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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW

(CAHDI)

Meeting report

63rd meeting
22-23 September 2022

Bucharest, Romania (hybrid meeting)

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

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1 INTRODUCTION

1.1 Opening of the meeting by the Chair, Ms Alina OROSAN

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 63rd meeting in Bucharest (Romania) on 22-23 September 2022, with Ms Alina Orosan (Romania) as the Chair. The meeting was held in hybrid format. The list of participants is set out in **Appendix I** to this report.

2. The delegations were welcomed by opening remarks by Ms Daniela Grigore Gîtman, Secretary of State for European Affairs (Romania), and Senator Titus Corlăţean (Romania). Ms Grigore Gîtman noted expert and conventional bodies to prove the ability of the Council of Europe to adapt to challenging political situations. Such bodies, including the CAHDI, had proven that they lived up to their mandate and the values of humanity and of the rule of law that the Organisation stood for. She stated that international law and the promotion of the rule of law at the international level lay at the very heart of Romania's foreign policy and were now more than ever, of paramount importance. Ms Grigore Gîtman then highlighted some recent national endeavours undertaken by Romania to support Ukraine in the field of international justice, notably by initiating, in March 2022, together with 39 other States, proceedings before the International Criminal Court (ICC) related to the charges of genocide, war crimes and crimes against humanity committed on the Ukrainian territory. Romania had further filed its third-party intervention with the European Court of Human Rights (ECtHR / Court) in the case brought by Ukraine against the Russian Federation concerning violations of human rights on the territory of Ukraine. Romania believed in the importance of continuing to firmly defend the fundamental principles of international law, among which sovereign equality, territorial integrity and political independence of all States as well as the prohibition of threat or of the use of force. Ms Grigore Gîtman stressed the need to implement a foreign and security policy that focuses on finding the best solution for stability and security in the region and that this goal could not be achieved without turning to international law and the instruments that it offers. Ms Grigore Gîtman concluded her statement by noting that through its work, the CAHDI was much connected to the political realities and preserved its relevance.

3. Senator Corlăţean underlined CAHDI’s potential of contributing to the advancement of this body of law and to the strengthening of the intergovernmental dialogue on legal issues of common relevance through its opinions, observations and commentaries on various aspects of public international law. The agenda of the current meeting, covering topical subjects such as the implications of the Russian aggression against Ukraine from the international law perspective and the application of international law in cyberspace, proved this point. He stated that the active involvement of Romania in support of the CAHDI, as well as of other international legal bodies, mirrored a deep commitment to the promotion of international law defining the country's foreign policy. International law, as a set of rules reflecting issues of concern for all humankind, was, according to Senator Corlăţean, the backbone of the international order, and, consequently, any great breaches of international law were a threat to the common endeavours of maintaining international peace and security and had as such to be sanctioned without hesitation. Senator Corlăţean further stressed that, tragically, Russia's war of aggression against Ukraine had reminded the region of the destabilising effect of non-adherence to fundamental norms and principles. He stressed that it was our duty now to join forces to restore and protect the rule based international law. It was consequently the right decision, albeit unprecedented, to exclude the Russian Federation from the Council of Europe. The unanimous vote within the Parliamentary Assembly in this regard took place only one day before the Committee of Minister's decision.

4. Further, on the issue of the Russian aggression against Ukraine, Senator Corlăţean welcomed the fact that the CAHDI continued to focus on the aspect of accountability for international crimes as also witnessed by its opinion on PACE Recommendation 2231. Senator Corlăţean then ended his introductory remarks by informing delegations of the involvement of the PACE in the preparations for the planned Fourth Summit of the Council of Europe through its own reflection group composed of a number of committee presidents. In this regard, he attached particular importance to two topics: the establishment of an international jurisdiction to sanction, based on international law, the crime of aggression committed in connection with the

Russian aggression against Ukraine and, secondly, the accession of the European Union to the European Convention of Human Rights as one of the key goals for many years in the Council of Europe.

5. The Chair thanked Ms Grigore Gîtman and Senator Corlăţean for their opening remarks and welcomed the experts attending the CAHDI for the first time extending her greetings and heartfelt thoughts, in particular, to the Ukrainian representative present in the room and to Ukrainians as a society in general.

1.2 Adoption of the agenda

6. The agenda was adopted as set out in **Appendix II** to this report.

1.3 Adoption of the report of the 62nd meeting

7. The CAHDI adopted the report of its 62nd meeting (document CAHDI (2022) 10 prov) with the proposed amendments and instructed the Secretariat to publish it on the Committee's website.

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***

8. Mr Jörg Polakiewicz, Director of Legal Advice and Public International Law (DLAPIL), informed delegations of recent developments within the Council of Europe since the last CAHDI meeting, beginning with the 132nd session of the Committee of Ministers, which took place in Turin (Italy) on 20 May 2022. This session was organised by the Italian Chairmanship and was attended by a record number of ministers who reaffirmed their commitment to the values of the Council of Europe and its work in the field of human rights, democracy and the rule of law. Whilst stressing the need to review the Council of Europe's priorities in light of the new reality of the continent, the Ministers decided to collectively ensure the financial resources to fill the gap in the organisation's budget following the exclusion of the Russian Federation from the Organisation on 16 March 2022. During the session, the Secretary General, the President of the Parliamentary Assembly, and several ministers spoke in favour of a Fourth Summit of Heads of States and Government of the Council of Europe. The Director underlined that this would be an opportunity to commit at the highest level to the values of the Council of Europe and to confirm or redefine the role of the Organisation in a fundamentally changed geopolitical landscape since the last Summit that took place in 2005 in Warsaw (Poland). For this purpose, a high-level reflection group chaired by Ms Mary Robinson (Ireland) was set up to consider the Council of Europe's responses to these new realities and challenges. The report is due for the end of September 2022.

9. The Director then informed delegations of a series of important decisions taken by the Committee of Ministers due to the ongoing aggression by the Russian Federation against Ukraine, in particular as regards the participation of the Russian Federation in open conventions negotiated in the framework of the Council of Europe and concerning the Russian Federation's accountability for international crimes. He recalled that the Russian Federation, expelled from the Organisation with immediate effect on 16 March 2022, also ceased to be a party to the European Convention on Human Rights on 16 September 2022. On this date also the office of the judge elected in respect of the Russian Federation ceased to exist. The ECtHR remains, however, competent to deal with applications, including inter-State applications directed against the Russian Federation in relation to acts or omissions having occurred until that date. The Committee of Ministers will also continue to supervise the execution of judgments and friendly settlements regarding the Russian Federation.

10. Continuing with developments concerning the ECtHR, the Director noted that with Ms Síofra O'Leary from Ireland, the Court had elected its first female President to take office on 1 November 2022. Concerning Protocol No. 16 to the European Convention on Human Rights, on 15 September 2022, Romania had ratified this instrument becoming the 17th Contracting Party. Under Article 15 of the Convention, the Government of Ukraine had notified the Secretary General on 28 March 2022 about the prolongation of the imposition of martial law and the introduction of a State of emergency on the entire territory of Ukraine. Also, the Republic of Moldova had prolonged, with a *note verbale* dated 5 August 2022, the introduction

of a State of emergency, siege and war. In the context of the supervision of the execution of the Court's judgments by the Committee of Ministers, the Director drew the attention of delegations to the case of *Kavala v. Turkey*, which marks the second time that the Committee of Ministers has resorted to the so-called infringement proceedings. Subsequently, the Court found, in a Grand Chamber judgement of 11 July 2022, a violation of Article 46, paragraph 1 of the Convention. While acknowledging that Türkiye had taken certain steps towards executing the judgement, the Court was unable to conclude that the respondent State had executed the judgement in good faith. When triggering the procedure, the applicant, Mr Kavala, had been in pretrial detention for more than four years, three months and 14 days on the basis of facts, which in its initial judgement, the Court had held not only to be insufficient to justify his detention, but also as constituting a violation of Article 18 of the Convention. Although new criminal charges had been brought against the applicant, the Court noted that there were striking similarities, if not complete duplication, between these sets of facts. According to the Court, a mere reclassification of facts could not affect its previous conclusion.

11. Lastly, the Director informed delegations that the Committee of Ministers had tasked the Committee on Artificial Intelligence (CAI) with the drafting of a legally binding instrument on artificial intelligence which would in fact be the first international treaty on the subject.

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)

12. The Chair introduced the sub-item by recalling that, on 11 May 2022, the Ministers' Deputies, at their 1434th meeting, had agreed to communicate Recommendation 2231 (2022) of the Parliamentary Assembly of the Council of Europe (PACE) on "The Russian Federation's aggression against Ukraine: ensuring accountability for serious violations of international humanitarian law and other international crimes" to, *inter alia*, the CAHDI, for information and possible comments.

13. As the final deadline for the submission of such comments was set for 5 September 2022, the CAHDI had to resort to a written procedure in order to adopt its opinion in time. A draft opinion had been prepared by the Chair with the help of the Secretariat and distributed to all delegations on 19 July 2022. Between this date and the deadline of 1 September 2022, three rounds of written consultations were held. The Secretariat had received comments from 15 delegations which were taken into account in preparing the final draft, a compromise proposal by the Chair. The opinion had finally been adopted by the CAHDI on 2 September 2022, as it appeared in document CAHDI (2022) 11 *Restricted*, dated 5 September 2022, and subsequently transmitted to the Committee of Ministers.

14. The Chair then drew the attention of the representatives to the decision of the Committee of Ministers on "Ensuring accountability for the Russian aggression against Ukraine" of 15 September 2022.[1] In this decision, the Ministers' Deputies stressed the urgent need to ensure a comprehensive system of accountability for serious violations of international law arising out of the Russian aggression against Ukraine in order to avoid impunity and to prevent further violations; noted with interest the Ukrainian proposals to establish an ad hoc special tribunal for the crime of aggression against Ukraine and a comprehensive international compensation mechanism, including, as a first step, an international register of damages; and welcomed ongoing efforts, in co-operation with Ukraine, to secure accountability for the crime of aggression against Ukraine.

15. From a substantive point of view, the representative of Türkiye recalled the importance of preventing impunity for the most serious international crimes and the support of his country to that end and for ensuring respect of Ukraine's territorial integrity, independence and sovereignty. Although his country had identified some points in the CAHDI opinion that might

[1] CM/Del/Dec(2022)1442/2.3, adopted by the Committee of Ministers on 15 September 2022 at the 1442nd meeting of the Ministers' Deputies.

have called for further comments, it did not want to undermine the consensus reached taking into account the situation in Ukraine. However, his country reserved the right to make further comments on these points and on the content of the CAHDI opinion in general. He then noted that, particularly in the light of the CAHDI opinion, several important political, legal and practical issues might arise regarding the establishment of such legal mechanisms, particularly in view of the existing mechanisms that will have to be taken into account. Furthermore, the creation of new legal mechanisms would need to respect the principles of legality and non-retroactivity and would further need to preserve the delicate balance between the requirement of legitimacy and the need to combat impunity for international crimes.

16. The Turkish representative then recalled the position of his country in the United Nations General Assembly (UNGA) Sixth Committee regarding universal jurisdiction and the ongoing debate in that Committee. According to this position, the application of this subsidiary and exceptional form of jurisdiction should be carefully considered. All the existing examples of *ad hoc* and international tribunals established for the prosecution of the most serious international crimes such as the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), the Special Tribunal for Lebanon (STL), the Special Court for Sierra Leone (SCSL) or the Special Panels for Serious Crimes in East Timor (SPSC) had in common that they were based on an engagement by the UN Security Council (UNSC) in one way or another. In Türkiye's view the specific mandate for determining existence of any threat to peace, breach of peace or act of aggression vested upon the UNSC by the UN Charter merited hence attention. As for the individual criminal responsibility for alleged crimes of aggression, it was further worth reiterating that there had not been any *ad hoc* or internationalised tribunals vested with jurisdiction over the crime of aggression. The only examples given in the CAHDI opinion of tribunals vested with such a jurisdiction were the International Military Tribunal (IMT) and the ICC. The Turkish representative then underlined that the legal and factual circumstances leading to the adoption of the multilateral agreements establishing these courts were quite different from and not comparable to each other. According to him a multilateral agreement among certain States to ensure criminal and civil liability in respect of a third country could not be seen as a sufficient legal basis in the current international order, not to mention the complications it would create if it bypassed customary international law and undermined the immunity recognised to sovereign States and their officials. Therefore, while choosing an international platform and means to establish a legal mechanism, his country believed that prudent steps should be taken not to compromise the legitimacy of this process.

