

Bucharest, 23 September 2022

CAHDI (2022) 18

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

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## List of items discussed and decisions taken Abridged Report

**63rd meeting**  
22-23 September 2022

Bucharest, Romania (hybrid meeting)

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

cahdi@coe.int - [www.coe.int/cahdi](http://www.coe.int/cahdi)

**COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)****63<sup>rd</sup> meeting, Bucharest, 22-23 September 2022****List of items discussed and decisions taken  
Abridged Report****1. Introducing the meeting**

1.1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 63<sup>rd</sup> meeting in Bucharest, Romania, in hybrid format on 22-23 September 2022, with **Ms Alina Orosan** (Romania) as Chair.

1.2. The CAHDI adopted its agenda as set out in **Appendix I** to the present report.

1.3. The CAHDI examined and adopted the **Report of its 62<sup>nd</sup> meeting** (Strasbourg, France, 24-25 March 2022), and authorised its publication on the CAHDI website.

1.4. 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.

**2. Concerning the Committee of Ministers' decisions with relevance to the CAHDI, including requests for the CAHDI's opinion:**

2.1. The delegations took note of the **opinion of the CAHDI on Recommendation 2231 (2022) of the Parliamentary Assembly of the Council of Europe (PACE)**, adopted on 2 September 2022 by means of written procedure, as contained in document CAHDI (2022) 11 Restricted.

2.2. The CAHDI examined and **agreed** to the **request by the International Development Law Organization (IDLO) to be granted observer status with the CAHDI** according to paragraph C. 8 a. of Resolution [CM/Res\(2021\)3](#) on *intergovernmental committees and subordinate bodies, their terms of reference and working methods*, and to inform the Committee of Ministers of this decision.

2.3. The CAHDI took note of **decisions of the Committee of Ministers relevant to its work**, as contained in document CAHDI (2022) 12 Restricted.

**3. Concerning the subject of "CAHDI Databases and Questionnaires",**

3.1. The CAHDI took note of the following questionnaires and databases:

- Questionnaire on "Settlement of disputes of a private character to which an international organisation is a party";
- Questionnaire on "Immunity of State-owned cultural property on loan";
- Questionnaire on "Immunities of special missions";
- Questionnaire on "Service of process on a foreign State";
- Questionnaire on "Possibility 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";
- Database on "The immunities of States and international organisations";
- Questionnaire and database on "Organisation and functions of the Office of the Legal Adviser of the Ministry of Foreign Affairs (OLA)"
- Database on "The implementation of United Nations Sanctions".

3.2. The CAHDI **examined the possibility of making public the replies to the four questionnaires that are currently still confidential**, concerning: the "Settlement of disputes of a private character to which an international organisation is a party", the "Immunity of State-owned cultural property on loan", the "Service of process on a foreign State" and the "Possibility 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 took note of the responses submitted by 12 delegations to the inquiry on whether they would be ready to render public their replies to these questionnaires respectively. The CAHDI further invited delegations that have not yet replied to the inquiry to do so at their earliest convenience. The CAHDI decided to resume consideration of this item at its 64<sup>th</sup> meeting.

4. Concerning the subject of **"Immunities of States and of international organisations; diplomatic and consular immunities"**:

4.1. The CAHDI took note of the **information provided by delegations** in relation to the immunities of States and international organisations, diplomatic and consular immunities as well as the **State practice and case-law on this matter**.

5. Concerning the subject **"The European Convention on Human Rights and other human rights Issues involving public international law"**:

5.1. The CAHDI took note of the information provided by Ms Orosan on the state of negotiations from the last two meetings of the Ad hoc negotiation Group ("46+1"), with focus on aspects of interest from the point of view of public international law.

5.2. 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 including the information by many delegates on the decisions by their governments to seek leave to intervene as a third party in proceedings before the European Court of Human Rights in the case of *Ukraine v. Russian Federation* (X) (no 11055/22). It further invited delegations to keep the Committee informed on developments in this regard as well as on other relevant pending cases.

5.3. With regard to the issue of **"National implementation measures of UN sanctions and respect for human rights"**, the CAHDI took note of the information provided in this regard.

6. On the subject of **treaty law**:

6.1. The CAHDI held an exchange of views concerning **non-legally binding agreements in international law**. The CAHDI examined the replies by States to the questionnaire on "The practice of States and international organisations regarding non-legally binding agreements", contained in document CAHDI (2022) 14 Confidential, and discussed on the further action to be taken on this item in the light of the options presented in document CAHDI (2021) 17 Confidential.

The CAHDI agreed on the importance of this subject which was included as well on the long-term work programme of the International Law Commission (ILC). Based on the availability of resources until the end of this year, the CAHDI agreed to entrust the Secretariat with the task of contracting a consultant to initiate an analysis of the replies which would assist the Committee in formulating conclusions and identifying the best options for follow up. It encouraged delegations that have not yet replied to the questionnaire to do so in the near future.

6.2. The CAHDI noted that the questionnaire on **"Treaties not requiring parliamentary approval"** prepared by the Slovenian delegation in cooperation with the Chair, the Vice-Chair, and the Secretariat, contained in document CAHDI (2022) 3 rev Confidential had been approved by means of written procedure on 15 June 2022. The CAHDI reiterated that the deadline for responses to the aforementioned questionnaire was set for 30 September 2022 and noted that the discussion based on the replies to the questionnaire will continue at the next meeting.

6.3. The CAHDI decided to discontinue the discussion on the topic of **"Declarations implying the exclusion of any treaty-based relationship between the declaring State and another State party to the treaty in relation to which the declaration is formulated"** as exhausted for the time being but that the working document CAHDI (2022) 7 Confidential prepared on the subject would serve as a basis for future discussions should such need arise.

6.4. 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.

