHDI

5. Committee of Ministers' decisions of relevance to the CAHDI's activities, including requests for CAHDI's opinion

a. Revised Draft Terms of Reference of the CAHDI for 2020-2021

12. The Chair introduced the revised draft Terms of Reference of the CAHDI for 2020-2021, as contained in document CAHDI (2019) 15 prov, and explained the background of the additional changes introduced by the Council of Europe's Directorate of Programme and Budget after the previous CAHDI meeting, which are part of changes made to all draft terms of reference of Council of Europe committees for 2020-2021. In particular, additional changes have been made to the "Main Tasks" as well as to the "Specific Tasks" of the Committee, with three new main tasks (sub-paragraphs iv, v and vi) and one new specific task (sub-paragraph viii) having been added to the draft terms of reference. The Chair further informed about an amendment submitted by the Czech delegation in relation to sub-paragraph viii) under "Specific Tasks", aimed at limiting CAHDI's mandate to "follow progress towards the United Nations Sustainable Development Goals (UNSDGs) [...] in the area of public international law". He kindly asked CAHDI members to contact their Permanent Representations in Strasbourg in support of this amendment, which will be discussed at the next meeting of the Committee of Ministers' Rapporteur Group on Legal Co-operation (GR-J) on 25 October 2019.

13. The CAHDI examined its revised draft Terms of Reference for 2020-2021, to be adopted by the Committee of Ministers on 19-21 November 2019 at the 1361st (Budget) meeting of the Ministers' Deputies.

b. Exchange of views between the Chair of the CAHDI and the Ministers' Deputies

14. The Chair informed the CAHDI about his presentation of the Committee's work to the Ministers' Deputies on 12 June 2019, and his subsequent exchange of views with them. His presentation is contained in document CAHDI (2019) Inf 2 (in English only). He further informed about the high appreciation of CAHDI's work, as reflected in the comments made by the numerous delegations that took the floor after his intervention, and thanked the member States that supported him in the meeting of the Ministers' Deputies.

15. The Chair asked CAHDI experts for feedback on the idea to hold a lunch-time side-event on "*The CAHDI and its Contribution to the International Law Practice*" in the margins of the forthcoming meeting of the United Nations Sixth Committee during the "International Law Week", on 31 October 2019. The Chair also informed the CAHDI about the expressions of interest by Chile, South Korea and China to apply for observer status in the CAHDI, and the opportunity provided by such a side-event to inform UN members from outside Europe about CAHDI's work and how to participate in it.

16. The representative of the Netherlands thanked the Chair for the work he has carried out this year in support of the Committee and its ongoing work. He underlined the importance of making CAHDI's work more visible and therefore fully supported the idea of a side-event during the Sixth Committee meetings.

17. The representative of Spain also agreed with the need to communicate CAHDI's work more widely, and welcomed the good opportunity for doing so through a side-event in the margins of the Sixth Committee meetings. He underlined the fact that out of the last five Under-Secretary-Generals for Legal Affairs and Legal Advisers of the United Nations, three had been CAHDI members - and that the two previous Presidents of the International Court of Justice (Peter Tomka and Ronny Abraham) had also been Chair of the CAHDI and CAHDI member, respectively.

18. The CAHDI took note of the exchange of views that took place on 12 June 2019 in Strasbourg between the Chair of the CAHDI and the Ministers' Deputies. It further agreed to pursue with the organisation, by the Permanent Mission of the Czech Republic to United Nations and the Council of Europe, of a side-event in the margins of the Sixth Committee in order to present CAHDI's work and inform about how non-member States of the Council of Europe can participate in it.

c. Other Committee of Ministers' decisions of relevance to the CAHDI's activities

19. The Chair presented a compilation of the Committee of Ministers' decisions of relevance to CAHDI's activities (document CAHDI (2019)16 *Restricted*), including the Decisions and Declaration adopted on 17 May 2019 at the 129th Session of the Ministers' Deputies. Furthermore, the CAHDI noted that on 2 May 2019 the Committee of Ministers examined and took note of the Abridged Report of its 57th meeting (Strasbourg, France, 21-22 March 2019).

20. Reporting back on some of the main highlights of Finland's Presidency of the Committee of Ministers of the Council of Europe (November 2018 - May 2019), the representative of Finland stressed the fact that the deep crisis of the Organisation had marked their Presidency of the Committee of Ministers, and thanked colleagues for their support in solving it. She further recalled the three priorities of the Finnish Presidency (strengthening human rights and the rule of law; equality and women's rights; and openness and inclusion) and the progress made on all of them. The representative of Finland further highlighted the importance that Finland attaches to strengthening the role and participation of civil society organisations and national human rights institutions in the Council of Europe, including in the work of the CAHDI. She also referred to the current Finnish Presidency of the EU Council and progress made to resume negotiations towards EU accession to the *European Convention on Human Rights*, as well as work towards EU ratification of the *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence* (CETS No.210), which is also one of their priorities.

21. The representative of France welcomed the information provided by the Finnish delegation and thanked them for the work accomplished during their Presidency of the Committee of Ministers. He underlined that France's priorities (preserving and consolidating the European system of human rights protection; promoting equality and living together; and meeting the new challenges facing human rights and the rule of law) continue the actions taken by Finland, in particular as regards the rights of the most vulnerable. The representative of France further informed the CAHDI that he will present a full account of France's Presidency at the next CAHDI meeting. In addition, he highlighted the Conference of the Heads of Supreme Courts of Council of Europe member States, held in Paris on 12-13 September 2019.

22. The CAHDI took note of the information provided by the delegations of Finland and France in relation to the previous and current Presidency of the Committee of Ministers, respectively. It also took note of the decisions of the Committee of Ministers relevant to its work.

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

23. The Chair presented the topic “*Settlement of disputes of a private character to which an international organisation is a party*” which had been included in 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 at facilitating an exchange on topical issues 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, and the effective remedies available to claimants in these situations. The document contains five questions addressed to members of the CAHDI.

24. The written comments to these questions submitted by 20 delegations (Albania, Andorra, Armenia, Austria, Belarus, Belgium, Canada, Czech Republic, Denmark, Estonia, Germany, Greece, Hungary, Israel, Mexico, Serbia, Slovenia, Spain, Switzerland and the United Kingdom) are contained in document CAHDI (2019) 3 *prov Confidential Bilingual*. There have been no new contributions submitted to the Secretariat since the last CAHDI meeting.

25. The Chair invited further written contributions of CAHDI delegations on the five questions on this issue.

26. The Chair recalled that, at the CAHDI meeting in September 2017, the representative of the Netherlands had 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. He further mentioned that the representative of the Netherlands had informed the CAHDI at previous meetings about a possible follow-up on this matter within the UN General Assembly. Finally, he recalled that at the 57th CAHDI meeting, some delegations had shared their experience on the suing of governments in relation to peace-keeping operations and missions.

27. The representative of the Netherlands underlined that they continue to consider this an important issue, but also a complex and a sensitive one. As there is not a one-size-fits-all approach but rather a tailor-made approach is needed, and in light of the cases in the recent years, they would like to focus on the practice of the United Nations in this respect. The representative of the Netherlands further informed the CAHDI that they are discussing with the UN Office for Legal Affairs about how to proceed. They are currently considering to raise this issue in the UN General Assembly, under the agenda item on the rule of law, and they would like to invite the UN Secretary General to address the matter in his report on the rule of law at the national and international levels, in order to share the views and practices of member States. Furthermore, the representative of the Netherlands underlined that as the Council of Europe is the only international organisation addressing this issue, he would like to invite the Secretariat to prepare a document on the practice of the Council of Europe in this respect, for discussion by the CAHDI.

28. In reply, the Secretariat explained that the experience on “external” litigation against the Council of Europe is limited, but a short document with this information can be prepared to facilitate discussions at the next CAHDI meeting, involving other Departments of the Council of Europe in order to cover both labour disputes and civil liability. Other international Organisations represented in the CAHDI were also invited to submit their contributions to be included in the working document that will be prepared.

29. The Director of the Council of Europe’s Directorate of Legal Advice and Public International Law (DLAPIL) informed the CAHDI about a judgment of the Tax Court of Berlin-Brandenburg (*Finanzgericht Berlin-Brandenburg*) in the case *Olaf Brosig v. Finanzamt Wilmersdorf*¹, of 22 August 2019. The Court dismissed the plaintiff’s claim that as a freelance interpreter who sometimes worked for the Council of Europe, he was subject to its rules as regards the exemption of income tax. The Court found the claim to be ill-founded after analysing the different possible legal basis, including the

¹ Ref. 12 K 12304/16.

Council of Europe's General Agreement on Privileges and Immunities and two internal Rules of the Council of Europe. The Court held that the object and purpose of the Council of Europe's General Agreement does not require a tax exemption for freelance interpreters. The Director of DLAPIL further informed the CAHDI that the Tax Court had followed a decision by the German Federal Tax Court in 1998² according to which interpreters cannot be considered as "officials" of the Council of Europe. This judgment can be appealed and is likely to return to the German Federal Tax Court.

30. The representative of NATO explained that if the Organization is involved in military operations, e.g. in the context of a mission approved by the UN Security Council, such function is carried out by the military forces of individual Allies rather than by the Organization itself. NATO also has an administrative tribunal to address labour disputes and they include arbitration clauses in their contracts and procurement processes. He agreed to contribute to the discussion paper on this issue.

31. The representative of INTERPOL informed the CAHDI about their practices regarding privileges and immunities, as well as some of the challenges they face as they do not have an international convention on this issue. Their practice is to adopt bilateral agreements which each country hosting INTERPOL offices, in particular with France, as INTERPOL's headquarters is based in Lyon since 1989. The representative of INTERPOL further informed the CAHDI that they have a model bilateral agreement approved by their General Assembly which they use in case of specific events, but the negotiation and domestic approval procedure is often cumbersome and long. Therefore, INTERPOL is searching for new solutions as an increasing number of missions and projects are being deployed in member States, at their request, and a model bilateral agreement to be applied to those missions and projects is under consideration. Finally, the representative of INTERPOL called on CAHDI experts to identify contact points at the national level with whom to discuss possible short-, medium- and long-term solutions, and to inform INTERPOL of any relevant experience and/or idea in this field that they could use.

32. The representative of the European Union informed the CAHDI about a case concerning both the Council of Europe and the EU, as a [judgment by the European Court of Human Rights on just satisfaction of 26 October 2010](#)³, awarding the applicant (Mr Dines Ramon, a Cypriot national forced to abandon his property in Northern Cyprus in 1974) 450,000 euros for the loss of use of his property in Northern Cyprus, which has not yet been executed. In June 2019, the same applicant secured an interim judgment from the Famagusta District Court in Cyprus, claiming over 585,000 euros from Turkey's EU pre-accession funds relating to the protection of human rights. However, the District Court from Cyprus has asked the Court of Justice of the European Union (CJEU) to lift the immunity of the European Commission as an organ of the EU, in relation to the funds targeted. This question is pending at the CJEU. The representative of the EU further informed the CAHDI that they have limited case-law regarding the conditions for lifting immunity.

ii. Immunity of State owned cultural property on loan

33. 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

34. The Chair recalled that this topic was included in CAHDI's agenda at its 45th meeting, in March 2013, following a joint initiative by 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 2004 *United Nations Convention on Jurisdictional Immunities of States and Their Property* (henceforth the 2004 UN Convention), in order to guarantee the immunity of State cultural property on loan. The [Declaration on Jurisdictional Immunities of State Owned Cultural Property](#) was 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.