17. From a procedural point of view, the Turkish representative reiterated his wish that what, in his view, corresponded to a foreseeable procedure should be followed, in particular regarding the way in which the comments and positions of the different CAHDI members are collected, disseminated and reflected. Although recourse to the written procedure is inevitable in some cases, he observed that it has become the rule rather than the exception and went on to highlight some of the practical difficulties encountered by Türkiye in participating in the various rounds of written consultations leading up to the adoption of the CAHDI opinion.

18. With regard to adopting CAHDI opinions via written procedure, the Chair pointed out to the practical problem of timing, already discussed during the 61st meeting of the CAHDI (23-24 September 2021 in Strasbourg, France). Although she shared the Turkish representative's wish to discuss the adoption of each opinion in person, she recalled that this was simply not possible as the CAHDI only had two plenary meetings a year and did not have the possibility of organising a specific meeting to discuss the adoption of an opinion that might cause difficulties. Furthermore, it would seem unreasonable to ask the Committees of Ministers to wait until the next CAHDI meeting in order to receive a required opinion. Thus, it was up to the CAHDI to adapt to the Committee of Ministers' timeframe and to demonstrate that it is capable to adopt opinions even under complex circumstances. This, according to the Chair, the CAHDI had successfully done, through the organisation of three rounds of consultations, although the summer period during which these consultations took place may have posed practical problems.

19. The Chair then provided some explanations on the use of the written procedure, both in general and in the specific case of the adoption of the opinion in question. She recalled that each time

a draft opinion was circulated by the Secretariat, a "clean" version as well as a version with highlighted comments made by the delegations were sent, thus enabling the delegations to clearly identify all the comments made.

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

20. The Chair informed delegations of the request submitted by the International Development Law Organization (IDLO) on 29 July 2022 to be granted observer status with the CAHDI, as contained in document CAHDI (2022) 17 *Restricted* (dated 2 August 2022). She explained IDLO to be a global intergovernmental organisation, established in 1988, devoted to promoting the rule of law to advance peace and sustainable development. It is composed of 37 member Parties among which many member States of the Council of Europe and observer States to the CAHDI. It has had observer status with the United Nations since 2001.

21. The Chair then reminded delegations of the rules governing observer status with the CAHDI as contained in Resolution CM/Res(2021)3 on intergovernmental committees and subordinate bodies, their terms of reference and working methods. The differentiation in terminology between "participants" and "observers" in this Resolution related to differences in the procedure for being granted the status for these two categories. While the admission of international organisations and other entities as "participants" was dependent on prior general authorisation by the Committee of Ministers, their subsequent admission to a steering or ad hoc committee was a mere formality under Article 7 (b) of the Resolution. An "observer" was, in turn, admitted on the basis of a unanimous decision by the respective steering or ad hoc committee according to Article 8 (a) of the Resolution.[2] Only where unanimity was not reached or in special cases, such as the admission of non-member States without observer status to the Council of Europe and in any other case which necessitated a political decision, the matter had to be referred to the Committee of Ministers. The Chair underlined that, despite these procedural differences, the rights and obligations pertaining to participants and observers were exactly the same. They had the right to participate in all meetings and activities organised by the CAHDI, but they did not have the right to vote or defrayal of expenses.

22. The Chair opened the floor for any views on the request by IDLO.

23. The representative of Italy noted that there were, in general, many benefits to be gained from strengthening cooperation and synergies between international organisations. The CAHDI, in particular, had a special interest in cooperating with other international bodies dealing with core subjects relevant to its work. Insofar as IDLO's activities concerned the promotion of the rule of law and good governance in particular in developing States, with economies in transition or affected by war, there were many advantages to be gained for the CAHDI from a future cooperation with the IDLO. Concerning the category under which IDLO's request should be considered, his country had no firm opinion on the matter. However, considering the application as an observer would, if unanimity existed in the CAHDI, allow to proceed without involving the Committee of Ministers, which would make the procedure much simpler and expedient.

24. The representative of Sweden expressed his country's support for granting observer status to IDLO and shared the Italian representative's view on the benefits to be gained, both for the CAHDI and for IDLO. Like previous speakers, he viewed IDLO as an organisation focusing mainly on rule of law issues of great relevance to the CAHDI. With regard to the procedure, he noted that his country did not have a detailed position on the issue and that he had full confidence in the Chair to manage the procedure in accordance with the applicable rules.

25. The representative of Austria supported the suggestion to grant IDLO the requested status by a consensual decision of the CAHDI, as had it been done in the past for other international organisations.

[2] In special cases, however, such as the admission of non-member States without observer status to the Council of Europe and any other case which may necessitate a political decision a decision of the Committee of Ministers is needed according to Article 8 (b) of the Resolution.

26. Following this exchange of views, the CAHDI unanimously agreed to the request by IDLO to be granted observer status with the CAHDI and to inform the Committee of Ministers of this decision.

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

27. The Chair presented a compilation of the Committee of Ministers' decisions of relevance to the CAHDI's activities (document CAHDI (2022) 12 *Restricted*), dated 13 July 2022.

28. The Committee of Ministers had, *inter alia*, taken note of the Abridged Report of the 62nd meeting of the CAHDI (24-25 March 2022 in Strasbourg, France). The document further contained links to the stocktaking document of the Italian Presidency of the Committee of Ministers, which took place from November 2021 to May 2022, as well as the priorities of the ongoing Presidency of Ireland until November 2022.

29. Moreover, the Chair drew the attention of delegations to the decisions taken by the Ministers' Deputies at their 1438th meeting on 30 June 2022 concerning the "Modalities for the participation of the Russian Federation in open conventions". Prior to these decisions, the CAHDI had prepared a Guidance Note on the "Continued participation of the Russian Federation in 'open' conventions elaborated in the framework of the Council of Europe" which was submitted to the Committee of Ministers on 4 May 2022. In their decisions of 30 June 2022, the Ministers' Deputies welcomed the CAHDI Guidance Note and invited: "where relevant, each body representing all the Parties of treaties to which the Russian Federation remains a Party […], to decide, on the basis of its rules of procedure, on the modalities of participation of the Russian Federation in the respective body as soon as possible and no later than the end of November 2022" and "to consider, requesting the advice of the CAHDI if needed, measures which may include restricting the participation of the Russian Federation in the above-mentioned treaty bodies or limiting its participation exclusively to the monitoring of its own compliance with the obligations under those conventions, without the right to participate in the adoption of decisions by those bodies nor to vote". For the time being, no conventional committee had requested the CAHDI for additional advice. The Chair had, however, been invited to present the Guidance Note to the Steering Committee for Human Rights (CDDH) on 16 June 2022.

30. The Director specified that the Russian Federation remained a party to some 41 conventions open to non-member States. However, in practice, conventions that were concerned by the above-mentioned decisions of 30 June 2022 were only those having an active follow-up or monitoring body, i.e., around 10 out of the total of 41 open conventions. Two of these, the Framework Convention for the Protection of National Minorities (ETS No. 157) and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126), featured specific characteristics as to their monitoring which had called for special solutions also in respect of the future participation of the Russian Federation. For ETS No. 157, the monitoring body was the Committee of Ministers itself. In that case, the participation by non-member States was foreseen but the modalities were to be determined by the Committee of Ministers.

31. In the case of ETS No. 126, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), was composed of independent experts who do not represent the governments of the States Parties to the convention. The CPT had taken the view that the person appointed to sit on this committee in respect of the Russian Federation was not appointed by the latter but elected by the Committee of Ministers. As a result, this person, being an independent expert, could continue to participate in the work of the Committee.

32. In view of the above, the Director indicated that the legal issues related to open conventions in reality only concerned 8 of these 41 conventions, and that the issues to be discussed around the possibilities to restrict participation of the Russian Federation in the work of these committees arose in relatively similar manner for each of them since these conventions all provided for the existence of a treaty body (usually called Committee or Conference of Parties) in similar terms. These treaties generally provided that States Parties, whether members or non-members of the Council of Europe, were entitled to sit on these committees and had the

right to vote in them. This therefore posed a problem regarding the implementation of the above-mentioned decisions of the Committee of Ministers, which clearly stated that it was for each treaty body of these conventions (representing the contracting parties including non-member States) to adopt the relevant decisions in this respect among themselves. The adoption of such decisions therefore required to amend their rules of procedure in order to provide a legal basis for such decisions since the current rules did not provide for possible measures to be taken against a State in a situation similar to that of the Russian Federation. In this respect, DLAPIL, as the Organisation's legal service, was in close contact with and actively provided legal advice to these bodies, especially in the context of the drafting of amendments to the current rules of procedure. The first step for these bodies was to decide whether or not they wanted to reduce the participation of the Russian Federation in their work and then to consider, as a second step, which concrete measures should be adopted, also in the light of their treaty regime and the committee's role.

33. The fundamental question in this regard was, according to the Director, how far these treaty bodies could go in restricting the participation rights of the State in question and on what legal basis they could base the decision to withdraw, suspend or terminate its participation and voting rights. Without going into the details of this question, given it had already been dealt with by the CAHDI in its Guidance Note, the Director recalled that this legal basis could either be found in the Vienna Convention on the Law of Treaties (VCLT)or based on collective countermeasures. Finally, he informed the delegations that a decision similar to the ones of 30 June 2022 was in preparation concerning Belarus which, although never a member of the Council of Europe, was a party to many open conventions.

34. The representative of Ireland then presented Ireland's priorities for its Presidency of the Committee of Ministers, which will end on 17 November 2022: strengthening of human rights and the protection of civilian in Europe, promotion of participatory democracy and youth engagement and fostering of a welcoming, inclusive and diverse Europe. He further drew the attention of delegations to two of the numerous events to be hosted by Ireland in the framework of its Presidency and that might be of interest for CAHDI members. Firstly, Ireland had hosted a conference on the "Effective application of the European Convention of Human Rights in contested European Territories" earlier that month in Galway which the Director for Legal Advice and Public International Law and several CAHDI members had attended. Secondly, on 20-21 October 2022, Ireland will host a judicial conference between the President and the Bureau of the ECtHR and the Senior Irish Judiciary, led by the Chief Justice of Ireland, in Farmleigh, Dublin.

3 CAHDI DATABASES AND QUESTIONNAIRES

35. The Chair introduced the item by recalling the questionnaires and databases entertained by the CAHDI especially in the field of issues related to immunities of States and international organisations but also in other areas of particular interest for the CAHDI. She informed delegations that since the last CAHDI meeting, Austria, Italy, the Republic of Korea and Sweden have provided new replies to the revised questionnaire on *The organisation and functions of the Office of the Legal Adviser of the Ministry of Foreign Affairs* (document CAHDI (2022) 6 prov *Bilingual*). Furthermore, the United Kingdom had transmitted its revised contribution to the database *Implementation of United Nations sanctions* in June 2022.