6.5. In addition, the CAHDI took note of document CAHDI (2022) Inf 3 containing 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 (2022) 15 Addendum prov Confidential Bilingual.

7. On the subject of **current issues of public international law**:

7.1. The CAHDI held an exchange of views **on the public international law aspects of the current situation of aggression against Ukraine**. Delegations condemned the Russian aggression against Ukraine and expressed their strong support to the legal avenues and mechanisms accessed by Ukraine to ensure comprehensive accountability. The exchange of views covered as well the mechanism to ensure accountability for the crime of aggression, a topic to be further considered including on the basis of additional input from the Ukrainian delegation.

7.2. The CAHDI held an exchange of views on the **peaceful settlement of disputes**.

7.3. The CAHDI held an exchange of views on the **work of the International Law Commission (ILC)** with a presentation by **Professor Dire Tladi** (President of the ILC).

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

7.5. The CAHDI discussed the **recent developments concerning the International Criminal Court (ICC) and other international criminal tribunals** in the light of document CAHDI (2022) 5. The CAHDI took note of the information provided by delegations on this matter.

7.6. The CAHDI took note of the presentations on the topic of **“The application of international law in cyberspace”** held by **Professor Dapo Akande** (Co-Director of the Oxford Institute for Ethics, Law and Armed Conflict (ELAC) at the Blavatnik School of Government/University of Oxford), **Doctor Cordula Droege** (*Chief Legal Officer/Head of Legal Division, ICRC*) and **H. E. Mr Guilherme de Aguiar Patriota** (*Former Chair of the Group of Governmental Experts (GGE) on Advancing responsible State behaviour in cyberspace in the context of international security*).

8. Concerning any **other issues**:

8.1. In accordance with [Resolution CM/Res\(2021\)3](#), the CAHDI elected Mr Helmut Tichy (Austria) and Ms Kerli Veski (Estonia), respectively, as Chair and Vice-Chair of the Committee, for a term of one year, from 1 January to 31 December 2023.

8.2. The CAHDI decided to hold its **64<sup>th</sup> meeting** in Strasbourg (France), on 23-24 March 2023. 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.

8.3. The CAHDI examined and agreed to the **proposal by the delegation of Italy to include the issue of soft law instruments on the agenda of future CAHDI meetings**.

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

## APPENDIX I

### 1. INTRODUCTION

1.1. Opening remarks

1.2. Adoption of the agenda

1.3. Adoption of the report of the 62nd meeting

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

- *Statement by Mr Jörg POLAKIEWICZ, Director of Legal Advice and Public International Law*

### 2. COMMITTEE OF MINISTERS' DECISIONS WITH RELEVANCE FOR THE CAHDI INCLUDING REQUESTS FOR CAHDI'S OPINION

2.1. Opinion of the CAHDI on Recommendation 2231 (2022) of the Parliamentary Assembly of the Council of Europe (PACE)

2.2. Examination of the request by the International Development Law Organization (IDLO) to be granted participant status to the CAHDI

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

### 3. CAHDI DATABASES AND QUESTIONNAIRES

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

3.2. Immunity of state-owned cultural property on loan

3.3. Immunities of special missions

3.4. Service of process on a foreign State

3.5. Possibility 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

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

3.7. The implementation of United Nations sanctions

3.8. Inquiry concerning the lifting of confidentiality of certain CAHDI questionnaires

### 4. IMMUNITIES OF STATES AND OF INTERNATIONAL ORGANISATIONS, DIPLOMATIC AND CONSULAR IMMUNITY

4.1. Exchanges of views on topical issues in relation to the subject matter of the item

4.2. State practice and relevant case-law

### 5. THE EUROPEAN CONVENTION ON HUMAN RIGHTS, CASES BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS AND OTHER HUMAN RIGHTS ISSUES INVOLVING PUBLIC INTERNATIONAL LAW

5.1. EU accession to the ECHR – international law aspects

- *Overview of the state of play in relation to the EU accession to the European Convention on Human Rights*

**5.2. Cases before the European Court of Human Rights involving issues of public international law**

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

## **6. TREATY LAW**

**6.1. Exchanges of views on topical issues related to treaty law**

- *Exchange of views on non-legally binding agreements in international law*
- *Exchange of views on treaties not requiring parliamentary approval*
- *Declarations implying the exclusion of any treaty-based relationship between the declaring State and another State party to the treaty in relation to which the declaration is formulated*

**6.2. 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*

## **7. CURRENT ISSUES OF PUBLIC INTERNATIONAL LAW**

**7.1. Topical issues of public international law**

- *Exchange of views on the aggression in Ukraine*

**7.2. Peaceful settlement of disputes**

**7.3. The work of the International Law Commission**

- *Exchange of views with Prof. Dire Tladi, Chair of the International Law Commission*

**7.4. Consideration of current issues of international humanitarian law**

**7.5. Developments concerning the international Criminal Court (ICC) and other international criminal tribunals**

**7.6. The use of new technologies and international law**

- *Discussion on the application of international law in cyberspace with introductions into the subject matter from:*
  - *Prof. Dapo Akande (Co-Director of the Oxford Institute for Ethics, Law and Armed Conflict (ELAC) at the Blavatnik School of Government/University of Oxford)*
  - *Dr Cordula Droege (Chief Legal Officer/Head of Legal Division, ICRC)*

## **8. OTHER**

**8.1. Election of the Chair and the Vice-Chair**

**8.2. Place, date and agenda of the 64th meeting of the CAHDI: Strasbourg (France), 23-24 March 2023**

**8.3. Any other business**

- *Proposal by the delegation of Italy to include the issue of soft law instruments on the agenda of future CAHDI meetings*

**8.4. Adoption of the Abridged Report and closing of the 63rd meeting**