² Ref. IV R 75/97.

³ ECtHR, *Ramon v. Turkey* (application no. 29092/95), Chamber judgment (merits) of 22 September 2009.

35. 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, Czech Republic, Estonia, Finland, France, Georgia, Holy See, Hungary, Ireland, Latvia, Luxembourg, the Netherlands, Portugal, Romania, Russian Federation and Slovak Republic). 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](#).

36. The representative of Sweden informed the CAHDI that as a first step to pass a new law on immunity from seizure for cultural objects on loan to Swedish museums from institutions abroad, the Government has appointed a commission of inquiry which is expected to present its results on 31 October 2020.

37. The Chair strongly encouraged those States that have not yet done so, to sign this Declaration, since it has proved to be a practical tool to facilitate the loans of State-owned cultural property. He further offered information on the usefulness of the Declaration derived from the experience of the Czech Republic in its application.

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

38. 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.

39. The CAHDI welcomed the replies submitted by 27 delegations (Albania, Andorra, Armenia, Austria, Belarus, Belgium, Canada, Croatia, Cyprus, 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 (2019) 4 *prov Confidential Bilingual*). There have been no new contributions to this questionnaire since the last CAHDI meeting.

iii. Immunities of special missions

40. Delegations were reminded that the topic of “*Immunities of special missions*” was included in the agenda of the CAHDI in September 2013, at 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.

41. Sir Michael WOOD, member of the United Nations International Law Commission (ILC) and former Chair of the CAHDI, and Mr Andrew SANGER, Lecturer at the Faculty of Law of the University of Cambridge presented the latest CAHDI publication on “*Immunities of special missions*”, including the analytical report contained therein which takes into account the main trends arising from the replies by 38 delegations to the questionnaire prepared by the CAHDI on this matter (Albania, Andorra, Armenia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Hungary, Ireland, Israel, Italy, Japan, Latvia, Malta, Mexico, Republic of Moldova, the Netherlands, Norway, Romania, Russian Federation, Serbia, Slovenia, Spain, Sweden, Switzerland, Ukraine, the United Kingdom and the United States of America). These replies are included in document CAHDI (2019) 5 *prov Bilingual*, as well as in the Appendix of the new CAHDI book. Copies of this latest book, published by Brill-Nijhoff Publishers, were distributed to all CAHDI delegations.

42. Sir Michael WOOD underlined the importance of the four CAHDI books, including this latest one, based on responses to a questionnaire, which is a good and well-tried formula and also a valuable source of materials and analysis of the law, in particular on topics that are understudied or

even underdeveloped. Sir Michael drew CAHDI's attention to Chapter 4 of the book, where the authors set out their conclusions on the present state of international law on special missions, including the consideration that the basic characteristics and rules of special missions (i.e. the requirements of mutual consent and representation of the sending State; and the granting of personal inviolability and immunity from criminal jurisdiction for the duration of the special mission and during a reasonable period of time for travel) are regulated by customary international law.

43. Furthermore, Mr Andrew SANGER presented the importance of CAHDI's work on special missions in the recent *Freedom and Justice Party*⁴ litigation in the UK, where the CAHDI's work played a major role in the Divisional Court of the High Court of England and Wales, in 2016, and in the Court of Appeal, in 2018. He underlined that these judgments demonstrate the value of CAHDI's questionnaire on immunities of special missions, as it provides an authoritative compilation of state practice and *opinio juris* on special missions. Mr SANGER explained that in the *Freedom and Justice Party* case, both the Divisional Court and the Court of Appeal concluded that customary international law requires members of a special mission to be granted inviolability and immunity from criminal jurisdiction; and that these rules form part of English law without the need for an Act of Parliament. Finally, Mr SANGER pointed out that the major role played by the CAHDI questionnaire in the English courts confirms the high value and importance of CAHDI's work and of questionnaires like the one on special missions.

44. The representative of Germany underlined the importance of this topic given the developments in the International Law Commission (ILC). He raised the issue of the implicit or even retroactive consent of the receiving State and whether immunities can be implicit or even retroactive, asking also whether there is enough practice in the topic to make it a rule of customary international law.

45. The representative of France underlined that this CAHDI book represents one of the useful results of CAHDI's work, also for practitioners outside the Council of Europe. He welcomed the fact that it was a bilingual publication and asked how the Convention on Special Missions can be considered today to reflect customary international law and whether future work needs to be carried out on to codify the customary international law on immunities of special missions.

46. The representative of Slovakia asked whether the travel of officials without the consent and knowledge of the host State within the EU, in particular for events at the local level, is to be considered as special missions.

47. In reply to the questions raised, Sir Michael WOOD explained that there is nothing in customary international law that requires consent to be given in advance or explicitly, as customary international law is flexible enough to allow for post-facto and implicit consent. However, he agreed that it is better to give consent to special missions in advance and explicitly. Sir Michael WOOD added that he was surprised by some replies to the questionnaire stating that only "official act immunity" was allowed, which could be problematic. He further considered that the 1969 UN Convention on Special Missions is not "depassé", as some of its provisions reflect customary international law (as regards the core immunities) and it has also influenced it. Finally, Sir Michael WOOD pointed out that implicit consent, rather than ex-post consent, triggers immunity, and that local events may not be considered special missions but the receiving State needs to say whether they have consented or not, whether implicitly or retroactively. He added that English Courts would accept the views of the Government on this matter.

iv. *Service of process on a foreign state*

48. 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, 31 delegations (Albania, Andorra,

⁴ *R (on the application of Freedom and Justice Party) v Secretary of State for Foreign and Commonwealth Affairs* [2016] EWHC 2010 (Admin) and [2018] EWCA Civ 1719; [2019] 1 All ER 133.

Austria, Belarus, Belgium, Bosnia and Herzegovina, Canada, Cyprus, Czech Republic, Estonia, 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 document CAHDI (2019) 6 *prov Confidential Bilingual*.

49. The Chair noted that there have been no new replies since the last CAHDI meetings and he encouraged delegations which had not yet done so, to submit or update their contributions to the questionnaire, which are treated as confidential.

50. 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.

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

51. 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) since its 29th meeting in March 2005. In this respect, he 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. He further underlined that, up to this CAHDI meeting, 22 States had ratified, accepted, approved or acceded to the 2004 UN Convention. Finally, he 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 is needed.

52. The CAHDI took note that since its last meeting no State represented in the Committee had signed, ratified, accepted, approved or acceded to the *United Nations Convention on Jurisdictional Immunities of States and Their Property* which, to date (27 September 2019), has 22 Parties.

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

53. The CAHDI noted that, up to this meeting, 35 States (Andorra, Armenia, Austria, Belgium, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Mexico, the Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, 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*".

54. The Chair invited delegations to submit or update their contributions to the relevant database so that it provides a picture as accurate and varied as possible of the current State practice regarding State immunities.

55. The representative of the United States of America informed the CAHDI of two cases he wanted to bring to the experts' attention. One concerns the interpretation by the US Supreme Court of the International Organisations Immunities Act (IOIA), delivered on 27 February 2019. The Supreme Court ruled, in the case of [*Jam v. International Finance Corporation*](#), that the IOIA provides international organisations with the same immunities from jurisdiction of US courts as they are currently afforded to foreign States, and not the absolute immunity given to foreign States when the IOIA was enacted in 1945. The case concerned a loan provided by the International Finance Corporation (IFC) to the owner of a power plant in India, for the plant's construction and operation, and requiring the recipient of the loan to manage environmental and social risks. The Indian farmers and fishermen in India who suffered environmental damage caused by the power plant sued the IFC, which asserted that it had absolute immunity under the IOIA. The US Supreme Court returned the case to the District Court for further proceedings to decide whether there was an exception to immunity under the 1976 Foreign Sovereign Immunities Act and whether that could apply in this

case. The representative of the United States of America further informed the CAHDI about a case involving the United Nations, as on 28 December 2018 the 2nd Circuit Court of Appeals issued a decision in [LaVenture v. United Nations](#), where the plaintiffs had alleged that the UN was responsible for the cholera epidemic in Haiti. The 2nd Circuit Court referred to its previous decision from 2016 in [Georges v. United Nations](#), upholding the absolute immunity of the UN. However, on 10 May 2019 the plaintiffs filed a petition with the Supreme Court, which will decide on whether to review this case.

56. The representative of Canada recalled the information he had provided to the CAHDI at its last meeting and gave an update on developments since March 2019 concerning the detention in China of a former Canadian diplomat (Michael Kovrig) and Michael Spavor, a Canadian businessman working in China and North Korea. Both Mr Kovrig and Mr Spavor were formally arrested in May 2019 and moved to a formal prison facility. Their situation has improved only to the extent that they are no longer subject to “residential surveillance at a designated place”, which is also a secret location. They were interrogated for more than 100 days and the charges against them appear to be endangering China’s national security, but such charges are still pending. Investigating authorities have an additional seven months from the date of arrest before making charges and sending the cases for prosecution, and therefore a review by a prosecutor may not occur until December 2019. The Chinese authorities have repeatedly questioned Michael Kovrig about his activities as an accredited Canadian diplomat between 2014 and 2016. The representative of Canada explained that China denies the applicability to this case of Article 39(2) of the *Vienna Convention on Diplomatic Relations* (VCDR), regarding residual immunities, and the Canadian Embassy in China is provided with little information on the case and it is not allowed to participate. The representative of Canada expressed concerns that if Michael Kovrig is ultimately prosecuted for diplomatic activities protected by Article 39(2) of the VCDR, it may be impossible for the Canadian authorities to get the court to consider and respect the Vienna Convention immunities. The representative of Canada further informed the CAHDI that, by contrast, Huawei’s executive Ms Meng Wanzhou remains on court order bail in Canada, following a transparent court hearing. She continues to live in her own home in Vancouver while awaiting her extradition hearing, scheduled for January 2020. She enjoys unrestricted and unsupervised counsellor access and is well represented by a legal team of her choosing. Finally, the representative of Canada thanked the CAHDI members and observer States that have provided significant support on residual immunities and detention issues, including direct intervention with the Chinese authorities. He concluded by recalling the importance of testing the legitimacy of these detentions and their conditions, as well as the contravention of the diplomatic immunities provided by the VCDR, all aimed at upholding the fundamental principles of international law on diplomacy.

57. The representative of Belgium further informed the CAHDI about a judgment of their *Cour de Cassation* delivered on 4 March 2019⁵ and regarding the employment contract of an Embassy worker, dismissed in 2010 for serious misconduct and who had demanded compensation from the employing State, which claimed immunity of jurisdiction in Belgian courts. In its June 2014 judgment, the Brussels Labour Court had recalled the principles of customary international law and the 2004 Convention, according to which a State cannot invoke its immunity of jurisdiction in judicial proceedings concerning an employment contract that has to be executed in another State, unless it is in relation to a position exercising public authority. The Labour Court carried out a detailed examination of this issue and refused to grant immunity of jurisdiction as it considered that the position of the applicant did not involve the exercise of public or diplomatic authority. In March 2019, the *Cour de Cassation* rejected the appeal and confirmed the earlier judgment, validating the need to conduct a factual examination of a person’s position in order to determine whether a State can invoke its immunity of jurisdiction in a procedure related to an employment contract.