36. The Chair then turned to the issue of the possibility to lift the confidentiality of the replies to four of the questionnaires under this item, notably those 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*. At its 62nd meeting (23-24 September in Strasbourg, France) the CAHDI had decided that the Chair, together with the Secretariat, would prepare an inquiry form to be sent to all delegations to find out whether they would be ready to render their replies to these questionnaires public. The deadline for this inquiry had expired on 1 August 2022 but so far only 12 of the 38 delegations concerned, that have provided replies at least to one of the four questionnaires, had signalled

to the Secretariat their stand on lifting the confidentiality of their replies. The Chair noted that all these 12 replies had been in favour of lifting confidentiality and encouraged all the remaining 26 delegations to approach the Secretariat and to let them know, before the 64th meeting of the CAHDI in March 2023, whether they would allow their replies to the four questionnaires to be made public.

37. Before opening the floor for comments concerning the issue of lifting confidentiality of the four questionnaires concerned, the Chair reiterated that before any publication takes place, delegations would have the opportunity, within an adequate deadline, to revise their replies. She further encouraged delegations to think about the ways in which the publication of the replies could be carried out. The easiest and most inexpensive solution would be to make a PDF compilation of the replies available on the public website of the CAHDI, while the more modern alternative would be to create a searchable database like it exists now, for instance, on national laws and jurisprudence on immunities of States and international organisations, or on the implementation of UN sanctions. The Chair recalled, however, that this second option would require additional resources, for instance, from voluntary contributions. Such voluntary contributions had been provided in the past by Germany and Netherlands at the time when the three existing databases were created.

38. The representative of the Republic of Korea took the floor noting that this was the first CAHDI meeting at which a delegation from his country could physically participate since its acceptance as an observer to the CAHDI in 2020. He wished to use this opportunity to express his heartfelt appreciation for the generous support extended by CAHDI member States to Korea's application back then. The Korean representative furthermore expressed his hope that his country would gradually increase its positive contribution to the discussions of the CAHDI. The Korean government had recently submitted its replies to the questionnaire on the topic of *The organisation and functions of the Office of the Legal Adviser of the Ministry of Foreign Affairs*. The Korean government intended to make further contributions in sharing relevant State practises and views within the framework of the CAHDI in the future.

39. The representative of the United Kingdom noted two practical points on the issue of publication of the replies to the questionnaires currently still handled as confidential. The United Kingdom agreed to its questionnaires being published but would require time to update two of them. This information had already been communicated to the Secretariat. The United Kingdom would assume the Secretariat to put a process in place by which it will verify the final version with States before proceeding to publication. The representative of the United Kingdom further maintained, on the form of publication, that given that the replies to the questionnaires were not very long or complicated PDF compilation offers a simple and quick solution.

40. The Italian representative proposed to add a disclaimer to the questionnaires and databases in the public domain that were prone to updates on a constant basis. Such disclaimer would warn persons consulting the questionnaires or databases in question that the information consulted might be outdated.

41. The representative of Türkiye took the floor to explain delegations the reasons behind his country's opposition to the publication of the replies to the questionnaire on Immunity of state-owned cultural property on loan. In his statement he maintained the following: He recalled that the Republic of Cyprus had been established in 1960 on the basis of, as he maintained, a partnership between the two peoples of the Island, through international treaties concluded between the Turkish Cypriots and Greek Cypriots, as well as the guarantor powers Türkiye, Greece and the United Kingdom. These international treaties, the representative of Türkiye maintained, were based on the political equality and equal status of the island's Turkish and Greek Cypriot peoples. He argued that the United Kingdom Government relinquished the sovereignty of Cyprus to the partnership Republic composed of the aforementioned politically equal partners "acting conjointly and in partnership". He additionally contended that the legitimacy of the 1960 Republic lay in the joint presence and effective participation of both sides in all the organs of the State. In his view none of the parties had the right to rule over the other, nor could any of them assume the right to be the Government of the whole island in the absence of the other in all the organs of the State and its government. He claimed that this state of affairs had ceased to exist as such after the violation of the constitution of the Republic

of Cyprus unilaterally in 1963 by the Greek Cypriot side, and the ousting of Turkish Cypriots from State mechanisms through the use of force. He purported that since December 1963, there has not been a joint authority or administration which is in law or in fact entitled to represent jointly the two peoples of Cyprus, namely the Turkish Cypriots and the Greek Cypriots, and, consequently, Cyprus as a whole, but, instead, each side has ruled itself. He contended that the Turkish Cypriot side, and Türkiye as a guarantor power under the 1960 Treaty of Guarantee, had never accepted the Greek Cypriot side's continued acting as the "legitimate Government of Cyprus". Türkiye considered this to amount to the deprivation of the Turkish Cypriot people from using their rights as equal partners of the State established in 1960. In view of Türkiye, the Greek Cypriots, who have organised themselves under their own constitutional order and within their own boundaries, cannot legitimately represent the entire island. The representative proclaimed Türkiye to continue to regard the Greek Cypriot authorities as exercising authority in the territory south of the buffer zone, as is currently the case, and as not representing the Turkish Cypriot people, who are, instead, represented by the "Government" of the "Turkish Republic of Northern Cyprus" ("TRNC"). This State, which was, according to the representative, democratically formed by the free will of the Turkish Cypriot people, was recognised by Türkiye as having full jurisdiction over its territory and therefore as the sole authority which can assume international obligations in that respect. Moreover, he alleged that the only authority qualified to provide information on any kind of matter concerning the "TRNC", including "cultural property" and the respective CAHDI questionnaire, would hence, in view of Türkiye, be the relevant "TRNC" authorities. With this in mind, Türkiye considered the "TRNC" as being entitled to the right of "cultural immunity" as any other State party to international legal instruments guaranteeing the immunity of state-owned property on loan. The representative concluded his intervention by stating that Türkiye, along with the "TRNC", remained committed to finding a political settlement on the Cyprus issue, based on sovereign equality and equal international status of the Turkish Cypriot people. Pending such a settlement, however, the position of Türkiye on this issue would remain unchanged. The representative of Türkiye, quoted the letter sent by Mr Tahsin Ertuğruloğlu, Minister of Foreign Affairs of the "TRNC", addressed to the CAHDI Chair, dated 24 March 2021 explaining the mentioned position in detail.[3]

42. The representative of Cyprus, referring also to the letter of the Permanent Representative of Cyprus to the Council of Europe to the Chair of CAHDI, dated 12 April 2021 (CAHDI (2021) COM 2 CYP), which replied in detail to the communication by Türkiye dated 24 March 2021 regarding Cyprus' reply to the same questionnaire, responded that it was clear for Cyprus that Türkiye's "objection" to render the said questionnaire public, apart from repeating its usual narrative about the Republic of Cyprus, mainly aimed to promote and upgrade the secessionist entity established by Türkiye in the occupied part of the Republic of Cyprus. The Republic of Cyprus considered this to violate international law, including the relevant UN Security Council resolutions on Cyprus, and the principles on which the Council of Europe is founded. The Cypriot representative further stated that Türkiye had not provided any replies to any of the questionnaires under consideration, including the questionnaire on immunity of state-owned cultural property on loan. Its "objection", founded entirely on the replies of Cyprus to the said questionnaire, constituted, in her view, an abuse of process, obstructing the member States' right to render their replies public, contrary to the discussions at the 62nd CAHDI meeting (24-25 March 2022 in Strasbourg, France) and the Secretariat's follow-up directions to member States sent on 07 June 2022. The representative concluded her intervention by uttering the strong rejection by Cyprus of the aforesaid "objection" and the views it is based on. Cyprus considered it without any effect whatsoever as to the decision to render public the replies of CAHDI members to the said questionnaire.

43. The Chair invited delegations that have not yet replied to the inquiry to do so at their earliest convenience and proposed to resume consideration of this item at the next 64th meeting of the CAHDI.

[3] At the request of the Permanent Representation of Türkiye and under its cover (see letter by Permanent Representative of Türkiye to the Chair of CAHDI dated 25 March 2021), a letter dated 24 March 2021 presenting this position was circulated to CAHDI delegations on 1 April 2021.

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

44. The Chair recalled that this item was, in principle, divided into two sub-items, item 4.1 "Exchange of views on topical issues relevant to the subject of the item", on the one hand, and item 4.2 "State practice and relevant case law", on the other. However, as no specific topics were brought to the attention of the Secretariat prior to the meeting for an exchange of views under this item, she simply invited delegations to share information on recent developments in the areas in their countries, be it State practice, case law or any other relevant genre, which they considered to be of interest to other delegations.

45. The representative of Belgium informed the CAHDI about a decision rendered by the Belgian Court of Cassation on 27 June 2022. He considered the ruling to be important because it recalled certain principles concerning State immunity and complemented the case law of labour courts on penalty payments that had already been mentioned during the previous CAHDI meeting. The judgment was based on a dispute over the employment contract of a staff member hired locally by the embassy of the respondent State. The State refused to pay double holiday allowance to locally recruited employees. In Belgium, the legislation on double holiday allowance is a matter of public policy and failure to pay within the prescribed period is an offence under the Social Criminal Code. The appealed judgment stated that the State could not invoke any immunity in this case, as the staff member did not perform any particular functions of public authority. It ordered the foreign State to pay the double holiday allowance and also to deliver to the defendant her pay and tax slips under penalty of a fine. The Court of Cassation noted that customary international law on State immunity prohibits the courts of one State from exercising their power to judge another State that has not consented to it. An exception to this rule applies when the action against the foreign State relates to a managerial act. If the act of management by the foreign State reveals a breach of the host State's law, immunity from criminal jurisdiction prevents the foreign State from being prosecuted. However, this immunity from criminal jurisdiction does not preclude a civil action based on that offence. Nor does it preclude such an action from being subject to a specific statute of limitations which would require the constituent elements of the offence to be established in the foreign State. The customary international law rule on State immunity, expressed in Article 19 of the United Nations Convention on Jurisdictional Immunities of States and Their Property, adopted in New York on 2 December 2004, prohibits coercive measures to force a State to enforce a judicial decision rendered by a court of another State. By attaching fines to the sentences pronounced against the foreign State, the appealed judgment violated this customary rule.

46. The representative of Sweden presented the decision delivered by the Swedish Supreme Court on 18 November 2021 in the case of *Stati et al. v. the Republic of Kazakhstan and the National Bank of Kazakhstan*.[4] The Court was called upon to determine whether certain financial assets accumulated in and managed by the National Bank of Kazakhstan were protected by State immunity from enforcement of an arbitral award rendered under the Energy Charter Treaty. The Court of Appeal found that the property in question indeed enjoyed State immunity. It based its decision on a so-called categorical interpretation of the principle expressed in Article 21(1)(c) of the United Nations Convention on Jurisdictional Immunities of States and Their Property, according to which property of central banks enjoys absolute immunity. The Supreme Court held, however, that immunity protection for the property of central banks was limited to property with a clear connection with the central bank's activities in the area of monetary policy. According to the Supreme Court, the property in question did not have such connection. The Court thus based its assessment on the principle contained in Article 19 of the Convention. It found that the purpose of holding the attached financial assets was not qualified enough to be seen as an expression of Kazakhstan's sovereign acts or similar acts of an official character. It was therefore not protected by State immunity. The Supreme Court thus reversed the decision of the Court of Appeal and remanded it to the Court of Appeal for further proceedings.

47. The representative of France reported on one judgment and three decisions of the French Court of Cassation. Firstly, in a judgment of 7 September 2022, the Court of Cassation had to

[4] Supreme Court, Case: Ö 3828-20,"Ascom" NJA 2021 s. 850, 18 November 2021.

rule on an act involving a sovereign foreign Head of State and confirmed that since this act had taken place in a private context and did not constitute a prerogative of public power or an act of sovereignty, this act could be the subject of a criminal qualification insofar as it was not susceptible to benefit from immunity. In another case the Court of Cassation decided, in three decisions of 7 September 2022, that the question of immunities, on the one hand, and the question of coercive measures on frozen properties, on the other hand, were distinct issues. Indeed, in order to assess the possibility of seizing property that is frozen as a result of European sanctions, it was first necessary, in order to preserve the effectiveness of the sanctions, to request the end of the freezing measure from the Director of the Treasury, who is the national authority in charge of applying the sanctions. The Court did not rule at this stage on the question of the possible immunities from execution from which these assets could benefit.

