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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)

List of items discussed and decisions taken Abridged Report

59th meeting
Prague (Czech Republic), 24-25 September 2020

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

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1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 59th meeting in Prague (Czech Republic), in hybrid format, on 24-25 September 2020 with Mr **Petr VÁLEK** (Czech Republic) as Chair.
2. The CAHDI adopted its agenda as set out in **Appendix I** to the present report.
3. The CAHDI examined and adopted the **Report of its 58th meeting** (Strasbourg, France, 26-27 September 2019), and authorised its publication on the CAHDI website.
4. The CAHDI took note of the information provided by the Director of Legal Advice and Public International Law on the **most important developments within the Council of Europe** since the last meeting of the Committee.
- 5.a The CAHDI took note of its **Terms of Reference for 2020-2021**, adopted by the Committee of Ministers on 19-21 November 2019 at the 1361st meeting of the Ministers' Deputies in particular of task (iv) to "hold an exchange of views annually in order to evaluate its activities and advise the Committee of Ministers and the Secretary General on future priorities in its sector, including possible new activities and those that might be discontinued". The CAHDI agreed that its current Chair and Vice-Chair, together with those elected for 2021, will reflect on this question and prepare a non-paper that will serve as a basis for the exchange of views at the next meeting of the CAHDI.
- b. The CAHDI took note of the **working methods during the Covid-19 pandemic**.
- c. The CAHDI examined and agreed to the **request for "observer" status to the CAHDI** submitted by the **Republic of Korea**. The CAHDI further decided to **transmit this request to the Committee of Ministers for decision**.
- d. The CAHDI took note of the Committee of Ministers' decisions of relevance to the CAHDI's activities, in particular the approval of the continuation of the ad hoc terms of reference of the CDDH to finalise in an **ad hoc group 47+1 the modalities for accession by the European Union to the European Convention on Human Rights** and the entitlement of the **CAHDI** to participate in this work as **observer**. With regard to the latter, the CAHDI appointed **Ms Alina OROSAN** (Romania) to participate in the work of the ad hoc group on behalf of the CAHDI.
6. a.1. Concerning the subject of "**Immunities of States and International Organisations**", the CAHDI held an exchange of views on the issue of the "*Settlement of disputes of a private character to which an international organisation is a party*". It took note of the written comments submitted to date (25 September 2020) 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) to the questions contained in the introductory document prepared by the Netherlands on this issue, and invited other delegations to reply in writing to these questions. The CAHDI also took note of the additional information provided on the experience of the Council of Europe and the contributions from Austria, Belgium, the Netherlands and NATO regarding the settlement of disputes of a private character involving an international organisation, in particular through relevant case law from domestic courts.
- a.2. The CAHDI furthermore addressed the issue of the "*Immunity of State owned cultural property on loan*" and examined in this regard the replies submitted to date (25 September 2020) 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 the questionnaire prepared on this topic.

On this issue, the CAHDI took note that no new delegations had signed the “[Declaration on Jurisdictional Immunities of State Owned Cultural Property](#)” since the last CAHDI meeting. To date (25 September 2020), the Declaration has been signed by the Ministers of Foreign Affairs of 20 States, members and non-members of the Council of Europe (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). This Declaration was drafted in support of the recognition of the customary nature of the pertinent provisions of the 2004 *United Nations Convention on Jurisdictional Immunities of States and Their Property* in order to guarantee the immunity of State cultural property on loan.

a.3. The CAHDI furthermore addressed the issue of “[Immunities of special missions](#)” and examined in this regard the replies submitted to date (25 September 2020) by 38 delegations (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) to the questionnaire prepared on this topic. The CAHDI encouraged delegations which had not yet done so, to submit or update their contributions to the questionnaire, which are treated as confidential.

a.4. The CAHDI addressed the issue of “[Service of process on a foreign State](#)” and examined in this regard the replies submitted to date (25 September 2020) by 31 delegations have submitted replies (Albania, Andorra, 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).

b. The CAHDI invited delegations to provide information regarding the [UN Convention on Jurisdictional Immunities of States and Their Property](#). It noted that, since the last meeting, no State represented within the CAHDI has signed, ratified, accepted, approved or acceded to this Convention which, to date (25 September 2020), has 22 Parties.

c. With regard to its [Database on “State practice regarding State Immunities”](#), the CAHDI noted that to date (25 September 2020), 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 this database.

The CAHDI pursued its exchange of views on the [Possibilities for the Ministry of Foreign Affairs to raise public international law issues in procedures pending before national tribunals and related to States’ or international organisations’ immunities](#). The CAHDI noted that to date (25 September 2020), 30 delegations had replied to the questionnaire on this matter (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). The CAHDI took note of the information provided by delegations related to States’ or international organisations’ immunities. The CAHDI invited delegations to submit or update their replies to the questionnaire.

7. Regarding the revised questionnaire on the “**Organisation and functions of the Office of the Legal Adviser of the Ministry of Foreign Affairs**” which contains additional questions on gender equality following the recommendations contained in the “*Council of Europe Gender Equality Strategy*”, the CAHDI took note that since the last meeting the Netherlands and Spain have submitted their replies, while Canada, Romania and Switzerland have revised their replies. Therefore, to date (25 September 2020) 41 delegations (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, Republic of Moldova, Montenegro, the Netherlands, Norway, Romania, Serbia, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom, the United States of America and NATO) have submitted their replies to this revised questionnaire. The CAHDI invited delegations to send to the Secretariat any further information in order to complete their replies.