58. The representative of Austria informed the CAHDI about three cases of State practice involving immunities of States and international organisations. The first one relates to proceedings before the US Supreme Court regarding the service of process on a foreign State, in the case [Republic of Sudan v. Rick Harrison](#). In this case, the Republic of Austria supported the arguments brought forward as *amicus curiae* by the US government, underlining that the proper way of serving

⁵ Ref. S.15.0051.N (*Juridat – case law database*).

a foreign State was not serving its Embassy abroad, but going through diplomatic channels. In a note submitted in the proceedings, Austria argued that Article 22 of the *United Nations Convention on Jurisdictional Immunities of States and Their Property* regarding service of process to foreign States reflects the current state of customary international law. Reference was also made to a judgment of the European Court of Human Rights in the case [Wallishauser v. Austria](#), where these rules were confirmed. The representative of Austria further explained that they also underlined that Article 22 of the *Vienna Convention on Diplomatic Relations* establishes that neither judicial nor administrative acts of public authority by the receiving State are to be exercised in the premises of a diplomatic mission. The US Supreme Court followed these arguments in its decision on 26 March 2019. The second piece of information provided by the representative of Austria was related to their consideration of the rule of service of process to foreign States through diplomatic channels as being of fundamental importance. The Austrian authorities are planning to file a reservation to the (*Hague*) *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, as they are in the process of joining this Convention. The reservation will state that the service of documents addressed to the Republic of Austria, including its political subdivisions, authorities and persons acting on its behalf shall be effected through diplomatic channels. Finally, the representative of Austria informed the CAHDI about a case pending before the Austrian Constitutional Court where the applicant is challenging the immunity of the Organisation of the Petroleum Exporting Countries (OPEC) based on the judgment of the European Court on Human Rights in [Waite and Kennedy v. Germany](#). It is a case about a labour dispute and the right to an effective remedy pursuant to Article 6 of the *European Convention on Human Rights* and for Austria this is particularly difficult as the *European Convention on Human Rights* is part of its constitutional law. It is one of the first cases where the constitutionality of a headquarters agreement is challenged.

59. The representative of France expressed their solidarity with the Canadian colleagues and also their concern as regards the interpretation that appears to be behind the Chinese practice on diplomatic immunity and according to which reasons of national security could be invoked to dismiss diplomatic immunity. The representative of France further informed the CAHDI about a decision of his country's *Conseil d'Etat* from 23 April 2019 concerning an issue to which other States participating in the CAHDI are equally confronted: the return of minors held in detention in North-East Syria. Cases have been brought to French administrative courts requesting them to order the repatriation of certain minors that are held in Syrian camps. The *Conseil d'Etat* denied the petition on the basis of lacking competence to ask the Government to do so as France has no jurisdiction over the territories where the minors are detained, and those persons are under the control of foreign authorities. The representative of France further explained that the *Conseil d'Etat* applied to this case a concept from the French jurisprudence: "acts of government", which are actions of a very political nature on which judges refrain from applying judicial control. This concept is nowadays very limited in the case-law of the *Conseil d'Etat* and is usually applied to the relations between Government and Parliament, as well as to international relations. The representative of France also mentioned the interesting debates that are taking place as to whether the French government has jurisdiction over people in the affected territories. In this respect, the case-law of the European Court of Human Rights has been followed as regards the criteria that need to be applied in order to establish that a State has extra-territorial jurisdiction and which correspond to two types of cases: where agents of the State have direct control over the relevant persons; and where the local administration is subordinated to a foreign State. The French authorities consider that they have not been in either of these situations. A separate issue is whether it is possible to offer consular assistance in these cases, but in our case there is no French consular service in Syria. The issue of jurisdiction is very important as it determines whether there are obligations towards these persons in Syria. Finally, the representative of France underlined the usefulness of exchanging information on this issue as relevant case-law and proceedings from one State can be used elsewhere.

60. The Chair indicated that the Czech Republic has an embassy in Syria and has executed the role of the protecting power for the United States of America and the UK, among others, offering this kind of assistance possibly also to France. In reply, the representative of France explained that the area that concerns them is in North-East Syria, a territory which is not controlled by the Syrian government but by Kurdish forces and therefore an Embassy in Damascus cannot provide the required assistance.

61. The representative of Germany provided the CAHDI with information on the repatriation of persons that are in North-East Syria, under control of the Kurdish forces, as it is an issue that concerns many legal advisers in Europe. Germany is currently faced with about a dozen cases having reached Berlin's Administrative Tribunal, a first instance court, involving the repatriation of persons from Syria, and with a diversity of cases, not only those concerning children alone, but also involving children with their accompanying parents, usually the mother; and one case about a suspected male foreign terrorist fighter, a German citizen, who is held in detention. The cases are also at different stages in the procedure: some have been decided by the administrative court in Berlin (these cases concern children that are either alone or accompanied by their mother) and where the Berlin court has ruled that Germany is under an obligation to repatriate the children, and the court's view is that they cannot be repatriated without the mother, so Germany is under the obligation to repatriate the mother as well. These decisions are currently under appeal. The representative of Germany further explained that the decision by the Berlin Administrative Court was based solely on domestic law, and in particular on obligations for the government derived from the Constitution. Therefore, the German court has not followed the same line as the French *Conseil d'Etat*. The German courts have acknowledged that there is some margin of manoeuvre for the government in their relations with foreign powers or countries but, in the current cases, the situation of the children is so critical that this would overrule any other considerations. The German authorities are also awaiting another decision on this issue by the administrative court in Berlin-Brandenburg. Finally, the representative of Germany concluded that they are planning to repatriate children from Syrian camps on a case-by-case basis, to the level of about 130-140 children, very often small children. Four children were already repatriated some weeks ago, including three orphans and one child who was in need of surgery, and whose mother had consented to the trip while she stayed in the camp with her two other children. The difficulties and challenges to repatriate people from camps in North-East Syria, including from a practical and security viewpoint, were also underlined, given Germany's lack of consular presence in that region.

62. The representative of Canada agreed that this is something that many legal advisers are confronted with now and the situation is very political but also humanitarian for the families concerned. Canada does not have cases at the moment but they expect that they will be getting them. The representative of Canada asked the German delegation whether the German government or the Courts require DNA testing of the concerned children in order to determine that they are Germans who should be repatriated. In reply, the representative of Germany indicated that the identification of those persons is a very important issue and in the case of the four children who have already been repatriated they did do DNA testing, although practically it is not very easy to do so. In the cases mentioned, the tests were carried out by German NGOs that are prepared to help with the identification, but it is uncertain whether they will be able to do so with all the children involved. The German authorities are trying also to use documents that are still in Germany, from the families that have left. Some of the children were born in Germany, which facilitates the identification. But in the case of very small children, DNA testing is probably the only way to make a determination.

63. The Chair referred to the document on "*Exchange of national practices 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 (2019) 7 prov *Confidential Bilingual*), and noted that, up to this CAHDI meeting, 30 delegations (Albania, Austria, Belgium, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Israel, Italy, Japan, Latvia, Luxembourg, Mexico, Montenegro, the Netherlands, Norway, Portugal, Romania, Russian Federation, 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 have not yet done so to submit or update their replies to the questionnaire.

64. The CAHDI took note of the information provided by delegations related to States' or international organisations' immunities.

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

65. The Chair introduced the document CAHDI (2019) 8 *prov Bilingual* on the “*Organisation and functions of the Office of Legal Adviser of the Ministry of Foreign Affairs*” and welcomed the replies of 40 States and one Organisation (Albania, Andorra, Armenia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Israel, Italy, Latvia, Lithuania, Luxembourg, Malta, Mexico, Montenegro, Norway, Republic of Moldova, the Netherlands, Romania, Serbia, Slovenia, Spain, 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 contributions were received from the Netherlands and Spain, while revised contributions were received from Canada, Romania and Switzerland.

66. The Chair indicated that they would soon review the contribution from the Czech Republic and invited delegations to send to the Secretariat any further information in order to complete their replies. 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.

67. The Chair made a call to the 11 delegations (Azerbaijan, Bulgaria, Iceland, Japan, North Macedonia, Poland, Portugal, Russian Federation, Slovak Republic, 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.

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

68. The Chair introduced document CAHDI (2019) 9 *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, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Mexico, the Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, the United Kingdom, the United States of America and the European Union). The Chair further encouraged CAHDI experts to insert new contributions or update existing ones.

69. The CAHDI took note that no new information on this issue was submitted by delegations.

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

70. The CAHDI took note of the annual Appendix to the document with the case law of the European Court of Human Rights related to public international law ([document PIL \(2019\) Case Law Appendix I](#)), prepared by the Secretariat, which contains press releases and legal summaries of relevant judgments and decisions of the European Court of Human Rights from 1 January to 31 December 2018. The CAHDI noted that this document is published in the CAHDI website.

71. The representative of Spain informed the CAHDI about the decision of the European Court of Human Rights, on 28 May 2019, in the case *Forcadell i Lluís and Others v. Spain*⁶, whereby the Court unanimously declared the application inadmissible. The applicants were 76 Spanish nationals,

⁶ ECtHR, [Forcadell i Lluís and Others v. Spain](#), application no. 75147/17, Chamber Decision of 28 May 2019.

members of the Catalanian parliament, including the Presidents of the Catalanian Parliament and the Catalanian Government, respectively. The applicants had contested the decision of Spain's Constitutional Court to suspend the convening of a plenary session of the Catalanian Parliament, which had not been respected. The Court concluded that the interference with the applicants' right to freedom of assembly had met a "pressing social need" and was accordingly "necessary in a democratic society", in particular in the interests of public safety, for the prevention of disorder and for the protection of the rights and freedoms of others, within the meaning of Article 11 § 2 (freedom of assembly and association) of the *European Convention on Human Rights*. The representative of Spain also referred to the acknowledgement by the Council of Europe's Venice Commission that the decision of the Spanish Constitutional Court had aimed to protect the country's Constitutional order. The Court also dismissed the alleged violation of Article 3 of Protocol No.1 to the *European Convention on Human Rights* (right to free elections), as the convening of the plenary sitting of the Catalanian parliament had been done in pursuance of a law which had been suspended by the Constitutional Court and therefore was temporarily inapplicable. Finally, as regards the alleged violation of Article 6 (right to a fair trial) of the *European Convention on Human Rights*, the Court considered that this complaint had not been substantiated, and therefore dismissed it as being manifestly ill-founded.

72. The representative of France informed the CAHDI about the case *A.M. v. France*⁷ regarding an Algerian national sentenced for terrorism and due to be expelled from France after completing his sentence. The Court suspended his expulsion in relation to possible ill treatment and torture upon his return to Algeria. France had requested a hearing to call the attention of the Court to the evolution of the situation in Algeria, including reports by NGOs and the Government, showing an improvement and indicating that the Court needed to change its position and evolve its case-law, rather than apply a blanket suspension of returns to Algeria. The Court considered that arguments were needed to justify the suspension of returns to Algeria, and concluded that the general situation as regards individuals linked to terrorism in Algeria did not, in itself, preclude the applicant's deportation. Therefore, it held unanimously that if the decision to deport the applicant to Algeria is enforced, there will be no violation of Article 3 (prohibition of torture and inhuman or degrading treatment) of the *European Convention on Human Rights*.