48. The representative of Austria reported on a coordinated activity with some other States led by his country in China. Chinese authorities in Beijing had informed diplomatic missions that, no diplomatic mission, consulate or representative office of an international organisation in China could acquire or dispose of properties, f. ex. as chancellery or residence, without the consent of the Chinese Ministry of Foreign Affairs. In addition, the Chinese authorities informed the diplomatic missions that a request had to be submitted to the Chinese side 60 days before the start of any procedures relating to such operations, and that these could only begin once written approval had been obtained. Close contacts had been established with other States, some of which are represented in the CAHDI, all of which transmitted notes to the Chinese Ministry of Foreign Affairs complaining about the Chinese requirement in that it contravened the long-established international law principle of inviolability of diplomatic premises. Moreover, the imposition of the Chinese requirement of a 60-day advance application severely hindered the ability of new staff members to promptly find suitable accommodation.

49. The representative of Germany underlined the coordinated efforts presented by the Austrian representative and expressed his gratitude for the efforts undertaken by Austria in this regard. He further mentioned the Covid related restrictions imposed on diplomats and consulates in China such as quarantine in government designated premises, which were, in the view of his country, contrary to the obligations of China under the relevant Vienna Conventions. These restrictions concerned Beijing in particular but also other Chinese cities. This was a point on which his country, and other countries represented in the CAHDI, were trying to influence the Chinese government. The representative underlined the importance of continuing these efforts to ensure compliance with the rules contained in the Vienna Conventions.

50. The representative of the United Kingdom drew the attention of delegations to the *Bafar v Wong* case before the United Kingdom Supreme Court. On 6 July 2022, the Supreme Court had ruled by a majority of 3 to 2 that a claim brought in the Employment Tribunal against a serving diplomat by his privately employed domestic worker for wages and breaches of employment rights fell within the exception to immunity provided for in Article 31(1)(c) of the Vienna Convention on Diplomatic Relations (VCDR). The domestic worker had alleged that she was a victim of human trafficking and was exploited by the diplomat and his family by being forced to work in circumstances of modern slavery. If those facts were proved, then it followed, according to the court's judgment, that the diplomat would not have immunity from the civil jurisdiction of the United Kingdom courts in this case. The Supreme Court acknowledged that under Article 31 of the VCDR a diplomatic agent would ordinarily enjoy immunity from civil and administrative jurisdiction in respect of contracts incidental to daily life, including the private employment of domestic workers. However, the Supreme Court ruled that the assumed circumstances of coercion and exploitation in this case – specifically the high degree of control alleged to have been exercised by the diplomat over the domestic worker and the exploitation of that control for his personal profit - were sufficient to be regarded as "commercial activity" outside the diplomat's official functions, falling thus within the exception to immunity in paragraph (1)(c) of Article 31. The Court reasoned that personal immunity in relation to the normal employment of a domestic worker was needed by members of diplomatic staff to ensure the efficient performance of the functions of diplomatic missions, but that the activity of profiting from the forced labour of a domestic worker held in a state of servitude would be manifestly and wholly inconsistent with the position and dignity of a diplomatic agent, and that

there was no good reason to deprive the victim of such exploitation of their ordinary civil remedies. The Supreme Court ruling was the final determination of the law relevant to the assertion of immunity. The claim returned to the Employment Tribunal for full consideration of the facts.

51. The representative of the United States of America reported on two cases. The first one was the case of *Broidy v. Muzin v. Qatar*,[5] in the District of Columbia Circuit. On 26 August 2022, the United States had filed an amicus brief in this case, which was pending in the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit), regarding the jurisdiction of Qatar to file an interlocutory appeal as a non-party to the litigation and on whether archival immunity under Article 24 of the VCDR may extend to documents provided to certain third parties. Article 24 provides broadly that the "archives and documents of the mission shall be inviolable at any time and wherever they may be". There was little in the way of domestic or international precedent on whether the archival inviolability of documents extends to embassy documents held by a third party. The case was brought by Elliott Broidy and his company Broidy Capital Management LLC against a group of private consultants working for Qatar that allegedly disseminated information hacked from Broidy's computers. At the trial level, the district court granted plaintiffs' motion to compel discovery despite the defendants' attempt to withhold documents based on the inviolability of the Qatari Embassy's archives. The district court issued a bright-line rule that documents outside of the mission's possession only retained inviolability if they were lost or stolen, and documents freely given to a third party were not protected by Article 24. The United States took the position that Qatar should be able to intervene to assert its rights under the VCDR, as production could violate the inviolability of any protected documents or information. In addition, the United States argued that the district court went too far in categorically holding that documents held by a contractor could never form part of the mission's protected archives, and the U.S. brief suggested three considerations for when inviolability might extend: the nature of the relationship between the mission and third party, the nature of the document or information, and the mission's expectation of confidentiality. The submission urged the court to remand for further consideration. Oral argument was scheduled for 28 October 2022.

52. The second case was the case of *Jam v. International Finance Corp*.[6] On 25 April 2022, the U.S. Supreme Court denied the Jam Plaintiffs' petition to review a decision of the D.C. Circuit ruling that the International Finance Corporation (IFC) was immune from the suit. This case concerned the interpretation of the U.S. general statute, the International Organizations Immunities Act (IOIA), as well as the Foreign Sovereign Immunities Act (FSIA) as applied to suits against international organisations. The IOIA provided privileges and immunities to certain presidentially-designated international organisations. In 2019, the Supreme Court ruled, consistent with the United States' position, that the IOIA provides international organisations the same immunities from the jurisdiction of U.S. courts that are currently afforded to foreign States, not the absolute immunity afforded to foreign states when the IOIA was enacted in 1945.[7] The Supreme Court remanded the case to the district court for further proceedings as to whether an exception to immunity under the FSIA would apply in this case. The United States filed in the district court explaining that the "commercial activities" exception to immunity in the FSIA would not apply under the facts of this case and that the IFC thus enjoyed immunity from the suit. The district court ultimately issued a decision in August 2020 that essentially agreed with the analysis advanced by the United States, and the court dismissed the action. Like the district court, the D.C. Circuit found that the suit was "based upon" alleged tortious activity in India and that the case did hence not have the required U.S. nexus to fall within the commercial activity exception. The case has now come to an end given that, earlier this year, the Supreme Court declined to review its decision.

53. The representative of Canada recalled that he had drawn the attention of the CAHDI, at previous meetings, to a number of cases litigated in his country concerning the downing of the Ukraine International Airlines flight PS752 from Teheran to Kyiv on 8 January 2020. As part of

[5] *Broidy v. Muzin* v. Qatar, No. 22-7082 (D.C. Cir.).

[6] *Jam v. International Finance Corp,* No. 20-7092 (D.C. Cir. 2021), cert. denied (Apr. 25, 2022).

[7] 139 S. Ct. 759, 765–67 (2019).

these litigations, there were certain cases against Iran brought before Canadian courts under the State Immunity Act. Unfortunately, the Government of Canada was not present in the court during these proceedings due to a respective decision of the Attorney General. The judgments in these cases came down in favour of the plaintiffs the court finding that the State Immunity Act was not being applicable in a case involving terrorism and awarded a large sum of money in compensation to the plaintiffs. It raised questions in the Ministry of Foreign Affairs tasked to provide the judgment of the court to Iranian authorities. The Iranian authorities had made no indication as to whether they planned to file an appeal against the judgment. Subsequently, a number of other similar cases have been brought and part of the request of a lawyer working for other plaintiffs was to join the new cases. In the current case, the successful legal advice given to the government had enabled the Crown (the State) to appear in court, where it hoped to successfully point out to the court the correct application of the State Immunity Act.

54. The representative of Azerbaijan informed the CAHDI that diplomatic missions of Azerbaijan abroad had recently been subject to attacks and acts of vandalism in gross violation of the VCDR causing financial and property damages. In particular, diplomatic missions of Azerbaijan in France and Lebanon have been attacked by radical Armenian groups residing in these countries. Despite the prompt request by diplomatic missions of Azerbaijan to law enforcement agencies of the receiving States, the attacks, acts of vandalism and property damages have not been prevented in a timely manner. Azerbaijan had on numerous occasions called upon the receiving States to comply with their obligations under the VCDR. In case of such illegal actions, the international community, following the spirit and purpose of the VCDR, should demonstrate solidarity and condemn such illegal actions. The representative underlined that it was upon the receiving States to comply with their responsibilities under the VDCR. Moreover, such actions damaged interstate relations, threatened normal and safe functioning of diplomatic missions and were to be considered as acts of terrorism. It was of paramount importance for Azerbaijan that the Secretary General of the Council of Europe reacted and provided a legal assessment of the situation in her reports.

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

55. The Chair, appointed by the CAHDI at its 59th meeting (24-25 September 2020 in Prague, Czech Republic) to participate, on behalf of the Committee, in the meetings of the Council of Europe Steering Committee for Human Rights (CDDH) ad hoc negotiation Group 46+1 (46+1 Group), provided delegations with a short overview of the developments in the negotiations that had taken place during the two meetings of the Group held since the last CAHDI meeting.

56. During the 13th meeting from 10 to 13 May 2022, the Group had reached provisional agreement on all issues arising under Basket 1 (EU's specific mechanisms of the procedure before the ECtHR) and held, for the second time during this round of negotiations, an exchange of views with representatives of civil society.

57. At the 14th meeting from 5 to 7 July 2022, the Group had reached a tentative agreement on the issue concerning inter-party applications under Article 33 of the ECHR included in Basket 2. This agreement was based on a proposal that was more general in nature than what had been tabled before. It did, in particular, not specify the consequences of an assessment by the EU that an inter-party application involved EU law and thus did not give directions to the ECtHR. Delegations had also welcomed the reference to the EU conducting its assessment as a matter of priority.

58. At the 14th meeting, progress had furthermore been made towards a possible solution to the issue concerning requests for advisory opinion under Protocol No. 16 to the ECHR which was equally handled under Basket 2. The representative of the EU had presented a new proposal, underlining the need to reflect in the accession agreement the requirement under Article 267 Treaty on the Functioning of the European Union (TFEU) that a court or tribunal against whose decisions there is no judicial remedy under national law refers issues of EU law for a

preliminary ruling to the Court of Justice of the European Union (CJEU). This requirement precluded those courts from requesting an advisory opinion under Protocol No. 16 when the question of interpretation or application of Convention rights and freedoms was related to a question falling within the scope of application of EU law covered by Article 267 TFEU. The Chair declared that a number of delegations had expressed their interest in this proposal, appreciating that it did not limit the jurisdiction of the Strasbourg Court, nor specify how the Court should react to a misguided request for an advisory opinion under Protocol No. 16. One delegation had asked how this provision would relate to Article 10 of Protocol No. 16 and declarations already made by EU member States that were party to the Protocol, and whether it had implications for a possible EU accession to Protocol No. 16. The representative of the Registry of the Court had noted, in this regard, that whilst this approach appeared to give a "temporary monopoly" on human rights issues to the CJEU, it did not preclude the possibility of later individual applications in the same cases as those which would thus be brought before the CJEU. This would permit the Court to have the "last word" on any Convention issues involved. This kind of sequencing was also in the interest of legal certainty. He noted, however, that the term "highest courts or tribunals" under Protocol No. 16 could refer to a wider range of courts than those covered by the requirement under Article 267 TFEU.

