

Strasbourg, 25 March 2021

CAHDI (2021) 7

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

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## **List of items discussed and decisions taken Abridged Report**

**60<sup>th</sup> meeting**  
24-25 March 2021

Videoconference KUDO

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

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**COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)****60<sup>th</sup> meeting, Video, 24-25 March 2021****List of items discussed and decisions taken  
Abridged Report**

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 60<sup>th</sup> meeting by videoconference, on 24-25 March 2021 with **Ms Alina Orosan** (Romania) 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 59<sup>th</sup> meeting** (Prague, Czech Republic, 24-25 September 2020), 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. The CAHDI took note of the **updating process of the homepage of the three CAHDI Databases** on “The Immunities of States and International Organisations”, “The organisation and functions of the Office of Legal Adviser in the Ministry of Foreign Affairs” and “The implementation of United Nations sanctions and respect for Human Rights”.
6. **The CAHDI examined the Non-paper on the Evaluation of the Activities of the CAHDI** prepared by the former Chair along with the current Chair and Vice-Chair of the CAHDI. The document considers the activities of the CAHDI and its main work priorities. On the basis of proposals made during the discussion, the CAHDI agreed that a revised version of the non-paper would be sent to delegations for adoption by written procedure. It was also agreed that the main findings of the exchange of views of the CAHDI on this issue will be incorporated in a document to be adopted at the next CAHDI meeting for the purposes of communication to the Committee of Ministers.
7. The CAHDI took note of the **decisions of the Committee of Ministers relevant to its work** and in particular the decision of 14 January 2021 communicating to the CAHDI *Recommendation 2191 (2020) of the Parliamentary Assembly of the Council of Europe* on “[Investment Migration](#)”, for information and possible comments. In response to this decision, the CAHDI discussed its draft opinion on the abovementioned recommendation and decided to adopt it by written procedure.
8. Concerning the subject of “**Immunities of States and International Organisations**”:
  - a.1 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 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 took note of the information provided by delegations on this matter.
  - 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 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, 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 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 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, has 22 Parties. The CAHDI took note of the information provided by delegations on this matter.

c. With regard to its *Database on “State practice regarding State Immunities”*, the CAHDI noted that to date, 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 took note of the information provided by delegations on this matter.

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, 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.

9. The CAHDI, mindful of the fact that in majority the replies to the abovementioned questionnaires are currently still confidential, will consider in more detail at its next meeting the possibility of making them public.

10. 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*”. To date, 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. Since the last meeting of the CAHDI, the Czech Republic and the Netherlands had updated their replies to the revised questionnaire. The CAHDI invited delegations to send to the Secretariat any further information in order to complete their replies.

11. 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, 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.

12. 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.

a. The CAHDI welcomed the presentation and its exchange of views with the **special guest** Judge Robert SPANO, President of the European Court of Human Rights on the issue of **inter-state cases before the European Court of Human Rights**.

b. The CAHDI took stock of the developments in relation to the EU accession to the European Convention on Human Rights. Ms. Alina OROSAN informed the CAHDI of the state of negotiations from the last 3 meetings of the 47+1 Group, with focus on aspects of interest from the point of view of public international law.

c. 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.

13. The CAHDI welcomed the presentations and its exchange of views with the **special guests** Mr Emmanuel DECAUX and Mr Erkki KOURULA, President and Vice President of the OSCE Court of Conciliation and Arbitration on the role this Court could play as a **means of peaceful settlement of disputes**.

14. The CAHDI held a discussion on reservations implying the exclusion of any treaty-based relationship in between the reserving state and another state party to the treaty in relation to which the reservation is formulated.

15. Within the framework of its activity as the **European Observatory of Reservations to International Treaties**, the CAHDI examined a list of 11 reservations and declarations 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 (2021) 4 Addendum prov Confidential Bilingual*.

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

17. The CAHDI welcomed the presentation and its exchange of views with the **special guest** Mr Peter LEWIS, Registrar of the International Criminal Court on the **recent developments concerning the International Criminal Court (ICC) and took note of further relevant information on the ICC and on recent developments concerning other international criminal tribunals**, as contained in

document *CAHDI (2021) 5 prov.* The CAHDI took note of the information provided by delegations on this matter.

18. Delegations shared information on **topical issues of public international law**.

19. The CAHDI decided to hold its **61<sup>st</sup> meeting** in Strasbourg (France), on 23-24 September 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.

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

## **APPENDIX I**

### **I. INTRODUCTION**

1. Opening of the meeting by the Chair, Ms Alina OROSAN
2. Adoption of the agenda
3. Adoption of the report of the 59<sup>th</sup> meeting
4. Information provided by the Secretariat of the Council of Europe
  - Statement by Mr Jörg POLAKIEWICZ, Director of Legal Advice and Public International Law
  - Replacement of the old databases by the new ones, information provided by the Secretariat

### **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. Working methods: Non-paper on the Evaluation of the Activities of the CAHDI
  - b. Opinion of the CAHDI on Recommendation 2191 (2020) of the Parliamentary Assembly of the Council of Europe (PACE)
  - c. 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
  - Exchange of views with Judge Robert SPANO, President of the European Court of Human Rights
  - Overview of the state of play in relation to the EU accession to the European Convention on Human Rights
  - Cases before the European Court of Human Rights involving issues of public international law

10. Peaceful settlement of disputes

- Exchange of views with Mr Emmanuel DECAUX and Mr Erkki KOURULA, President and Vice-President of the OSCE Court of Conciliation and Arbitration

11. Law and practice relating to reservations and interpretative declarations concerning international treaties: European Observatory of Reservations to International Treaties

- General discussion in relation to reservations implying the exclusion of any treaty-based relationship in between the reserving state and another state party to the treaty in relation to which the reservation is formulated
- 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 Mr Peter LEWIS, Registrar of the International Criminal Court

14. Topical issues of public international law

**IV. OTHER**

15. Place, date and agenda of the 61<sup>st</sup> meeting of the CAHDI: Strasbourg (France), 23-24 September 2021

16. Any other business

17. Adoption of the Abridged Report and closing of the 60<sup>th</sup> meeting