73. The representative of Belgium informed the CAHDI about the case *Romeo Castaño v. Belgium*⁸ concerning the refusal to execute a European Arrest Warrant issued by Spain in respect of a Spanish national suspected of shooting the applicants' father, who was murdered in 1981 by a commando unit claiming to belong to the terrorist organisation ETA. The Court found a violation of Article 2 (right to life) of the *European Convention on Human Rights* under its procedural aspect (effective investigation). However, the Court stressed that the finding of a violation in no way lessened the obligation for the Belgian authorities to verify that the individual concerned would not run a risk of treatment contrary to Article 3 of the Convention if surrendered to the Spanish authorities. The Court awarded compensation to the applicants in respect of non-pecuniary damages.

74. The representative of Germany informed the CAHDI about a case before the Court, *Hanan v. Germany*⁹, regarding an airstrike in Afghanistan that killed the two sons of the applicant, an Afghan national. The case concerns Article 1 of the *European Convention on Human Rights*, as the applicant claims that his sons were under Germany's jurisdiction within the meaning of that provision. The airstrike was carried out by the International Security Assistance Force (ISAF) in Afghanistan, which had been authorised by the UN Security Council. German troops were deployed as part of ISAF and the relevant airstrike, on 4 September 2009, was ordered by a German Colonel. This case will be examined by a Grand Chamber as, on 27 August 2019, the Chamber to which the case was allocated relinquished jurisdiction in favour of the Grand Chamber, in accordance with Article 30 of the *European Convention of Human Rights*.

⁷ ECtHR, *A.M. v. France*, application no. 12148/18, Chamber Judgment of 29 April 2019 (final on 29 July 2019).

⁸ ECtHR, *Romeo Castaño v. Belgium*, application no. 8351/17, Chamber Judgment of 9 July 2019.

⁹ ECtHR, *Hanan v. Germany*, application no. 4871/16.

75. The representative of Georgia informed the CAHDI about the [decision of the Committee of Ministers of 25 September 2019](#) regarding the execution of the Court's judgment on just satisfaction from 31 January 2019 in the inter-States case *Georgia v. Russia*¹⁰. The Court had awarded the applicant Government a lump sum of 10 million Euros in respect of non-pecuniary damages suffered by a group of at least 1500 Georgian nationals, victims of a co-ordinated policy of arrest and expulsion. The deadline for payment having expired on 30 April 2019, the Committee of Ministers called upon the Russian authorities to pay without delay the sums awarded, together with the default interest accrued.

76. The representative of Turkey referred to several judgments of the European Court of Human Rights concerning Turkey, which are included in the annual Appendix of the case-law of the *European Convention on Human Rights*, and which his delegation considers that they are not directly linked with public international law issues. He further requested the CAHDI to consider the inclusion of such cases in the Appendix of case-law.

77. The Secretariat informed the CAHDI that the choice of cases included in the compilation first of all reflects those cases mentioned by CAHDI members at CAHDI meetings and, secondly, the compilation aims to reflect the Court judgments that are directly or indirectly connected with public international law and, above all, which can be useful for the Ministries of Foreign Affairs and CAHDI members in particular. She underlined that the compilation of case-law uses the text of the press releases of the European Court of Human Rights and that the Court's decisions are publicly available.

78. The representative of Cyprus expressed her delegation's support to the selection of cases included in the compilation. She further indicated that there is no need to remove any of the cases from the annual Appendix of case-law.

79. The representative of Ukraine underlined that CAHDI's practice has varied in relation to the information provided by delegations under this agenda item. She further pointed out that the applications submitted by Ukraine to the European Court of Human Rights have direct links with CAHDI's work. The representative of Ukraine recalled the five [inter-States applications against the Russian Federation](#) pending before the Court. She focused her intervention on the case *Ukraine v. Russia (re Crimea)*¹¹, and informed the CAHDI about the [Grand Chamber hearing](#) that took place on 11 September 2019. This case concerns alleged violations of Articles 2, 3, 5, 6, 8, 9, 10 and 11 of the *European Convention on Human Rights*, as well as of Articles 1 and 2 of Protocol No.1 to the Convention and Article 2 of Protocol No.4. The Ukrainian Government claims that these alleged violations were a result of a general administrative practice by the Russian Federation. The representative of Ukraine referred to several United Nations (UN) reports and to [UN General Assembly Resolution 73/263](#), of 2 August 2019. She also recalled that the [interim measures](#) applied by the European Court of Human Rights to this case, under Rule 39 of the Rules of the Court, remain in force. Finally, the representative of Ukraine underlined that her delegation reserved the right to inform the CAHDI, at future meetings, about the latest developments concerning inter-States cases brought by Ukraine against the Russian Federation.

80. The representative of the Russian Federation stressed the importance not to turn the Committee into another Court and therefore he indicated that he would not comment on the substance of the inter-States applications and other pending proceedings at the European Court of Human Rights. He further referred to the position of the Government of the Russian Federation, as duly represented in the pleadings of the inter-States cases. The representative of the Russian Federation informed the CAHDI that they are following individual complaints and applying for participation as a third party, as a State, in the proceedings of individual complaints. On a separate issue, the representative of the Russian Federation referred to the annual Appendix of case law of the European Court of Human Rights prepared by the Secretariat, and pointed out that the case-law of the Court raises concerns as regards public international law, in particular as regards the

¹⁰ ECtHR, *Georgia v. Russia (I)*, application no. 13255/07, Grand Chamber Judgment of 31 January 2019

¹¹ ECtHR, *Ukraine v. Russia (re Crimea)*, application no. 20958/14.

application by the Court of international humanitarian law, international law rules of State responsibility, and the extraterritorial application of Treaties.

81. The representative of the Russian Federation further indicated that he would like to draw the attention of the CAHDI experts on the application of the international rules on State responsibility and the extraterritorial application of the treaties. In this respect, he underlined that the ECtHR continuously derogates from the international law practice on the extraterritorial application of treaties, the practice of the International Court of Justice (ICJ) and other authorities and institutions and that his country needed to address this problematic issue together with other problematic issues related to the application of public international law by the ECtHR including the application of IHL.

82. The representative of Poland took the floor to underline the fact that the Republic of Poland does not recognise the annexation of Crimea by the Russian Federation. The representative of Ukraine referred to UN [General Assembly Resolution 68/262](#), of 27 March 2014 on the “Territorial integrity of Ukraine”. In reply to the statement of the Ukrainian delegate, the representative of the Russian Federation stated that the UN General Assembly cannot pronounce itself on the status of a territory, except in relation to decolonisation, and therefore it is not a valid reference as regards the status of Crimea.

83. The representative of Norway informed the CAHDI about a Grand Chamber judgment delivered on 10 September 2019 in the case *Strand Lobben and Others v. Norway*¹². The case concerned a child taken into foster care a month after the birth and adopted by the foster parents three years later. The Grand Chamber found a violation of Article 8 (right to respect for private and family life) of the *European Convention on Human Rights* in respect of both applicants (mother and son). The Court considered that the domestic authorities had not attempted to carry out a genuine balancing exercise between the interests of the child and his biological family. The Court was not satisfied that the procedure had been accompanied by safeguards that were commensurate with the gravity of the interference and the seriousness of the interests at stake. The representative of Norway underlined the importance of this case as regards the hierarchy of rights and he questioned whether the rights of the child lie higher than the rights of the parents.

84. The Chair thanked delegations for their contributions and recalled the entry into force, on 1 August 2018, of Protocol No. 16 to the *European Convention on Human Rights* (CETS No. 214), which now has 13 ratifications. He further recalled the information provided by the Director of Legal Advice and Public International Law under agenda item 5, concerning [the first advisory opinion delivered by the European Court of Human Rights on 10 April 2019](#), at the request of the French Court of Cassation. The Chair further referred to the [second request for an advisory opinion](#), received on 9 August 2019 from the Constitutional Court of Armenia.

85. The CAHDI took note of the information provided by the delegations on cases before the European Court of Human Rights involving issues of public international law. Furthermore, it agreed to revise the annual Appendix to the document with the case law of the European Court of Human Rights related to public international law (*document PIL (2019) Case Law Appendix I*), containing press releases and legal summaries of relevant judgments and decisions of the European Court of Human Rights from 1 January to 31 December 2018, in order to reproduce the exact wording of the Court in some of the summaries.

10. Peaceful settlement of disputes

86. The CAHDI held an exchange of views on the document *CAHDI (2019) 14 Restricted*, on *Means of Peaceful Settlement of Disputes*, which contains an overview of the different means of peaceful settlements of disputes, including the instruments by which a State can accede to them or recognise their jurisdiction. The Chair recalled that the CAHDI meeting in September 2017 decided, at the initiative of France, to expand the scope of this item to include, in addition to the clauses of

¹² ECtHR, *Strand Lobben and Others v. Norway*, application no. 37283/13, Chamber Judgment of 30 November 2017, Grand Chamber Judgment of 10 September 2019.

acceptance of the compulsory jurisdiction of the International Court of Justice (ICJ), other clauses of attribution of jurisdiction to the ICJ, as well as the case-law of the International Tribunal for the Law of the Sea (ITLOS), inter-States arbitration cases, and any other relevant cases of peaceful settlement of disputes between States. Document *CAHDI (2019) 14 Restricted* integrates the comments made by Switzerland at the 57th CAHDI meeting (21-22 March 2019). As it was agreed at the 57th CAHDI meeting, this document will be used as a basis for future discussions under this agenda item.

87. The Chair informed the CAHDI that there had been one new Declaration under Article 36(2) of the Statute of the International Court of Justice (ICJ) since the previous CAHDI meeting. Latvia's Declaration to the Secretary-General of the United Nations, dated 30 August 2019, which was duly notified on 24 September 2019.

88. The representative of Latvia informed the CAHDI about the reservations contained in her country's Declaration recognising the jurisdiction of the ICJ as compulsory, including disputes concerning a treaty which provides for recourse to some method of peaceful settlement entailing a binding decision, disputes related to or connected with the deployment of armed forces abroad, and disputes where any other Party to the dispute has accepted the compulsory jurisdiction of the ICJ.

89. The representative of France informed the CAHDI about ongoing proceedings in the ICJ, in the case *Equatorial Guinea v. France*, related to immunities and criminal proceedings in France. In particular, the application, filed on 13 June 2016, concerns the immunity from criminal jurisdiction of the Second Vice-President of the Republic of Equatorial Guinea in charge of Defence and State Security and the legal status of a building in Paris, housing the Embassy of Equatorial Guinea, both as premises of the diplomatic mission and as State property¹³. The Court concluded that it has jurisdiction pursuant to the *Optional Protocol to the Vienna Convention on Diplomatic Relations* and concerning the compulsory settlement of disputes, as regards the status of the building as diplomatic premises. The representative of France further informed the CAHDI that the written proceedings have been completed and the ICJ will fix the oral phase of the proceedings.