59. The Chair further explained that at both meetings, in May and in July 2022, the Group had continued its discussions on issues concerning possible amendments to provisions in the Accession Agreement on the election of judges and the supervision of the execution of judgments of the Court in cases to which the EU is a party. Although some considerable progress was made on both issues, some important aspects still remained to be clarified at future meetings, e.g., as regards the appropriate majorities to be fixed in order to avert bloc voting by the EU and its member States in the Committee of Ministers when the Committee is examining the execution of judgments to which the EU is a respondent or co-respondent. The Chair concluded her overview by stating that these issues as well as the still completely unsolved subject concerning the Common Foreign and Security Policy (CFSP) under Basket 4 would remain on the agenda of the Group for the meetings to come. These were scheduled to take place from 5 to 7 October 2022 (15th meeting) and from 22-25 November 2022 (16th meeting).

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

60. The Chair invited delegations to report on judgments, decisions and resolutions by the Court involving issues of public international law.

61. The representative of Belgium drew the attention of delegations to the case of *J.C. and others v. Belgium*[8] before the ECtHR concerning the status of the Holy See under international law. The applicants brought an action for compensation in Belgium against the Holy See, several leaders of the Catholic Church in Belgium and Catholic associations for damages caused by the structurally deficient manner in which the Church allegedly dealt with the issue of sexual abuse within its midst. On 25 February 2016, the Belgian Court of Appeal declared itself without jurisdiction to judge the claimants' action, having concluded that the Holy See enjoyed immunity from jurisdiction. The Court of Appeal found that the Holy See was recognised on the international scene as having the common attributes of a foreign sovereign with the same rights and obligations as a State: it was party to important international treaties, it had signed concordats with other sovereignties, it held diplomatic relations with approximately 185 States, and Belgium recognised it as a State. The Court of Appeal deduced from this that the Holy See enjoyed jurisdictional immunity under customary international law. Following an analysis of the principles of public international law, canon law and Belgian practice, the Court of Appeal considered that the faults and omissions of which both the Belgian bishops and heads of orders and the Holy See were accused fell within the exercise of administrative powers and public authority, and that, therefore, immunity from jurisdiction applied *ratione materiae* to all of these acts and omissions. The Strasbourg Court found that the rejection by the Belgian courts of their jurisdiction to hear the civil liability action brought did not depart from the generally recognised principles of international law on State immunity and that the restriction on the right

[8] ECtHR, *J.C. and others v. Belgium*, no 11625/17, 12 October 2021 (in French only).

of access to a court could therefore not be regarded as disproportionate to the legitimate aims pursued.

62. The representative of Ukraine thanked the Chair for her welcoming remarks, which were directly addressed to him and the Ukrainian people. This support was felt and highly appreciated in his country. He then elaborated on the various inter-state cases brought by Ukraine before the Court. He reminded delegations, that since Russia's initial invasion of Crimea in 2014, Ukraine had used the Court as a means to protect the rights of Ukraine and its citizens by, *inter alia*, introducing five inter-state applications against the Russian Federation. *Ukraine v. Russia (re Crimea)*[9] was the first one of these cases and, so far, the only case the Court had found admissible. The second one, *Ukraine and the Netherlands v. Russia*[10] mostly concerned the events in eastern Ukraine, including the downing of the Malaysia Airlines flight MH17. The third case, *Ukraine v. Russian Federation (VIII)*,[11]related to illegal seizure of Ukrainian naval warships and their crew. The fourth case, *Ukraine v. Russian Federation (IX)*[12], dealt with the illegal murder of opponents of the Russian Federation. Finally, in response to the full-scale invasion in February 2022, Ukraine had filed the fifth application *Ukraine v. Russia (X),*[13]on 23 June 2022 which related to grave violations of human rights. As the war was ongoing, Ukrainian authorities continued to gather data, facts and evidence and to complete this application with some new elements.

63. The representative of France presented two elements relating to the notion of jurisdiction. She first informed delegations about a Grand Chamber judgment of 14 September 2022 in the case of *H.F. and others v. France*,[14] in which the Court stated that France could not be held responsible for the living conditions of French women and children in the camps in northeastern Syria insofar as it did not exercise jurisdiction there. The Court also confirmed that France's international obligations to protect human rights did not require it to repatriate persons detained in northeastern Syria, but only to re-examine their applications.

64. Furthermore, the representative wished to inform the CAHDI members that, like other States, France decided to request leave to intervene in the case between Ukraine and Russia[15] before the Court. This intervention will focus on the exceptional circumstances of this case and the importance for the Court to remain in line with its jurisdiction on extraterritorial jurisdiction. The representatives of Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, Germany, Ireland, Italy Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain Sweden and the United States indicated that their countries had also requested leave to intervene in this case.

65. The representative of the United Kingdom pointed out that her country had not yet intervened, in particular because the change of monarch and government had delayed a decision on the matter, but that she expected a decision in this regard to be taken by her government shortly. She also reported, in response to a question from the Chair, that her country had been granted an extension to the deadline of 22 September 2022 to introduce its request to intervene due to the exceptional events in her country.

66. The representative of Latvia further indicated that her country had been notified by the Court that it would take some time for it to decide on the procedural aspects of this case due to the unprecedented number of third-party interventions. She expressed the wish that intervening States would coordinate their interventions in order not to unnecessarily burden the procedure and to ensure the good administration of justice, while recalling that these interventions could only concern points of law and not of fact. However, in her view, there was no doubt that the question of jurisdiction was indeed a point of law. The representative of Austria added that his

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[9] ECtHR, *Ukraine v. Russia (re Crimea)* [GC] (decision), nos 20958/14 38334/18, 16 December 2020.

[10] ECtHR, *Ukraine and the Netherlands v. Russia*, applications nos. 8019/16, 43800/14 and 28525/20, 7 November 2020.

[11] ECtHR, *Ukraine v. Russian Federation (VIII)*, application no. 55855/18, 29 November 2018.

[12] ECtHR, *Ukraine v. Russian Federation (IX)*, application no. 10691/21, 19 February 2021.

[13] ECtHR, *Ukraine v. Russia (X),* application no. 11055/22*,* 23 June 2022*,* concerning the Ukrainian Government's allegations of mass and gross human-rights violations committed by the Russian Federation in its military operations on the territory of Ukraine since 24 February 2022.

[14] ECtHR, *H.F. and others v. France*, [GC], nos. 24384/19 and 44234/20, 14 September 2022.

[15] Supra n. 12*, Ukraine v. Russia (X)*.

country was directly affected by this situation because of the large number of applications for temporary protection introduced in Austria by Ukrainian citizens due to human rights violations in Ukraine. He also supported the proposal for a co-ordinated approach, indicating that the preparation of a joint document outlining the position of the intervening States involved would be desirable. This position was shared by the representatives of the Czech Republic - who indicated that discussions to this end could take place informally within the network of government agents – Ireland, Luxembourg, the Netherlands, Norway and Portugal.

67. For his part, the representative of Denmark indicated that his country had also made a request to intervene in the case brought by Ukraine before the International Court of Justice (ICJ) on 26 February 2022.[16] The representative of the Netherlands pointed out that his country had also requested leave to intervene in the case. His country had not yet filed its brief as it considered this too premature at this stage. It would do so after reply briefs had been submitted in order to have an overview of the parties' arguments and to avoid duplications or divergences. So far, no preliminary objections had been raised in the case. The representative of Slovakia stressed that his country was also considering intervening in the case.

68. As regards the substance of their respective interventions in the case before the Strasbourg Court, the representatives of, *inter alia*, France, Germany, Norway, Sweden and the United Kingdom indicated that, if permitted, their interventions would focus on the question of jurisdiction, and more particularly on the issue of extraterritorial jurisdiction, in accordance with Article 1 of the Convention. Furthermore, the representatives of Denmark, Germany, Italy, Latvia, Lithuania and Poland maintained that these interventions constituted a moral, legal and political support to Ukraine and its approach to tackle the situation according to international law and to existing conventions and jurisdictional instances, in line with European standards in this matter. The representative of Norway added that this was only the third time in its history that his country requested leave to intervene in an Inter-State case before the Court, which underlined the seriousness of the situation for his country.

69. The representative of Ukraine thanked the countries that had requested or were planning to request leave to intervene in this case. As of mid-September, third-party interventions by 18 countries had been counted. He considered that this sent a strong message not only to the Russian Federation but also to Ukrainian soldiers fighting on the frontline and to Ukrainian civilians under attack. For them it was important to know that the world stood by them, that their struggle was right and that civilised countries were supporting them in every possible way, whether it entailed legal, political or military support. He finally called on those countries that had not yet done so to intervene and indicated that his country stood ready to provide all the necessary assistance to this end.

70. The Chair concluded the discussion on this point by stressing that these interventions were a valuable support for Ukraine. In this unfair conflict, all instruments available to States under international law should be used to provide a response and to restore the legitimacy of international legal mechanisms and instruments.

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

71. The Chair invited delegations to provide the CAHDI with new information concerning cases before their domestic courts related to the implementation of the UN sanctions and respect of human rights.

72. The Swiss representative informed delegations on the follow-up to the Grand Chamber ruling in *Al-Dulimi and Montana Management Inc.* of 21 June 2016.[17] The Swiss government had had to determine whether or not the list of sanctions was legal under the current circumstances. Al-Dulimi and Montana Management Inc. were deleted from the UN and Swiss lists and the matter had been brought to an end. The representative further informed delegations about her country's engagement with the UN for persons placed on the sanctions list due to their connection to the Islamic State organisation. The representative explained that, at the moment, only the persons that find themselves on the list of sanctions for connections to the Islamic

[16] ICJ, *Case concerning allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide* (Ukraine v. Russian Federation), filed on 26 February 2022.
[17] ECtHR, *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], no. 5809/98, 21 June 2016.

State and Al-Qaeda can address the Bureau of Mediators to demand that their name be deleted from the list, while the persons affected by the other 13 sanctions regimes do not have access to this mechanism. The representative then informed that Switzerland will organise, together with Ireland, Norway and the Graduate Institute of International and Development Studies (IHEID), a discussion on the improvement of the appeals procedure against inclusion on the sanctions lists.

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***

73. The Chair recalled that, on 26 March 2021, an Expert Workshop on "Non-legally binding agreements in international law" had been organised by the German Presidency of the Committee of Ministers, the University of Potsdam and the CAHDI Secretariat in which many delegations had participated. The event had brought about the idea to discuss the possible follow-up to this topic by the CAHDI during its 61st meeting (23-24 September 2021 in Strasbourg, France) during which the CAHDI had agreed to pursue its work on this issue on the basis of a questionnaire (document CAHDI (2022) 2 Confidential). A draft questionnaire had been prepared by the German delegation in cooperation with the Chair, the Vice-Chair and the Secretariat and sent to delegations on 22 February 2022. At the 62nd meeting (24-25 March 2022 in Strasbourg, France), this questionnaire was approved as it appeared in document CAHDI (2022) 2 Confidential dated 24 March 2022 and delegations had been requested to send their replies to it by 1 August 2022, as a tentative first deadline.

74. So far, 16 States (Austria, Canada, Cyprus, Estonia, Finland, Germany, Greece, Italy, Japan, the Netherlands, Norway, Portugal, Sweden, Switzerland, the United Kingdom and the United States of America) as well as the European Union had provided the Secretariat with their replies to this questionnaire. The replies are compiled in document CAHDI (2022) 14 prov Confidential Bilingual, dated 6 September 2022.

75. The Chair pointed out that, as the majority of delegations had not yet submitted their replies to the questionnaire, it was probably still too early to draw any conclusions from it. She therefore suggested that the inventory of State practice in this area be continued and stressed the need to obtain more replies from delegations. However, she invited delegations to already discuss the different alternatives of next steps to which this inventory could lead, whether it was, e.g., a glossary of terms or a model Memorandum of Understanding (MoU). In this respect, the Secretariat had earmarked some money that the CAHDI could use in 2022, e.g., to recruit a short-term consultant to analyse the replies received so far and to draw some interim conclusions from them. Other options that did not require consultant services were nevertheless possible, such as the establishment of a working group for this purpose within the CAHDI. The Chair then gave the floor to delegations to receive their views on the way to follow-up on the questionnaire.