8. With regard to the issue of “**National implementation measures of UN sanctions and respect for human rights**”, no new information was submitted by delegations. The CAHDI noted that to date (25 September 2020), 37 States (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 and the United States of America) and one organisation (the European Union) had submitted a contribution to the database concerning the practice of national implementation of UN sanctions and respect for human rights. The CAHDI invited delegations to submit or update their contributions at their earliest convenience.

9. The CAHDI took note of the information provided by delegations concerning cases before the **European Court of Human Rights** involving issues of Public International Law. In addition, the CAHDI invited delegations to take into account the measures taken by some member States in the context of the COVID-19 pandemic and to hold an exchange of views on this subject.

10. The CAHDI held an exchange of views on the document *CAHDI (2019) 14 Restricted on Means of Peaceful Settlement of Disputes*, which merges the previous CAHDI documents on this issue and contains an overview of the different means of peaceful settlement of disputes, including the instruments by which a State can accede to them or recognise their jurisdiction.

11. Within the framework of its activity as the **European Observatory of Reservations to International Treaties**, the CAHDI examined a list of 14 reservations and declarations, as well as one partial withdrawal, to international treaties concluded within and outside the Council of Europe, subject to objection.

In addition, the CAHDI took note of the reactions to reservations and declarations to international treaties previously examined by the CAHDI and for which the deadline for objection had already expired. It invited delegations to submit to the Secretariat any information relevant for the update of the summary table as set out in document *CAHDI (2020) 10 Addendum prov Confidential Bilingual*.

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

13. The CAHDI held an exchange of views with **Judge Ekaterina TRENDAFILOVA**, President of the Kosovo* Specialist Chambers, and took note of the **recent developments concerning the International Criminal Court (ICC) and other international criminal tribunals**, as contained in document *CAHDI (2020) 11 prov.* The CAHDI took note of the information provided by delegations on this matter.

** All references to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nation's Security Council Resolution 1244 and without prejudice to the status of Kosovo.*

14. The CAHDI took note of the presentation about the work of the International Nuremberg Principles Academy made by its Director, **Mr Klaus RACKWITZ**.

15. In accordance with *Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods*, the CAHDI elected **Ms Alina OROSAN** (Romania) and **Mr Helmut TICHY** (Austria), respectively, as **Chair and Vice-Chair of the Committee**, for a term of one year, from 1 January to 31 December 2021.

16. The CAHDI decided to hold its **60th meeting** in Strasbourg (France), on 24-25 March 2021. The CAHDI instructed the Chair of the CAHDI, in co-operation with the Secretariat, to prepare in due course the provisional agenda of this meeting.

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

APPENDIX I

I. INTRODUCTION

1. **Opening of the meeting by Mr Martin SMOLEK, Deputy Minister for Legal and Consular Section at the Ministry of Foreign Affairs of the Czech Republic followed by introductory remarks by the Chair of the CAHDI, Mr Petr VÁLEK**
2. **Adoption of the agenda**
3. **Adoption of the report of the 58th meeting**
4. **Information provided by the Secretariat of the Council of Europe**
 - Statement by Mr Jörg POLAKIEWICZ, Director of Legal Advice and Public International Law

II. ONGOING ACTIVITIES OF THE CAHDI

5. **Committee of Ministers' decisions of relevance to the CAHDI's activities, including requests for CAHDI's opinions**
 - a. *Terms of Reference of the CAHDI for 2020-2021 and related matters*
 - Working methods during the COVID-19 pandemic
 - Examination of the request by the Republic of Korea to be granted observer status in the CAHDI
 - b. *Other Committee of Ministers' decisions of relevance to the CAHDI's activities*
6. **Immunities of States and International Organisations**
 - a. *Topical issues related to immunities of States and International Organisations*
 - Settlement of disputes of a private character to which an International Organisation is a party
 - Immunity of State-owned cultural property on loan
 - Immunities of special missions
 - Service of process on a foreign State
 - b. *UN Convention on Jurisdictional Immunities of States and Their Property*
 - c. *State practice, case-law and updates of website entries*
7. **Organisation and functions of the Office of the Legal Adviser of the Ministry of Foreign Affairs**
8. **National implementation measures of UN sanctions and respect for human rights**

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

- Derogations under Article 15 of the *European Convention on Human Rights*: Exchange of views
- 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. Consideration of current issues of international humanitarian law

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

- Exchange of views with **Judge Ekaterina TRENDABILOVA**, President of the Kosovo* Specialist Chambers

** All references to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nation's Security Council Resolution 1244 and without prejudice to the status of Kosovo.*

14. Topical issues of public international law

- Presentation by **Mr Klaus RACKWITZ**, Director of the International Nuremberg Principles Academy on "*The Significance of the Nuremberg Principles - Past, Present and Future*", on the occasion of the 70th anniversary of the formulation of the Nuremberg Principles by the International Law Commission, followed by an exchange of views

IV. OTHER

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

16. Place, date and agenda of the 60th meeting of the CAHDI: Strasbourg (France), 24-25 March 2021

17. Any other business

18. Adoption of the Abridged Report and closing of the 59th meeting