90. The representative of Ukraine explained that her delegation has always informed the Committee about recent developments in cases brought by Ukraine before the ICJ and the International Tribunal for the Law of the Sea (ITLOS), and that they would like to continue doing so. She therefore informed the CAHDI about recent developments in the proceedings instituted by her country against the Russian Federation at ITLOS. In particular, she drew the attention of the Committee to the Provisional Measures Order adopted by ITLOS on 25 May 2019, in the *Case concerning the detention of three Ukrainian naval vessels (Ukraine v. Russian Federation)*¹⁴. Ukraine had filed a request for provisional measures on 16 April 2019, pending the constitution of an arbitral tribunal. On 25 May 2019, ITLOS called for the release of the Ukrainian vessels and their return to the custody of Ukraine, as well as the release of the 24 detained Ukrainian servicemen. The representative of Ukraine further informed the CAHDI that the Russian Federation released the 24 servicemen as part of an exchange of detainees with Ukraine, but has not yet returned the ships to Ukraine's custody. She added that Russia's lack of participation in this dispute does not exempt it from its obligation under Article 290 paragraph 6 of the 1982 *United Nations Convention on the Law of the Sea (UNCLOS)*, to implement the ITLOS Order.

91. The representative of Ukraine also informed the CAHDI that public hearings on the preliminary objections raised by the Russian Federation in the dispute *Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait*, brought by Ukraine against the Russian Federation before the Arbitral Tribunal created under the Annex VII to UNCLOS, were held on 10-14 of June 2019 in the Hague. A decision of the Tribunal is expected by the end of the year. The representative of Ukraine further informed the Committee that on 3-7 June 2019, the ICJ held an oral hearing on the preliminary objections raised by the Russian Federation in the case concerning the *Application of the International Convention for the Suppression of the Financing of Terrorism and*

¹³ ICJ, *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, [Summary 2018/3](#), of 6 June 2018.

¹⁴ ITLOS, [Press Release 284](#), of 25 May 2019.

[of the International Convention on the Elimination of All Forms of Racial Discrimination \(Ukraine v. Russian Federation\)](#)¹⁵. The Court's decision is also expected to be delivered before the end of the year. The representative of Ukraine also drew the attention of the Committee to ICJ's Order of 19 April 2017 indicating provisional measures on this case¹⁶, that is still pending implementation.

92. The representative of the Russian Federation called on the Ukrainian delegation to follow the established practice of the CAHDI to limit interventions to judgments and decisions rather than cover each procedural step. As regards the proceedings at ITLOS, the representative of the Russian Federation explained that the Tribunal has not addressed the substance of the case and that his delegation continues to oppose the jurisdiction of both the Tribunal and the arbitration in view of the declarations made by both the Russian Federation and Ukraine to UNCLOS. The representative of the Russian Federation indicated that he would not repeat the pleadings made during the hearings at the ICJ¹⁷ as regards the Russian objections to the jurisdiction of this court in the case referred by Ukraine. He further informed the CAHDI about a positive development with regard to the peaceful settlement of disputes, as the Russian Federation and the Netherlands have reached a complete and final settlement of all claims, by both parties, connected to the events related to the presence of the *Arctic Sunrise* vessel within the Exclusive Economic Zone of the Russian Federation in September 2013¹⁸.

93. The Chair concluded the discussions on this item by recalling the established practice of the CAHDI to provide information on final judgments and decisions of international courts and tribunals. Furthermore, the Chair of the CAHDI underlined that the rationale behind this practice is that this Committee should not become a "second battleground" where the arguments of both parties would be repeated. In this respect, the Chair recalled Article 12.b of Appendix 1 to Resolution CM/Res (2011) 24¹⁹, according to which "*The Chair shall conduct proceedings and sum up the conclusions whenever he or she thinks necessary. He or she may call to order a speaker who departs from the subject under discussion or from the committee's terms of reference*". However, as he pointed out, he had never used this procedure.

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

94. 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 (2019) 17 prov *Confidential* and CAHDI (2019) 17 Addendum prov *Confidential Bilingual*) and opened the discussion. The Chair also drew the attention of the delegations to document CAHDI (2019) Inf 3 containing reactions to reservations and declarations to international treaties previously examined by the CAHDI and for which the deadline for objecting had already expired.

95. The Chair underlined that the reservations and declarations to international treaties still subject to objection are contained in the document CAHDI (2019) 17 prov *Confidential*, which includes eight reservations and declarations, as well as one partial withdrawal. Six of them were

¹⁵ ICJ, [Press Release No. 2019/23](#), of 7 June 2019.

¹⁶ ICJ, [Press Release No. 2017/15](#), of 19 April 2017.

¹⁷ ICJ, Verbatim Records [CR 2019/9](#) and [CR 2019/11](#) of the public sittings held on 3 and 6 June 2019 regarding the Preliminary Objections of the Russian Federation in the case concerning Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (*Ukraine v. Russian Federation*).

¹⁸ See [Joint Statement of the Russian Federation and the Kingdom of the Netherlands on Scientific Cooperation in the Russian Arctic Region and the Settlement of a Dispute](#), of 17 May 2019.

¹⁹ Resolution [CM/Res\(2011\)24](#) on intergovernmental committees and subordinate bodies, their terms of reference and working methods (adopted by the Committee of Ministers of the Council of Europe on 9 November 2011 at the 1125th meeting of the Ministers' Deputies).

made with regard to treaties concluded outside the Council of Europe (Part I of the document) and two of them concerned treaties concluded within the Council of Europe (Part II of the document). One problematic partial withdrawal has been identified since the last meeting of the CAHDI (Part III of the document). The Chair further noted that three of these reservations and declarations had already been discussed at the 57th CAHDI meeting in March 2019, while six had been newly added since then.

96. With regard to the **declaration made by Iran** to the *United Nations Convention on International Settlement Agreements Resulting from Mediation*, no comments were made by delegations.

97. With regard to the **declaration made by Poland** to the *Doha Amendment to the Kyoto Protocol*, the representative of the European Union requested the Polish delegation to confirm that this reservation and in particular its paragraph 4, cannot be interpreted as limiting the obligations of Poland under the EU Treaties, in particular Article 4 of the *Treaty on European Union*. The representative of Poland confirmed that this is the correct interpretation of their declaration.

98. With regard to the **declaration made by Azerbaijan** concerning the *Multilateral Agreement for the Establishment of an International Think Tank for Landlocked Developing Countries*, the representative of Azerbaijan explained that his country has made this type of interpretative declaration in other occasions due to the conflict between the two states when ratifying international treaties. The representative of Armenia informed the CAHDI that his country will make a declaration on this issue.

99. With regard to the **reservation made by Ethiopia** to *the Statutes of the International Centre for Genetic Engineering and Biotechnology*, the representative of the European Union stated that this reservation is problematic.

100. With regard to the **reservation made by Lebanon** to the *International Convention for the Suppression of the Financing of Terrorism*, a number of delegations (Austria, Czech Republic, Finland, Germany, Ireland, the Netherlands, Romania and Sweden) informed the CAHDI that they are considering objecting to this reservation.

101. With regard to the **declaration and reservation made by Norway** to the *International Convention for the Protection of All Persons from Enforced Disappearance*, the representative of Norway explained that the declaration and reservation were the result of a discussion of several years between the Ministry of Foreign Affairs and the Ministry of Defence in Norway, as his country has a dualist system and therefore international conventions are not automatically applied. The declaration and reservation are linked to whether Article 17(2) of this Convention requires the passing of new legislation, which Norway does not have as regards deprivation of liberty in armed conflict, as this is regulated in an Armed Forces Manual and in Rules of Engagement. The representative of Norway further stated that this declaration and reservation are not incompatible with the Convention and that Article 17(2) of the Convention will be implemented, not through formal law but through different legal instruments. He further asked CAHDI members for their input and national practice on deprivation of liberty during armed conflict, as many countries do not regulate this through legislation. In reply, the Chair indicated that there is no specific law on this in the Czech Republic either. The representative of Austria thanked the Norwegian delegation for the explanations provided and asked whether the Armed Forces Manuals are available. In reply, the representative of Norway explained that the relevant Manuals are publicly available, but not in English. The representative of Denmark informed CAHDI members that their regulations are publicly available for members of the Armed Forces, and that if they go against what is requested in the Manual, action can be taken.

102. With regard to the **declaration made by Azerbaijan** to the *Council of Europe Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events* (CETS No. 218), no comments were made by delegations.

103. With regard to the **declaration made by Turkey** to the *European Convention for the Protection of Animals during International Transport (Revised)* (ETS No. 193), Cyprus objected to this declaration on 3 September 2019. The representative of Greece stated that they will object to this declaration, in line with their past practice regarding similar declarations.

104. With regard to the **partial withdrawal of reservations made by the United Kingdom in respect of Bermuda** to the *Convention on the Elimination of All Forms of Discrimination against Women*, the representative of the United Kingdom explained the rationale behind it, which had been related to the end of conscription in Bermuda.

105. The CAHDI took note of the reactions to reservations and declarations to international treaties previously examined by the CAHDI and for which the deadline for objection had already expired. The Chair of the CAHDI invited delegations to submit to the Secretariat any information relevant for the update of the summary table as set out in document CAHDI (2019) 17 Addendum *prov Confidential Bilingual*.

III. GENERAL ISSUES OF PUBLIC INTERNATIONAL LAW

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

106. The Chair welcomed and thanked Mr Pavel Šturma, Chair of the ILC, for having accepted the invitation of the CAHDI. He recalled that Mr Šturma had participated in the 56th CAHDI meeting, in September 2018. He further underlined that it was a pleasure and a privilege for the CAHDI to count with his presence.

107. Mr Šturma presented an overview of the work of the ILC at its 71st session, highlighting the main outcomes of this intensely productive session, namely the adoption, on second reading, of a full set of draft articles and commentaries thereto on prevention and punishment of crimes against humanity, which include a draft preamble, 15 draft articles and a draft annex. The objective of these draft articles is the potential drafting of a convention concerning the prevention and punishment of crimes against humanity within the national law of States, as well as inter-State co-operation for this purpose. The ILC decided to recommend these draft articles to the UN General Assembly, including the elaboration of a Convention by the General Assembly or by an international conference of plenipotentiaries, on the basis of the draft articles. As the ILC has concluded its work on this topic, action now lies with the Sixth Committee, which is set to adopt a resolution at this year's session addressing the ILC's recommendation. Furthermore, Mr Šturma also referred to the two topics on which the ILC concluded a first reading: "Peremptory norms of general international law (*jus cogens*)" and "Protection of the environment in relation to armed conflicts". Mr Šturma informed the CAHDI about the four topics whose consideration by the ILC continued at the 71st session: "Succession of States in respect of State responsibility"; "Immunity of State officials from foreign criminal jurisdiction"; "General principles of law" and "Sea-level rise in relation to international law". In addition, Mr Šturma informed the CAHDI that the ILC took note of an oral report of the Special Rapporteur on the topic "Provisional application of treaties", as regards the informal consultations convened to consider the draft model clauses on provisional application of treaties. The ILC will carry out a second reading of the draft Guide on the Provisional Application of Treaties at its 72nd session next year, and CAHDI members were encouraged to send their comments to the draft Guide by 15 December 2019, as it will be adopted in second reading in 2020. Mr Šturma further informed the CAHDI about ILC's future work and the re-establishment of a Planning Group to consider the Commission's programme, procedures and working methods, which is turn decided to re-establish the Working Group on the Long-term Programme of Work and the Working Group on Methods of Work. The ILC also decided to include in its long-term programme of work the following topics: "Reparation to individuals for gross violations of international human rights law and serious violations of international humanitarian law" and "Prevention and repression of piracy and armed robbery at sea". Finally, Mr Šturma underlined the importance that the ILC gives to its exchanges with the CAHDI and expressed his appreciation for these regular interactions and the opportunity to discuss ILC's work with CAHDI experts. The full speech of Mr Šturma can be found in **Appendix III** to this report.