76. The representative of Switzerland indicated that her country had already carried out a preliminary analysis of the responses provided in order to move forward in a pragmatic way on the subject. In her view, the compilation should focus on the replies to the questions of greatest practical interest, such as the replies to questions 1, 2, 5, 9, 10, 13, 19, 31 and 32. This would make it easier and quicker, on the basis of a limited selection, to determine how the CAHDI wishes to move forward on the subject and to define its preferences for the follow-up of this work, whether it be the preparation of a glossary, a model of a non-legally binding instrument or a guide.

77. The representative of Germany first thanked the Secretariat for the compilation of replies provided, which he said was an extremely useful document that would become increasingly substantial when further replies from delegations would be received. He added that the CAHDI's work on this subject had recently taken on a special significance as the International Law Commission (ILC) had included the topic of non-legally binding agreements in its long-term programme of work. Thus, the ILC report included some elements on this subject

mentioned by one of its members, Mr Mathias Forteau (France). The fact that the CAHDI is ahead of the curve on this subject was a very positive element, according to the representative. This could potentially help the ILC to also move forward on this topic. Regarding the methods of follow-up to the questionnaire, he stressed that his country remained very open on this issue. What was important to him was that the method chosen, whatever it would be, should be the most effective and efficient. However, his country's preference was to opt for a consultant or the appointment of a special rapporteur, although the designation of a working group might also be a satisfactory option.

78. After sharing the appreciation of the representative of Germany, the representative of the United Kingdom noted that there was a significant degree of similarity between the replies, which was a positive element, and that there seemed to be a consensus that the term "agreement" was reserved for treaties. Regarding the next steps, the idea of a consultant was very positive if funding was available, but the option of a working group could also be considered. Regarding the questions on which attention should be focused, the representative indicated those which he considered most important and relevant: the question of definitions (in the context of the distinction with treaties); the question of the procedures to be followed for the adoption of such instruments, especially at the internal level, such as authorisation procedures, record keeping and publication; the question of why such instruments are used as well as the legal effects they produce; the question of parliamentary scrutiny of such instruments; and finally, the question of internal capacity-building measures, such as the training of those who would resort to such instruments.

79. The representative of the United States informed delegations that her country was still reviewing and analysing the information that had been provided. What seemed apparent from the replies was that the benefit to be gained from non-legally binding instruments was their flexibility. Her country was therefore concerned that excessive formalisation of these instruments or the use of a model MoU would jeopardise this flexibility. However, she remained open to the idea of considering any other mechanism that would preserve this flexibility, while recalling that this subject was of great interest to the US Congress.

80. The representative of France considered the questionnaire to be very satisfactory and pointed out that her country would reply to it as soon as possible. This subject was indeed very important, especially as it would also be covered by the ILC.

81. The representative of Greece stated that her country had answered the questions as far as possible but that this had sometimes proved difficult due to lack of formalised practice with regard to some aspects treated in the questionnaire. On the substance of the subject, there were no different categories of non-legally binding instruments in her country, which placed more importance on the content of the instrument than on its title. She also agreed with the remark made by the representative of the United States of America on the need to adopt a cautious approach in order to preserve the flexibility of these instruments and considered it premature, in view of the number of replies, to already consider the follow-up to the questionnaire.

82. The representative of Italy mentioned that this subject generated a lot of work for his services at the internal level, in particular to guide other administrations on the differences, criteria and procedures relating to non-legally binding instruments. Regarding the follow-up of this work, he considered that the method of using a consultant or a special rapporteur seemed very suitable. Moreover, although he agreed with the remarks of the representatives of Switzerland and the United Kingdom on the usefulness of identifying the issues most deserving of attention, he indicated that his country had not yet identified the issues of most interest to it. Finally, he considered that it would be too early to initiate a reflection on possible guidelines for States. However, there was sufficient material for a preliminary analysis of the trends emerging from the replies already received, whether this analysis was carried out by a consultant or a special rapporteur.

83. The representative of Finland also stressed that more replies were needed before the follow-up to the questionnaire could be considered. Regarding follow-up, she noted that her country was open to all options, whether it was a consultant, a special rapporteur or a working group.

84. The representative of Austria commented that the CAHDI should not be too ambitious and bind itself and that if the follow-up to the questionnaire already led to an agreement on common terminology and definitions this would be a very satisfactory result. Regarding the method to be followed, he indicated his preference for the consultant option.

85. In answer to the question raised by the Chair, the Secretariat indicated that in its view the preferable solution would be to have recourse to a consultant now, as the funds were available for this purpose during the current year, in order to start analysing the replies already received and those that will arrive before the end of the year. The consultant could then continue the analysis next year when new replies to the questionnaire will be received.

86. The representative of the Czech Republic emphasised that, although his country had not yet been able to respond and could hardly do so before the end of the year, he considered this initiative to be extremely important and useful. Regarding the follow-up, he indicated that his country had no strong preferences and was not opposed to the consultant option.

87. The Chair, in view of the representatives' interventions showing interest for the consultant option and the budgetary constraints, encouraged the idea of already having recourse to a consultant who could analyse the responses received so far, and those to be received subsequently, in order to identify initial common trends in those replies which would subsequently make it possible to suggest approaches to be adopted, for example to define common definitions or positions. It would therefore be advisable to instruct the Secretariat to look for a consultant to start work before the end of the year, and if necessary to earmark the necessary funds to continue the project next year. She believed that enough replies had already been received for the consultant's work to be sufficiently consistent.

88. The representative of Germany supported this approach, which he described as incremental. Indeed, as the Chair pointed out, nothing would prevent the consultant from taking subsequent responses into account and the CAHDI from having a new overall reflection once the consultant's final analysis was received.

89. The representative of Greece, clarifying her earlier remarks, stated that her country's objective was not to oppose the proposal made by the Chair. Her country's interrogation was about the scope of the consultant's mandate and the content of the conclusions to be expected from this exercise. Rather, the position taken was that more replies should be received before deciding how to move forward on the issue with no principled opposition to hiring a consultant. The representative of Norway took a similar position, indicating that budgetary constraints should not be the driving force behind the rapid recourse to a consultant, but that in view of the position adopted by the majority of delegations he would not object to such a decision. He also indicated that the work undertaken by the CAHDI could feed into that of the ILC and that the risk of the latter finalising its work before the CAHDI was limited as the subject was only on the long-term programme of work.

90. In response to these interventions, the Chair indicated that the consultant's task would not be to decide on the next steps of the project, but to formulate conclusions identifying common trends or divergences. It would then be up to the CAHDI, and only to it, to decide how it wished to take its work forward on the basis of the conclusions drawn by the consultant. In conclusion, 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 a follow up. She encouraged delegations that had not yet replied to the questionnaire to do so in the near future.

- ***Exchange of views on treaties not requiring parliamentary approval***

91. The Chair recalled that, at the 61st meeting of the CAHDI (23-24 September 2021 in Strasbourg, France), the delegation of Slovenia had suggested that the CAHDI would also explore the issue of legally binding agreements not requiring parliamentary approval. The CAHDI had further agreed to pursue its work on the topic on the basis of a questionnaire prepared by the Slovenian delegation in cooperation with the Chair, the Vice-Chair and the Secretariat and in consultation with the German delegation for purposes of ensuring

coherence. The questionnaire was sent to delegations on 22 February 2022. After some comments were made to this draft by delegations during the meeting as well as afterwards, the CAHDI approved the questionnaire by written procedure on 15 June 2022 as it appeared in document CAHDI (2022) 3 rev Confidential. The tentative first deadline for replies had been set for 30 September 2022 but the Secretariat had already received the replies of Austria, Canada, Estonia, Japan and Norway. The Chair encouraged other delegations to submit their replies as soon as possible.

92. The representative of Slovenia began by thanking the Chair, Vice-Chair and Secretariat for their help in finalising the questionnaire. He then mentioned the hesitations that may have existed concerning the wording to be chosen for the treaties concerned by this questionnaire (simplified treaties, technical treaties, etc.), but it was finally considered that the one that best reflected the reality of these treaties was "treaties not requiring parliamentary approval". With regard to possible next steps for this questionnaire, the representative considered that the consultant option could also be relevant in this context. He indicated that, although he did not wish to overload the work of the CAHDI at this preliminary stage, a reflection on this subject could also be initiated, especially in view of possible financial opportunities.

93. The Chair expressed the view that the option of a consultant could also be considered for this questionnaire, but that at this stage and in view of the limited number of responses received, this possibility could only be considered next year. To this end, it would be appropriate to already take steps to seek the necessary funds for the hiring of this consultant.

- ***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***

94. The Chair reminded delegations of document CAHDI (2021) 13 prov Confidential on “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”. She recalled that the document had been prepared by the Chair, the Vice-Chair and the Secretariat following a discussion on this topic at the 60th meeting of the CAHDI (24-25 March 2021 in Strasbourg, France). However, the discussion at 61st meeting in September 2021 had shown a need to embark on a revision of the working document. Accordingly, interested delegations had been invited to submit their possible comments on the working document to the Secretariat. The revised working document with the reference CAHDI (2022) 7 prov Confidential, dated 25 February 2022, had been discussed at the 62nd meeting in March 2022 after which the CAHDI had invited delegations that had not yet done so to submit their comments to the Secretariat by 1 August 2022. No new contributions had, however, been received by the Secretariat by this deadline.

95. The Chair invited interested delegations to take the floor to comment on the document, or to express their views on whether or not the CAHDI should continue to discuss this topic and maintain it on its agenda.

96. The representative of Austria recalled that the main issue addressed in that document was whether the exclusion of a State from the applicability of a multilateral treaty vis-à-vis another State, in a declaration or reservation, was contrary to the object and purpose of such a multilateral treaty. The adoption of a common answer to this question seemed, according to the representative, difficult to envisage. His country would maintain its position that such a reservation or declaration was contrary to the object and purpose of such a treaty and would, in that event, continue to formulate objections. Furthermore, he noted that since this topic, although extremely interesting and important for his country and some others, no longer seemed to be of great interest to the CAHDI as a whole, it did not seem essential to him to continue discussions on this subject.

97. The Chair concluded, taking into account the absence of other interventions and the position of the representative of Austria, that the CAHDI would discontinue the discussion on this topic 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.

6.2 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*

98. 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 objection (document CAHDI (2022) 15 prov Confidential). The Chair also drew the attention of the delegations to document CAHDI (2022) 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.

99. The Chair underlined that the reservations and declarations to international treaties still subject to objection were contained in document CAHDI (2022) 15 prov Confidential, which included 12 reservations and declarations made with regard to treaties concluded outside and within the Council of Europe.

100. With regard to the **declaration made by Türkiye** to the *Paris Agreement (2015)*, the Chair noted that in its declaration, Türkiye affirmed that it would implement the Paris Agreement as a "developing country". This declaration was problematic as Türkiye is considered as a "developed country" within the United Nations Framework Convention on Climate Change (UNFCC) regarding to its Appendix I which provides a list of States regarded as industrialised countries for the implementation of the Paris Agreement. This "developing country" status entails a more favourable and flexible legal regime and less obligations for States categorised as such. The Chair pointed out that, through this declaration upon ratification, Türkiye had unilaterally decided to change its legal status within the legal framework without the approval of the Conference of the Parties, procedure provided by Article 16 of the UNFCC for any amendment to the Annexes to the Convention. She added that, at the last CAHDI meeting, the representative of Türkiye had explained his country's position and that a written statement had also been distributed to all CAHDI delegations by the Secretariat. No delegation took the floor under this item.

101. With regard to the **declaration made by Türkiye** to the *Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer (2016)*, the Chair noted Türkiye to declare that its ratification to the Amendment to the Montreal Protocol entailed any obligation to enter into dealing with States that Türkiye has no diplomatic relations with within the Framework of the UN Environment Program Activities. The representative of Cyprus stated her country to be in the process of issuing an objection to this declaration by Türkiye.