108. Many delegations expressed strong support for the possible future negotiation of an international convention on crimes against humanity, which needs to be decided by the Sixth Committee. The representative of Austria informed the CAHDI that they are considering the possibility of hosting a codification conference in Vienna in this respect, subject to a decision by the new government. Furthermore, several delegations expressed their concern regarding the procedure that had been followed by the ILC to adopt draft conclusions on peremptory norms of general international law (*jus cogens*), without dialogue with States, and which is not in line with the methods of work of the ILC. In addition, some delegations stated that the ILC needs to give priority in its work to the views of States and State practice, as it is States which drive international law forward.

109. The representative of Mexico informed the CAHDI that his country will chair the [Informal Meeting of Legal Advisers of Ministries of Foreign Affairs](#), on 28-29 October 2019, during the “International Law Week”, and that there will be three themes to be addressed at this meeting: the 70th anniversary of the Geneva Conventions; the right of veto in the UN Security Council as regards situations of mass atrocities (which is a joint initiative of Mexico and France); and the conditions to justify the use of force against non-State actors. He also raised the issue of discussions on universal jurisdiction in the ILC and further underlined that a number of projects concluded by the ILC in the past have had no follow up given by the Sixth Committee, in particular those with a normative aim.

110. In reply to questions from several delegations, Mr Šturma explained that the issue concerning the draft conclusions on peremptory norms of general international law (*jus cogens*) had been more procedural than substantive, but agreed that the question of consultation with member States is an important one and that this case was rather the exception than the rule, as there has been no change in ILC’s methods of work. In this respect, ILC’s Working Group on Methods of Work has been reinstated and debates on this issue will take place in 2020. He indicated that it is important to listen to governments, as States are the main actors, but also to maintain what has already been achieved in the past as regards codification of international law. As regards new topics, Mr Šturma stated that the ILC prefers to follow a “prudent approach” in the selection of new topics, after getting the views of member States. The ILC decided to set up a Study Group on a topic with large support and there were long discussions on possible new topics, but the debate remains open and further exchanges with member States will take place in the Sixth Committee. On other topics, such as State responsibility, Mr Šturma indicated that the ILC has completed its work and the follow-up is the responsibility of the Sixth Committee. He further explained the sometimes difficult differentiation between codification and the progressive development of international law, which is a permanent issue in ILC and other fora, as both are important and the ILC needs to do both, depending on the topic. As regards work on the protection of environment, he explained that the language used in the draft principles compiled by the ILC is nuanced to express that some principles reinstate existing law, while other represent progressive development of international law.

111. Finally, in reply to another set of questions, Mr Šturma explained that there are not many women members of the ILC, but they are very active. He also addressed the main differences in scope between ILC’s work on crimes against humanity and the parallel [initiative “Towards a Multilateral Treaty for Mutual Legal Assistance and Extradition for Domestic Prosecution of the Most Serious International Crimes”](#) (the mutual legal assistance or MLA initiative), as ILC’s work includes a definition of crimes against humanity as well as obligations to criminalise them, while the approach followed by the MLA initiative is to include more crimes under international law. On this point, the representative of Slovenia underlined that both lines of work are complementary and informed the CAHDI that his country is planning to organise a conference to negotiate a draft treaty on mutual legal assistance, in June 2020.

112. The CAHDI welcomed the presentation of the work of the ILC by Mr Šturma and highly valued this exchange in preparation for the forthcoming meetings of the Sixth Committee. Furthermore, the CAHDI took note of the exchange of views which took place on 31 May 2019 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 (2019) Inf 4 and CAHDI (2019) Inf 5 *English only*.

13. Consideration of current issues of International Humanitarian Law

113. 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. He underlined the importance of this topic this year, in light of the International Conference which will take place in December 2019.

114. The representative of the International Committee of the Red Cross (ICRC) recalled the dates of the [33rd International Conference of the Red Cross and Red Crescent](#), which will take place in Geneva on 9-12 December 2019. She reported on the preparations for the conference, including a meeting held on 28-29 June 2019, with around 90 delegations, and which allowed States and national societies to exchange views on the resolutions under preparation. The representative of the ICRC further informed the CAHDI that there will be five draft resolutions, covering the following topics: a roadmap for better national implementation of IHL; restoring family links while respecting the right to privacy, including in relation to personal data protection; addressing mental health and psychosocial needs of people affected by armed conflict, natural disasters and other emergencies; climate-smart disaster laws and policies that leave no one behind; and the one that was presented as a “zero draft” and discussed in June, in relation to the UN Sustainable Development Goals. This draft resolution has now been significantly re-drafted and focuses on working together to prevent and respond to epidemics and pandemics. The draft IHL resolution addresses national implementation of humanitarian law and all the measures that States can take with their national societies. The representative of the ICRC indicated that there will be a full day on IHL, a day on shifting vulnerabilities, and a day on trust in humanitarian action. States and members of the conference will have the opportunity to make statements in the general debate, which will be called “For the Record: Voices from the Conference” and will run from the middle of the first day of the conference, and throughout the conference. The chair of “Voices from the Conference” will be Mrs Natia Loladze, President of the Georgian Red Cross Society. There will also be a Drafting Committee, chaired by Mexican Ambassador Socorro Flores, where the draft resolutions will be negotiated. In addition, there will be “spotlight sessions” or 90-minute discussions or exchanges on different topics. The conference website will include all this information but, as way of example, some of these sessions will focus on new technologies and IHL and urban warfare; voluntary reporting and sharing good practices; and how IHL affects women, boys and girls differently. On 25 October 2019, alongside the draft conference resolutions, delegations will also receive the ICRC report on “IHL and the challenges of contemporary armed conflicts”, a 60-page document circulated at the last international conferences and giving the ICRC’s views on a number of pressing issues, and which is not for negotiation or adoption but to inform discussions. Finally, the representative of the ICRC informed the CAHDI about a new ICRC publication, issued in September 2019, on [Guidelines on investigating violations of IHL: law policy and good practice](#).

115. On the situation of third-country nationals in Syria and Iraq, the representative of the ICRC thanked CAHDI members for sharing their practice and the challenges they face. She explained that from the perspective of the ICRC, the current state of affairs is not sustainable, as the living conditions in the camps are below acceptable standards, despite the efforts of the local administration. The ICRC is working to improve the situation and, together with the Norwegian Red Cross and the Syrian Arab Red Crescent, they have set up a field hospital as well as mobile clinics, even though bringing personnel and medicines is still very difficult. The conditions in the camps are particularly detrimental for children, who are around two-thirds of those detained, and half of them are under five years of age. The ICRC recognises that the situation for countries of nationality or legal residents of foreign fighters and their families is complex, but they believe that IHL and human rights law provide guidance on how these issues can be dealt with positively. For the ICRC, children should be urgently repatriated in the company of their mothers, who is the usual caretaker, as well as siblings in order to retain family unity. The representative of the ICRC further indicated, in reply to a question, that the ICRC bases its determinations on testimonies by family members and caretakers; it is for States to make their own determinations. It is important to recall that ‘family’, however, may go beyond DNA, as children may be adopted or have siblings from different parents. As regards adults, she indicated that it is important to find solutions to their legal situation and each

case should be reviewed by the competent authorities of the state of nationality on an individual basis. Finally, the representative of the ICRC underlined the importance of bringing to justice those who have committed particularly serious crimes, such as war crimes, genocide or crimes against humanity, as States must investigate and prosecute these acts.

116. In reply to some questions, the representative of the ICRC explained that there will be an opening ceremony at the 33rd International Conference of the Red Cross and Red Crescent, in the evening of 9 December 2019, and that the general debate (“Voices on the record”) will start from the middle of 10 December 2019. Information on the order of speakers will be provided at a later stage.

117. The representative of Austria informed the CAHDI about a conference that will be held in Vienna on 1-2 October 2019 on protecting civilians in urban warfare, which will be devoted to the issue of explosive weapons in populated areas. He invited all CAHDI delegations to attend, as the conference will include a high-level opening segment and five panels addressing various aspects of the main theme, with participants expected to include delegations from Ministries of Foreign Affairs, Ministries of Defence and civil society experts on IHL. The conference aims at gathering support to develop a political declaration on this topic, to be adopted in Dublin in 2020, at the initiative of the UN Secretary-General.

118. The representative of Finland informed the CAHDI about an important IHL dissemination event held that was taking place on that day and organised by the Finnish Society of the Red Cross together with the Ministry of Justice and with support from the Foreign Ministry. The event focuses on the relationship between terrorism crimes and IHL, and participants are law enforcement officials including the police, prosecutors, judges and attorneys. Furthermore, and in order to mark the 70th anniversary of the Geneva Conventions, the Finnish National Society of the Red Cross is organising a jubilee conference on 14 November 2019, under the theme of “humanity of the law in the era of artificial intelligence”. In order to find new ways to promote IHL, the Finnish Permanent Mission in Geneva uses modern social media tools to commemorate the Geneva Conventions and to mark the 33rd international conference of the Red Cross and Red Crescent, including a Twitter campaign running from 20 August 2019, the day of the signature of Geneva Conventions, until the end of the 33rd ICRC conference. She invited CAHDI experts to follow the campaign at the Twitter address @finlandgeneva#ihlfacts. The representative of Finland further informed the CAHDI that IHL is one of the priorities of their Presidency of the Council of the EU, and they aim to prepare EU Council conclusions on humanitarian assistance and IHL, highlighting the 70th anniversary of the Geneva Conventions and the 33rd ICRC conference, and reaffirming the EU’s commitment to respect and implement IHL, to demonstrate strong support to the international conference, which will include EU common pledges.

119. The representative of Slovenia informed the CAHDI about two publications prepared by the Ministry of Foreign Affairs on the occasion of the anniversary of the Geneva Conventions, and which will be presented at an event in November 2019. One of the publications will contain the text of the four Geneva conventions and three additional protocols, in English and in Slovenian, while the second publication will consist of expert articles on IHL. The aim is that both publications will be used to train members of the armed forces and others, as well as for spreading knowledge on IHL.

120. The CAHDI took note of the information provided by delegations on current issues of international humanitarian law.

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

121. 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 (2019) 11 prov), containing recent developments concerning the International Criminal Court (ICC) and other international criminal tribunals. He further pointed out recent developments such as Paraguay’s acceptance of the Kampala amendment to the Rome Statute on Article 8, and the ratification by Belgium and Slovenia of the amendment to Article 124 of the Rome Statute. He further

informed the CAHDI that the ratification by the Czech Republic of the amendments to the Rome Statute regarding Article 124 and Article 8 are forthcoming.

122. The representative of Japan recalled the need to reform the ICC and the discussions on this issue that took place at the last CAHDI meeting in March 2019. He further informed the CAHDI about an informal meeting held in London in May 2019, a retreat of ICC's Bureau in June 2019, and a planned review of the ICC by external experts. He thanked the UK for promoting discussions on this issue and referred to the need to fulfil the ICC's mandate while ensuring universality and complementarity. The representative of Japan further pointed out the need to make the best possible use of the resources of the Office of the Prosecutor, taking into account the feasibility of investigations. Finally, he recalled the Assembly of the State Parties to the Rome Statute that will be held in The Hague in December 2019, where one of the Resolutions envisaged will address the reform of the ICC.

123. The representative of Switzerland referred to the 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 of civilians as a war crime in non-international armed conflicts, in order to strengthen the protection of civilians. She explained that many conflicts are not international in nature and the Swiss proposal would codify existing IHL in the Rome Statute. The representative of Switzerland asked for the support of CAHDI members to the proposed amendment at the Working Group in New York.

124. The CAHDI took note of the recent developments concerning the International Criminal Court (ICC) and other international criminal tribunals, as contained in document CAHDI (2019) 11 prov. Furthermore, the CAHDI took note of the information provided by delegations on this matter.

15. Topical issues of international law

125. The Chair recalled that there is no document for discussion under this agenda item and invited delegations to take the floor concerning any topical issues of international law.

126. The representative of Austria informed the CAHDI about two events that will take place in Vienna on 18-19 November 2019, in relation to the 50th anniversary of the *Vienna Convention on the Law of Treaties* this year. The first event will be held on Monday 18 November at the University of Vienna, which is organising the conference "50 Years Vienna Convention on the Law of Treaties". Further details are contained in the programme of the event distributed to CAHDI experts during the meeting. The second event is a practitioners' seminar on treaty law, organised by the Ministry of Foreign Affairs and which will take place on 19 November 2019. The representative of Austria further informed the CAHDI that the invitations are sent to the legal advisers, as there is only one seat per delegation and this is a closed meeting aimed at having an open exchange among practitioners and treaty experts on those issues where the Vienna Convention does not provide all the answers. Further information was distributed to CAHDI experts during the meeting, while a more detailed programme will be sent out in the near future.

127. The representative of France recalled the successful [Second World Meeting of Societies for International Law](#) held in September in The Hague, which brought together numerous national societies but also a high number of legal advisers of Ministers of Foreign Affairs, practitioners and judges. He further expressed his appreciation to those that replied to the invitation, originally launched by the French society for international law. A follow-up has been proposed, with the setting up of a world network of national societies for international law, and a future meeting in 2021, to be held in Lima (Peru).

128. The representative of Poland recalled the Conference they organised on the *Vienna Convention on the Law of Treaties*, held on 23 May 2019 and aimed at a Polish audience to promote the knowledge of this Convention and their national practice in that respect. The representative of Poland further indicated that he looked forward to the Vienna Conference on the 50th anniversary of the Convention.

129. The CAHDI took note of the information provided by delegations on topical issues of international law.

IV. OTHER

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

130. As mentioned at the opening of the meeting, the Chair informed the CAHDI that the Vice-Chair of the Committee, Ms Elinor Hammar skjöld, was no longer the Director General of Legal Affairs of the Swedish Ministry of Foreign Affairs; and therefore the CAHDI needed to elect a new Vice-Chair for the next term. He further drew the attention of CAHDI members to the rules governing the elections of Chair and Vice-Chair.

131. In accordance with *Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods*, the CAHDI re-elected Mr Petr Válek (Czech Republic) and elected Ms Alina Orosan (Romania), respectively, as Chair and Vice-Chair of the Committee, for a term of one year from 1 January to 31 December 2020.

17. Place, date and agenda of the 59th meeting of the CAHDI

132. The CAHDI decided to hold its 59th meeting in Strasbourg (France), on 26-27 March 2020. The CAHDI instructed the Chair of the CAHDI, in co-operation with the Secretariat, to prepare the provisional agenda of this meeting in due course.

18. Any other business

133. The representative of Liechtenstein thanked the Chair for allowing him to raise two issues with regards to the ICC. The first one concerned the review of the ICC, which Liechtenstein fully supports, including the decision made in June 2019 to undertake an independent expert review of the ICC, and which he considered should not endanger the independence of the Court and be completed as soon as possible. The second issue is an initiative undertaken by the Permanent Mission of Liechtenstein to the United Nations in New York, regarding the application of the Rome Statute to cyber warfare. The representative of Liechtenstein informed the CAHDI that, in response to the increasing digitalisation of international warfare, Liechtenstein plans to launch a new project to determine the extent to which the Rome Statute applies to cyber warfare. He invited CAHDI experts to approach him or his colleagues in New York for any further information.

134. The representative of INTERPOL informed the CAHDI about a case affecting them and which has arrived before the Court of Justice of the EU in June 2019²⁰. The case raises issues related to the ability of EU Member States to co-operate with non-EU member States through INTERPOL, as well as questions about the compatibility between the membership of the EU and international organisations, such as INTERPOL, with obligations for member States under EU law. The case is related to double jeopardy and EU data protection law. As INTERPOL is unable to participate in the case directly, the representative of INTERPOL wanted to raise the CAHDI's awareness about the case and inform non-EU member States that this case has the potential to affect their ability to co-operate with EU member States on law enforcement and police functions.

135. The CAHDI took note of the information provided by delegations.

19. Adoption of the Abridged Report and closing of the 58th meeting

136. The CAHDI adopted the Abridged Report of its 58th meeting, as contained in document CAHDI (2019) 19, and instructed the Secretariat to submit it to the Committee of Ministers for

²⁰ Request of 27 June 2019 by the Administrative Court of Wiesbaden, Germany, for a preliminary ruling of the Court of Justice of the EU.

information. The Chair informed members that the final version of the Abridged Report would be sent out by the Secretariat the following week.

137. Before closing the meeting, the Chair thanked all CAHDI experts for their participation and efficient co-operation in the good functioning of the meeting. He also thanked the CAHDI Secretariat and the interpreters for their invaluable assistance in the preparation and the smooth running of the meeting. Finally, the Chair warmly thanked the assistant of the CAHDI Secretariat, Ms Daria Cherepanova, for all her hard work as unfortunately her temporary contract with the Council of Europe is coming to an end.

APPENDICES

APPENDIX I**LIST OF PARTICIPANTS****MEMBER STATES OF THE COUNCIL OF EUROPE / ETATS MEMBRES
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APPENDIX II

AGENDA

I. INTRODUCTION

1. **Opening of the meeting by the Chair of the CAHDI, Mr Petr VÁLEK**
2. **Adoption of the agenda**
3. **Adoption of the report of the 57th meeting**
4. **Information provided by the Secretariat of the Council of Europe**

II. ONGOING ACTIVITIES OF THE CAHDI

5. **Committee of Ministers' decisions of relevance to the CAHDI's activities, including requests for CAHDI's opinions**
 - a. *Revised Draft Terms of Reference of the CAHDI for 2020-2021*
 - b. *Exchange of views between the Chair of the CAHDI and the Ministers' Deputies (12 June 2019)*
 - c. *Other Committee of Ministers' decisions of relevance to the CAHDI's activities*
6. **Immunities of States and international organisations**
 - **Presentation of the new CAHDI publication "Immunities of Special Missions" by Sir Michael WOOD and Mr Andrew SANGER**
 - 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 website entries*
7. **Organisation and functions of the Office of the Legal Adviser of the Ministry of Foreign Affairs**
8. **National implementation measures of UN sanctions and respect for human rights**
9. **Cases before the European Court of Human Rights involving issues of public international law**
10. **Peaceful settlement of disputes**

11. **Law and practice relating to reservations and interpretative declarations concerning international treaties: European Observatory of Reservations to International Treaties**
 - List of reservations and declarations to international treaties subject to objection
- III. **GENERAL ISSUES OF PUBLIC INTERNATIONAL LAW**
12. The work of the International Law Commission (ILC)
 - Presentation of the work of the International Law Commission (ILC) by **Mr Pavel ŠTURMA**, Chair of the ILC
 - Exchange of views between the ILC, the Chair of the CAHDI and the Secretary to the CAHDI, Geneva (Switzerland), 31 May 2019
13. **Consideration of current issues of international humanitarian law**
14. **Developments concerning the International Criminal Court (ICC) and other international criminal tribunals**
15. **Topical issues of international law**
- IV. **OTHER**
16. **Election of the Chair and the Vice-Chair of the CAHDI**
17. **Place, date and agenda of the 59th meeting of the CAHDI: Strasbourg (France), 26-27 March 2020**
18. **Any other business**
19. **Adoption of the Abridged Report and closing of the 58th meeting**

APPENDIX III

PRESENTATION BY Pavel ŠTURMA CHAIR OF THE INTERNATIONAL LAW COMMISSION

58th Meeting of the Committee of Legal Advisers on Public International Law 26 September 2019, Strasbourg (France)

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

It is an honour and a pleasure for me to address the 58th meeting of the Committee of Legal Advisers on Public International Law of the Council of Europe (CAHDI) in my capacity as the Chair of the International Law Commission. I am grateful to the CAHDI for the opportunity to present the work of the Commission at its seventy-first session, which took place from 29 April to 7 June and from 8 July to 9 August this year.

On 31 May, during its session, the Commission had the privilege of receiving the Chair of the CAHDI for an exchange of views. We thus had the pleasure of meeting Mr. Petr Válek of the Czech Republic, who recently assumed the Chair position of the CAHDI from Ms. Päivi Kaukoranta of Finland. The Chair spoke about the work of the CAHDI, including on legal challenges related to “hybrid war,” derogations to the European Convention on Human Rights, humanitarian needs and rights of internally displaced persons, peaceful settlement of disputes, and different aspects of immunities, among other things. Being here with you today, I am grateful to continue the tradition of this dialogue between our two entities and to present to you the work of International Law Commission over this past year in turn.

This year, at its 71st session, the International Law Commission concluded the second reading of one topic by adopting a full set of draft articles and commentaries thereto. It also concluded its work on two topics on first reading, adopting a set of draft conclusions and draft principles, respectively, as well as commentaries thereto. In addition, the Commission continued its consideration of a number of other topics.

As mentioned, on **second reading**, the Commission considered one topic.

With respect to this topic, “**Crimes against humanity**”, the Commission had before it the fourth report of the Special Rapporteur Mr. Sean D. Murphy as well as comments and observations received from Governments, international organizations and others. The fourth report of the Special Rapporteur addressed these comments and observations on the draft articles and commentaries adopted on first reading and made recommendations for each draft article.

The Commission adopted, on second reading, the entire set of draft articles on prevention and punishment of crimes against humanity, comprising a draft preamble, 15 draft articles and a draft annex, together with commentaries thereto.

The draft articles on prevention and punishment of crimes against humanity have as their objective the potential drafting of a convention concerning prevention and punishment of crimes against humanity within the national law of States as well as inter-State cooperation for this purpose. Since “[t]reaties focused on prevention, punishment and inter-State cooperation exist for many offences far less egregious than crimes against humanity, such as corruption and transnational organized crime,” as noted in the commentary, “a global convention on prevention and punishment of crimes against humanity might serve as an important additional piece in the current framework of international law, and in particular, international humanitarian law, international criminal law and international human rights law.” Unlike for example the Rome Statute, which concerns the vertical

relationship between States parties and the International Criminal Court, these draft articles are focused on the horizontal relationship among States. They were elaborated from the outset with the intention that they form the basis for a possible convention. This renders the topic an exercise not as much of codification of international law, but of its progressive development. As indicated in the commentary, “[w]hile some aspects of these draft articles may reflect customary international law, codification of existing law is not the objective . . . rather, the objective is the drafting of provisions that would be both effective and likely acceptable to States, based on provisions often used in widely adhered-to treaties addressing crimes, as a basis for a possible future convention.” The draft articles are roughly organized into: general provisions, including a definition of crimes against humanity and general obligations; provisions on prevention and *non-refoulement*, measures to be taken at the national level and with respect to international cooperation; provisions on extradition and mutual legal assistance; and provisions on the settlement of disputes.