102. With regard to the **reservations made by Iraq** to the *Convention on the Recognition and Enforcement of Foreign arbitral awards (1958)* the Chair explained that only the first reservation appeared to be problematic. Through this reservation Iraq refused to apply the Convention to any tribunal award made before "the law enters into force" without making clear which law was being referred to. The Chair prognosed that this might just be an oversight from Iraq. However, it was difficult for the other contracting parties to understand the scope of the reservation made. The Chair recalled that the Convention itself was silent about reservations. No delegation took the floor concerning this reservation.

103. With regard to the **declaration made by the Philippines** to the *Convention on the Reduction of Statelessness (1961)* the Chair stated Article 8 paragraph 3 of the Convention to only allow the revocation of citizenship in certain defined cases. In sub-paragraph c of its declarations the Philippines resorted to quoting several national laws based on which it declared revocation of citizenship to remain possible without explaining the content of the quoted laws. According to the Chair one could hence already take the view that sub-paragraph c of the declarations was problematic as such given that the other Contracting Parties could not possibly foresee, without going through the different national laws, which revocation grounds the Philippines intended to maintain. In addition, one of the grounds of revocation maintained by the Philippines, the possibility to deprive citizenship for desertion, appeared to be also materially problematic since it might be difficult to subsume this ground under the exceptions allowed under Article 8.3 of the Convention, e.g., under "conduct seriously prejudicial to the vital interests of the State".

The Chair explained Tunisia to have made an, albeit slightly different, but perhaps comparable declaration to the same convention concerning “evading obligations under the law regarding recruitment into the armed forces” against which several States, among which States represented in the CAHDI, had objected at the time. The representative of Austria stated the declaration by the Philippines to be unclear and problematic and that it needed careful examination.

104. The **declarations made by Slovenia, Latvia, Italy, Bulgaria and Portugal** to the *European Convention on Mutual Assistance in Criminal Matters (ETS No. 30 – 1959) and its Additional Protocols (ETS No.99 – 1978 and ETS No 1882 -2001)* designate the European Public Prosecutor’s Office (EPPO) as a judicial authority for the purposes of mutual legal assistance under the Convention and its protocols. The Chair recalled that Switzerland had submitted, on 27 January 2022, a counter-declaration against the altogether 14 declarations made by EU member States with regard to EPPO until then. This counter-declaration stated that the Convention as amended by its Second Additional Protocol allowed States Parties to notify only their own judicial authorities as judicial authorities. No delegation wished to take the floor under this item.

105. With regard to the **declaration made by the Republic of Moldova** to the *Council of Europe Convention on preventing and combating violence against women and domestic violence (2011-CETS No.210)*, stating that it would apply the provisions of the Convention only on the territory effectively controlled by its authorities until the full establishment of its territorial integrity, no comments were made by delegations.

106. With regard to the **declaration made by Ukraine** to the *Council of Europe Convention on preventing and combating violence against women and domestic violence (2011-CETS No.210)*, Ukraine declared that it did to consider any of the provisions of the Convention as obliging it to amend its Constitution, the Family Code or other national laws. The Chair explained that this declaration could be seen to limit the scope of application of the Istanbul Convention in a manner not allowed by Article 78 of the Convention.

107. The representative of Austria stated the reference to the national constitution in the Ukrainian declaration to appear problematic. It was not the intention of an international convention to allow States to exclude any necessary changes in their constitution. The representative uttered his hope that Ukraine would reconsider its declaration considering that it would be a pity to reduce the effect of the Istanbul Convention through such a declaration.

108. Several delegations stated to share the scepticism uttered by the Austrian representative and enquired whether the representative of Ukraine would be able to elaborate on the reasons behind its declarations.

109. The representative of Ukraine noted that no international treaty could be ratified by the Parliament of Ukraine if it contravened the constitution. That had been, for instance, the case with the Rome Statute and it had required a lengthy process of amending the constitution before it became possible to ratify the treaty. The representative would, however, note the concerns noted by the delegations. Ukraine would stand ready to work with the colleagues as a group or a bilateral level to find a solution which will be good for all parties.

110. The Chair summarised her understanding of the reasons behind the language chosen in the declaration to signify a warranty for the Ukrainian Parliament that ratifying the Istanbul Convention would not be incompatible with the Ukrainian constitution. In any case, the CAHDI would reflect on this issue also at its next meeting and it would be helpful for the discussions in the group if Ukraine could provide more elements of reflection to the group that would enable it to better understand the rationale behind the declaration.

111. With regard to the **partial withdrawal of a reservation by Oman** to the *Convention on the Rights of the Child (1989)*, the Chair explained this withdrawal to leave untouched the remaining problematic part of the reservations made by Oman concerning the right to freedom of religion of the child. Oman had made a similar reservation already upon accession to the Convention in 1966, to which several States had objected, including member States of the CAHDI. This reservation was since modified but the part on the right to religion never changed in substance. No delegation took the floor concerning this item.

7 CURRENT ISSUES OF PUBLIC INTERNATIONAL LAW

7.1 Topical issues of public international law

- ***Exchange of views on the aggression in Ukraine***

112. The representative of Ukraine took the floor to bring an overview of the four cases Ukraine has brought against the Russian Federation in various international legal fora, as well as the latest developments in the war against Ukraine.

113. An overwhelming majority of the representatives present at the meeting took the floor to express solidarity with Ukraine. Underlining the need for accountability for the Russian aggression, delegations voiced their support for Ukraine in its legal undertakings in this regard, including the cases brought by Ukraine against the Russian Federation before the ICJ and the ECtHR. Delegations notified of either their requests for leave to intervene in these cases, or of their intent to submit such a request shortly.

114. Many of them further explicitly denounced and condemned the planned referenda by the Russian Federation for the annexation of the so-called independent republics in the east of Ukraine.

115. With respect to the proposal by the representative of Ukraine to create an ad hoc Special Tribunal to hold the Russian Federation accountable for the crime of aggression, the delegations of Austria, Belgium, Germany, Norway, Switzerland, the United Kingdom and Türkiye expressed concerns with regard to viability and efficiency of such a tribunal, suggesting, instead, a stronger focus on already existing mechanisms to ensure accountability, such as the proceedings before the ICC.

116. On the same topic, the representatives of Estonia, Latvia, Lithuania, the Netherlands and Sweden expressed explicit support for the establishment of an ad hoc Special Tribunal for the crime of aggression.

117. The representative of the International Committee of the Red Cross (ICRC) took the floor to provide an overview of the humanitarian contribution of the ICRC in the region and of the main topics of concern from an international humanitarian law perspective.

118. The representative of Interpol provided an update regarding the recent developments within the organisation concerning the Ukraine crisis.

119. An intervention by Mexico before the Security Council of the United Nations was circulated among the participants of the meeting at the delegation's request.

7.2 Peaceful settlement of disputes

120. The representatives of Germany and the United Kingdom took the floor to announce the intentions of the States they represent to intervene in the *Gambia v. Myanmar*[18] case before the ICJ and to indicate a willingness to hear from and discuss with other States considering similar interventions.

121. The representative of the United States of America took the floor to announce the intent of the US National Group to nominate Ms Sarah Cleveland for a position as a judge at the ICJ.

7.3 The work of the International Law Commission

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

122. Professor Dire Tladi presented the Report of the 73rd session (2022) of the International Law Commission (ILC). On the first topic of the report, "Peremptory norms of general international law (*jus cogens*)", Professor Tladi presented an overview of the major issues in the deliberations of the ILC on the draft conclusions on the topic. The assertion that *jus cogens* norms reflect and protect the fundamental values of the international community had led to a debate on for the scope of the term "international community" of States, whether it would encompass a large majority, an overwhelming majority, or virtually all States. Another issue

[18] ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*.

related to Draft Conclusion 16 on the consequences of *jus cogens* norms for the decisions of international organisations and whether the ILC conclusions should stipulate explicitly that decisions of the UN Security Council are subject to peremptory norms and thus lose their validity if they come in conflict with *jus cogens* norms. Two other Draft Conclusions discussed more in depth were Draft Conclusion 21, on procedural requirements for invoking *jus cogens*, and Draft Conclusion 23, regarding the non-exhaustive list of norms that the ILC has previously referred to as having *jus cogens* status.

123. On the second topic of the report, "Protection of the environment in relation to armed conflicts", Professor Tladi noted that the Commission had adopted 27 Draft Principles in which all references to "natural environment" had now been replaced with "environment" in order to broaden the scope of the principles. Another important change had been inserted in Draft Principle 4, where the Commission had modified the wording to clarify the requirements for an area to be designated as a protected zone. Professor Tladi noted further that the Commission had not expanded Draft Principle 9 to include a reference to individual accountability. On Draft Principle 13, a proposal had been put forward to add a paragraph to prohibit particular weapons which might cause widespread, long-term and severe damage. Eventually the Commission had not adopted the Draft Principle at this session but nuanced it significantly to make sure that this Draft principle was to be understood in accordance with the principles of public international law. Further important discussions had been held on the topic of the prohibition of reprisals against the environment, as well as the situations of occupation.

124. On the third topic, "Immunity of State officials from foreign criminal jurisdiction", Professor Tladi identified three key issues. The first issue concerned situations relating to the immunity of State officials from foreign criminal jurisdiction but on account of an existing international criminal court cases. According to the draft provision now adopted such situations were to be excluded from the scope of the Draft Articles. The second issue related to Draft Article 7 and the exceptions to immunity *ratione materiae*, which was adopted by vote. The third issue highlighted by Professor Tladi was Draft Article 14 on the determination of immunity, which provides that decisions on Draft Article 7 should be taken at an appropriately high level and that the decision maker should be sure that there are substantial grounds to believe that one of the crimes listed in Draft Article 7 has been committed.

125. On the fourth topic, "Succession of States in respect of State responsibility", Professor Tladi informed the CAHDI that the planned outcome of the discussions had been changed from Draft Articles to Draft Guidelines on this topic to underline their non-binding nature.

126. On the fifth topic, "General principles of law", the main issue had been the adoption of Draft Conclusion 7. The Special Rapporteur had taken the view that there existed two types of general principles of international law; those which emanate from national legal systems, and those which emanate from the international legal system itself. This view was debated and eventually the Commission adopted Draft Conclusion 7 on how to identify general principles emanating from the international legal system itself.

127. On the final topic, "Sea level rise", Professor Tladi explained that one of the main debates had concerned the question of whether a State still continues to exist in the event that its territory no longer exists owing to its inundation due to sea level rise. Another main issue was the topic of whether or not there are existing legal frameworks to deal with the human rights of persons that are affected by sea level rise, as well as the question of causation, the latter of which was dismissed due to its inherently political and sensitive character.

128. The Polish representative raised the issue of aligning, on the one hand, the hierarchical superiority of *jus cogens* in both substantive and procedural issues, as adopted by the ILC and, on the other hand, the issue of State immunity. Professor Tladi responded that the Commission had decided not to address this aspect, but that, in his view, there seemed to be a suggestion that immunity in some cases must give way to the *jus cogens* nature of the crime. In this sense, Professor Tladi referred to the view expressed by the ICJ in *Germany v. Italy*[19]

[19] ICJ, Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening).

that *jus cogens* does not affect State immunity but trumps individual immunity, especially immunity *ratione materiae*.

129. The Irish representative requested a more detailed account of the debates in the Commission regarding the question of the continuity of a State in the event of its territory disappearing on account of sea level rise. Professor Tladi explained the Commission to have concluded that there was no relevant State practice to base oneself upon in this regard and that whatever decision will be made on this topic, the approach will have to be creative and progressive.