The Commission decided, at the 71st session, in conformity with article 23 of its statute, to recommend these draft articles on prevention and punishment of crimes against humanity to the General Assembly. In particular, the Commission recommended the elaboration of a convention by the General Assembly or by an international conference of plenipotentiaries on the basis of the draft articles. Since the Commission has concluded its work on the topic, which started in 2014, action now lies with the Sixth Committee, which is set to adopt a resolution at this year’s session addressing the Commission’s recommendation.

After its adopting the draft articles on prevention and punishment of crimes against humanity, the Commission also expressed to the Special Rapporteur, Mr. Sean D. Murphy, its deep appreciation and warm congratulations for the outstanding contribution he made to the preparation of the draft articles.

As for topics concluded on **first reading**, there were two.

With regard to the first of these, the topic of “**Peremptory norms of general international law (*jus cogens*)**,” the Commission had before it the fourth report of the Special Rapporteur Mr. Dire Tladi, which discussed the question of the possible existence of regional *jus cogens* and the inclusion of an illustrative list, based on norms previously recognized by the Commission as possessing a peremptory character. As a result of its consideration of the topic at the present session, the Commission subsequently adopted, on first reading, 23 draft conclusions and a draft annex, together with commentaries thereto, on peremptory norms of general international law (*jus cogens*).

This topic, it may be noted, was borne out of a recognition that while the existence of *jus cogens* as part of the modern fabric of international law is now largely uncontroversial, its precise nature, what norms qualify as *jus cogens*, as well as the consequences of *jus cogens* in international law remain unclear. Thus, the draft conclusions, in terms of scope, concern the identification and legal consequences of peremptory norms. They define peremptory norms of general international law (*jus cogens*), as norms “accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character,” which in terms of function “reflect and protect fundamental values of the international community, are hierarchically superior to other rules of international law and are universally applicable.” Examples of such *jus cogens* norms, as previously identified by the Commission, are provided in an annex to the draft conclusions, and include the prohibition of genocide, the prohibition of torture, the prohibition of slavery, and the prohibition of racial discrimination and apartheid. The draft conclusions themselves are “aimed at providing guidance to all those who may be called upon to determine the existence of peremptory norms of general international law (*jus cogens*) and their legal consequence.” On this the commentary notes that “[g]iven the importance and potentially far-reaching implications of peremptory norms, it is essential that the identification of such norms and their legal consequences be done systematically and in accordance with a generally accepted methodology.”

The Commission decided, in accordance with articles 16 to 21 of its statute, to transmit the draft conclusions, through the Secretary-General, to Governments for comments and observations, with

the request that such comments and observations be submitted to the Secretary-General by 1 December 2020.

With respect to the second topic concluded on first reading, “**Protection of the environment in relation to armed conflicts**,” the Commission had before it the second report of the Special Rapporteur Ms. Marja Lehto, which discussed questions related to the protection of the environment in non-international armed conflicts, and matters related to responsibility and liability for environmental damage. As a result of its consideration of the topic at the present session, the Commission adopted, on first reading, 28 draft principles, together with commentaries thereto, on protection of the environment in relation to armed conflicts.

The draft principles were prepared bearing in mind the intersection between international law relating to the environment and the law of armed conflict, as well as other branches of international law such as human rights law. The Commission addressed this topic in three temporal phases: before in “peacetime”, during, and after an armed conflict (“post-conflict”) – although the Commission has noted that there is not a strict dividing line between the different phases. Along these lines, the draft principles are likewise divided into five main parts. The “Introduction” contains draft principles on the scope and purpose of the draft principles. Part Two concerns guidance on the protection of the environment *before* the outbreak of an armed conflict but also contains draft principles of a more general nature, such as ones on the protection of the environment of indigenous peoples and on human displacement. Part Three pertains to the protection of the environment *during* armed conflict and includes discussion of pillage and environmental modification techniques. Meanwhile, Part Four pertains to the protection of the environment in situations of occupation, while Part Five deals with the protection of the environment *after* an armed conflict.

The Commission decided, in accordance with articles 16 to 21 of its statute, to transmit the draft principles on protection of the environment in relation to armed conflicts, through the Secretary-General, to Governments, international organizations, including from the United Nations and its Environment Programme, and others, including the International Committee of the Red Cross and the Environmental Law Institute, for comments and observations, with the request that such comments and observations be submitted to the Secretary-General by 1 December 2020.

Following the receipt of comments and observations by States and others on both the topic of peremptory norms of general international law (*jus cogens*) and the topic of protection of the environment in relation to armed conflicts, the Commission will consider these items on second reading in 2021 and aims to conclude its work on the two topics at that session.

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

On the topic “**Succession of States in respect of State responsibility**”, for which I serve as the Special Rapporteur, the Commission had before it my third report, which addressed introductory issues, including certain general considerations, questions of reparation for injury resulting from internationally wrongful acts committed against the predecessor State as well as its nationals, and technical proposals in relation to the scheme of the draft articles. Following the debate in plenary, the Commission decided to refer all draft provisions, as contained in the third report of the Special Rapporteur, to the Drafting Committee. Upon its consideration of a first report of the Drafting Committee, the Commission provisionally adopted draft articles 1, 2 and 5, with commentaries thereto. Furthermore, the Commission took note of the interim report of the Chair of the Drafting Committee on draft articles 7, 8 and 9 provisionally adopted by the Committee, which was presented to the Commission for information only.

With regard to the topic “**Immunity of State officials from foreign criminal jurisdiction**”, the Commission had before it the sixth and the seventh reports of the Special Rapporteur Ms. Concepción Escobar Hernández, which were devoted to addressing procedural aspects of immunity from foreign criminal jurisdiction. In particular, the sixth report, on which the debate was not completed at the seventieth session in 2018, provided an analysis of three components of procedural aspects related to the concept of jurisdiction, namely: (a) timing; (b) kinds of acts affected; and (c)

the determination of immunity. The seventh report completed the examination of the procedural aspects of immunity regarding the relationship between jurisdiction and the procedural aspects of immunity; addressed questions concerning the invocation of immunity and the waiver of immunity; examined aspects concerning procedural safeguards related to the State of the forum and the State of the official, considered the procedural rights and safeguards of the official, and proposed nine draft articles. Following the debate in plenary, the Commission decided to refer draft articles 8 to 16 to the Drafting Committee, taking into account the debate and proposals made in plenary. The Commission received and took note of the interim report of the Chair of the Drafting Committee on the provisionally adopted draft article 8 *ante*, which was presented to the Commission for information only.

On this topic of immunity of State officials from foreign criminal jurisdiction, the Commission would in particular welcome any information that States could provide on the existence of manuals, guidelines, protocols or operational instructions addressed to State officials and bodies that are competent to take any decision that may affect foreign officials and their immunity from criminal jurisdiction in the territory of the forum State.

As for the topic “**General principles of law**”, the Commission had before it the first report of the Special Rapporteur Mr. Marcelo Vázquez-Bermúdez, which addressed the scope of the topic and the main issues to be addressed in the course of the work of the Commission. The report also addressed previous work of the Commission related to general principles of law and provided an overview of the development of general principles of law over time, as well as an initial assessment of certain basic aspects of the topic and future work on the topic. Following the debate in plenary, the Commission decided to refer draft conclusions 1 to 3, as contained in the report of the Special Rapporteur, to the Drafting Committee. The Commission subsequently took note of the interim report of the Chair of the Drafting Committee on draft conclusion 1 provisionally adopted by the Committee, which was presented to the Commission for information only.

On the topic of general principles of law, the Commission also requested States to provide information on their practice relating to general principles of law, in the sense of Article 38, paragraph 1 (c), of the Statute of the International Court of Justice, including as set out in: (a) decisions of national courts, legislation and any other relevant practice at the domestic level; (b) pleadings before international courts and tribunals; (c) statements made in international organizations, international conferences and other forums; and (d) treaty practice.

Finally, with respect to the topic of “**Sea-level rise in relation to international law**”, the Commission decided to include the topic in its programme of work and established a Study Group, co-chaired by Mr. Bogdan Aurescu, Mr. Yacouba Cissé, Ms. Patrícia Galvão Teles, Ms. Nilüfer Oral and Mr. Juan José Ruda Santolaria. The Study Group held one meeting, at which time it agreed on its composition, methods and programme of work, based on the three subtopics identified in the syllabus. The Commission subsequently took note of the joint oral report of the Co-Chairs of the Study Group.

On the topic of sea-level rise in relation to international law, the Commission would welcome any information that States and others could provide on their practice and other relevant information concerning sea-level rise in relation to international law. At the seventy-second session in 2020, the Study Group will focus on the subject of sea-level rise in relation to the law of the sea.

In this connection, the Commission would appreciate receiving, by 31 December 2019 this year, examples from States of their practice that may be relevant, even if indirectly, to sea-level rise or other changes in circumstances of a similar nature. Such practice could, for example, relate to baselines and where applicable archipelagic baselines, low-tide elevations, islands, artificial islands, land reclamation and other coastal fortification measures, and any other relevant issues. Relevant materials that the Commission would appreciate receiving could include, for example, treaties, national legislation or regulations, declarations, statements, and jurisprudence, among other materials.

The Commission would further welcome receiving in due course any information related to statehood and the protection of persons affected by sea-level rise, both of which will be considered by the Study Group during the seventy-third session in 2021 of the Commission.

As regards “**Other decisions and conclusions of the Commission**”, the Commission took note of an oral report of the Special Rapporteur on the topic “**Provisional application of treaties**”, Mr. Juan Manuel Gómez Robledo, on the informal consultations convened to consider the draft model clauses on provisional application of treaties, and decided to annex the Special Rapporteur’s revised proposal for the draft model clauses to the report, with a view to seeking comments from Governments in advance of the commencement of the second reading of the draft Guide to Provisional Application of Treaties at the seventy-second session of the Commission.

As for other activities that took place during the 71st session, in addition to continuing its traditional exchanges of information with the CAHDI, the Commission also received Mr. Abdulqawi Ahmed Yusuf, President of the International Court of Justice; the Inter-American Juridical Committee; the Asian-African Legal Consultative Organization; and the African Union Commission on International Law. Members of the Commission also held an informal exchange of views with the International Committee of the Red Cross.

Now, before I conclude my account today, allow me to also say a few words about the Commission’s **future work**.

This year, the Commission re-established a Planning Group to consider its programme, procedures and working methods, which in turn decided to re-establish the Working Group on the long-term programme of work, chaired by Mr. Mahmoud D. Hmoud, and the Working Group on methods of work, chaired by Mr. Hussein A. Hassouna.

The Commission decided to include in its long-term programme of work the following topics: (a) “**Reparation to individuals for gross violations of international human rights law and serious violations of international humanitarian law**”; and (b) “**Prevention and repression of piracy and armed robbery at sea**”.

Finally, I would like to inform you that the Commission decided that the seventy-second session of the Commission would be held in Geneva from 27 April to 5 June and from 6 July to 7 August 2020.

Let me conclude my presentation by reiterating the importance that the Commission gives to its exchanges with the CAHDI. 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 once more for being able to speak with you about the Commission’s recent work.

Thank you for your attention.