130. The Swiss representative inquired on the role of the ILC in the context of increased difficulties to adopt new conventions pertaining to international law. Professor Tladi answered that he considered the ILC to be limited in its role to studying particular topics and proposing conventions or making recommendations.

131. In reply to the question by the Latvian representative about the long-term future role of the ILC, Professor Tladi noted that the topics addressed by the ILC would largely be driven by its membership, an aspect that continued to be important due to the varied portfolio of topics, including new specialised topics, such as “Sea level rise” that the Commission had on its agenda. Professor Tladi reminded the CAHDI that, even when texts adopted by the ILC are not legally binding, they immediately begin to be used by legal advisers upon their adoption, due to their high legitimacy. Thus, there is a balance between the extent to which it is important to have the work of the ILC turned into conventions and the extent to which it remains useful even where this is not the case.

132. The Greek representative inquired on the ways forward that have been considered by the ILC with regards to the novel topic of “Sea level rise”. Professor Tladi explained that the debates of the study group on this topic were much more transparent than in the past, and that the current discussions were preliminary in nature. Professor Tladi furthered the point that the idea behind a study group was for the Commission to add liberty without the pressure of an outcome on a specific issue, and that it might well be that after consideration, a Special Rapporteur will be appointed with a view to arriving at an outcome, especially with regards to the human rights dimension of this topic.

133. The Slovenian representative expressed a sentiment of regret that it is so difficult to progress towards conventions and asked for suggestions on how to make the work of the ILC more visible to the public and more feasible to apply at the national level. The representative also asked for more elaboration on the rough conclusions of the debate on *jus cogens* and Draft Article 7. Professor Tladi answered that in some cases, such as that of the articles on crimes against humanity, there was a minority of States that did not want to adopt a convention, blocking the view of the majority due to the need for a consensus, as opposed to a majority practiced in the 6th Committee. With regards to Draft Conclusion 7, Professor Tladi expressed his support for the idea that, in order to define the international community of States as a whole, the consensus should be achieved by a very large majority, as opposed to a total consensus. The Professor also advanced the idea that there should also be a qualitative aspect to determining the *jus cogens* nature of norms, and that these should not only be judged by the number of States that support them, but also by, for example, whether there is a consensus of States that explicitly opposes them.

134. The representative of the United States of America recalled the strong preference of the United States not to break the principle of consensus in the Sixth Committee. However, the representative also recognised the fact that one could not let a small number of delegations obstruct even incremental progress, which is why the United States is supportive of pushing back harder to support the introduction of a resolution on the crimes against humanity project.

135. The Portuguese representative reiterated the importance of the work of the 6th Committee on the Draft Articles on Crimes Against Humanity and expressed the view that, if the Committee will not be able to move forward regarding these Draft Articles, this might send a message that the ILC will be limited to non-binding work.

7.4 Consideration of current issues of international humanitarian law

136. The Chair opened the floor for the exchange of views and interventions from the delegations under this item.

137. The Swiss representative informed the CAHDI of an expert meeting organised by the ICRC and Switzerland on the topic of international humanitarian law and the environment in the beginning of 2023. She further drew the attention of delegations to the election of Switzerland as a non-permanent member of the UN Security Council as of 1 January 2023. Her country's thematic priorities would be the following: building lasting peace, protecting civilian population and non-fighting populations in armed conflict, fighting for climate security, and reinforcing the effectiveness of the Security Council.

138. The representative of the ICRC took the floor to address several issues. Firstly, on the situation in Northeast Syria, the ICRC welcomed the increased number of repatriations seen in this context and the holistic reintegration programmes put in place by some States. The ICRC continued to call on States to repatriate their nationals. The ICRC also urged States to provide support to authorities in Northeast Syria to end the situation of the men and boys detained outside any legal framework, as well as to help the local authorities develop and implement adequate legal review procedures to ensure that only people who have either committed a crime or pose an imperative threat to security remain in detention.

139. Secondly, concerning the impact of counterterrorism measures and sanctions on the ability of the ICRC to operate, whilst noting some positive developments, the ICRC urged the responsible stakeholders to ensure that sanctions regimes comply with international humanitarian law and do not impede principled humanitarian action. To this end, the representative proposed to include well framed and standing humanitarian exemptions that exclude exclusively humanitarian activities carried out by impartial humanitarian organisations in accordance with IHL from the scope of the sanction regime. The representative added that derogations are insufficient, as they are ad hoc, have to be asked for in all the domestic jurisdictions, and thus raise operational, policy, and legal issues.

140. Thirdly, the ICRC representative gave an update on some recent key publications on IHL and referred further to ongoing or planned activities of the ICRC. The representative mentioned the report of the Fifth Universal Meeting of National IHL Committees and Similar Entities emphasising the importance of building legal frameworks, structures and capacities that will contribute to ensuring respect for IHL and respond to the humanitarian consequences in case of a crisis. The ICRC was, moreover, looking forward to co-organising the Regional Meeting of European National IHL Committees with Austria in the spring of 2023. The representative also brought attention to the ICRC's 2022 publication, "Gendered Impacts of Armed Conflict and the Implications for Application of IHL", that explores the relevance of a gender analysis to the conduct of hostilities and states of occupation and its implications for related IHL rules. The ICRC equally welcomed the new report by the UN Special Rapporteur on the Rights of persons with Disabilities, Mr Gerard Quinn, on the "Protection of Persons with Disabilities in the Context of Military Operations" based on joint consultations organised by the ICRC and the Special Rapporteur. The representative also expressed the ICRC's eagerness to co-organize the upcoming Meeting on the Protection of the Natural Environment in Armed Conflict together with Switzerland.

141. Lastly, the ICRC representative commended the recently finalised political declaration on explosive weapons in populated areas as an important step towards ensuring better respect for IHL and strengthening the protection of civilians. She congratulated Ireland for its leadership in this project.

142. The representative of Ireland invited delegations to a high-level international conference in Dublin to adopt the aforementioned declaration.

143. The representative of the United Kingdom reported that his country has been collaborating with the British Red Cross to provide practical assistance to selected States who wish to produce their own voluntary reports on IHL implementation at a domestic level. A toolkit had been published in various languages to assist with this and the United Kingdom was working with the Swiss Ministry of Foreign Affairs and the ICRC to identify further States who would

like assistance to produce a report. The representative added that UK's submission in respect to its own activities for the period between 2020 and 2022 has been submitted to the UN and is awaiting publication.

144. The Belgian representative drew the attention of the CAHDI to ministerial level side events that were organised by Belgium with the European Commission and the Democratic Republic of Congo on ensuring accountability for sexual violence and other violations of international humanitarian law.

145. The Slovenian representative informed the CAHDI of their plans to organise an event in January 2023 in Ljubljana (Slovenia) on contemporary challenges in humanitarian crises, specifically on the protection of critical infrastructure and environment, during and after armed conflict.

146. The representative of the United States of America took the floor to support the ICRC representative's message towards making a priority out of ensuring that sanctions programmes do not impede humanitarian efforts. The representative informed the CAHDI that the US was working to address these challenges, including with an initiative referenced by the Secretary of State during the Global Food Security Summit held on 19 September 2022. According to the representative the goal was to establish a humanitarian carve out across all UN sanctions regimes and to ultimately streamline, standardise and expand the exemptions across US sanctions programmes.

147. The Swedish representative highlighted that the topic of gender and IHL continued to be a clear priority for Sweden. The representative also informed that Sweden is closely following the application of international humanitarian law in Ukraine, as well as working on addressing the issue of sanctions and humanitarian exemptions.

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

148. The Chair reminded the CAHDI of document CAHDI (2022) 5 prov presenting a summary of the developments at the ICC and other international criminal tribunals since the last CAHDI meeting. No delegation took the floor on this topic.

7.6 The use of new technologies and international law

- ***Presentation 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)***

149. The Chair welcomed and introduced Mr Dapo Akande, Professor of Public International Law and member of the International Law Commission, to the CAHDI.

150. Professor Akande stated that international law does apply in cyberspace, but that some scholars have suggested that particular international legal obligations which are agreed as applying in the offline world occasionally do not apply in cyberspace. A first example of such a challenge is the idea that some States opposed statements that would affirm the applicability of international humanitarian law or the law of armed conflict to cyber operations, arguing that such affirmation would militarise cyberspace. A second example is that a number of States have argued that the international law obligation of States to act with due diligence to prevent their territory being used to engage in activity that is harmful to other States does not extend to the cyber domain.

151. Professor Akande explained that the idea that existing rules of international law may not apply inside cyberspace seems to be premised on two assumptions. The first one supposed that existing rules of customary international law can only apply in cyberspace if those rules are also substantiated by evidence of State practice in the cyber domain and that practise is then backed up by expression of a belief that the rule is specifically applicable in the cyber domain. The second one is due to the fact that some standards of conduct which actually reflect existing international legal obligations have been framed in the context of cyberspace as voluntary non-binding norms of responsible State behaviour. Such a norm would refer to what the ICJ in the

Corfu Channel case[20] refers to as "every State's obligation not to knowingly allow its territory to be used for acts contrary to the rights of other States", or the obligation to act with due diligence.

152. Such a categorisation would give rise to the suggestion that the corresponding rules or principles have not yet developed or crystallised for cyberspace, and that the cyber domain is carved out of the scope of these obligations, assumptions which would undermine the agreed consensus that international law applies to State behaviour in cyberspace by cherry picking the rules that apply.

153. On the question of whether or not it is necessary to prove new or specific State practice for existing international law to apply in cyberspace, Professor Akande explained that, in his opinion, in the absence of a limitation to a particular context or type of activity, or where the previous expressions of a norm in international law have been general, then there is nothing in international law that suggests that one must seek to ascertain whether a rule applies across domains, since this rule can apply to all different cases. For example, the freedom of navigation on the high seas is a norm specifically only applicable to the high seas, but the prohibition of attacks on civilians or the prohibition for a State to arrest the serving head of another State do not specify anything more than their own content. It does not matter where the arrest takes place, who the civilians are, where they are, what weapons are used.

154. With reference to the ICJ *Nuclear Weapons* Advisory Opinion[21], Professor Akande maintained the fact that new technologies develop over time not to mean that these create new domains or spaces which cannot be subject to existing legal rules or principles. Thus, he concluded that existing general rules of international law apply to the cyberspace automatically without the need for specific state practice or *opinio juris*.

155. On the topic of the relation between the so-called voluntary non-binding norms of responsible State practice and existing international law, Professor Akande explained that some of those norms reflect existing international law obligations of States, and in fact, some of them explicitly or implicitly use the language of law. On the opposite, one may ask whether certain well-established rules of international law have been demoted to non-binding recommendations by the effect of the work of UN bodies through reports, or whether, though these rules are generally applicable, they do not survive as legal obligations in the cyber context because States have chosen to regard them in that context as only voluntary and non-binding. However, this argument fails to observe that the articulation of these norms is said to be without prejudice to the rights and obligations of States under international law. The very reports which mention these non-binding norms also mention that they do not seek to limit or to prohibit action that is otherwise consistent with international law, and the UN Open-ended Working Group states that these norms do not replace or alter States' obligations under international law which are binding, but they rather provide additional specific guidance.

156. With regard to the implications of the view that existing international law as a whole applies to State action in cyberspace, Professor Akande referred to a case study on the prohibition of the use of force by States and explained that, according to the Tallinn Manual on the International Law Applicable to Cyber Warfare, a cyber operation constitutes a use of force when its scale and effect are comparable to non-cyber operations rising to the level of use of force. When looking at the effects of the operation this would typically mean death, physical injury, physical damage, but Professor Akande furthered that some countries have stated that a cyber operation that causes serious economic consequences, such as heavily affecting the financial sector or shutting down the stock market, may amount to use of force as well. One would, however, need to show that a new interpretation on the use of force has been developed with regards to cyber operations.

157. Professor Akande concluded by reiterating the importance of clarifying how international law applies in cyberspace. He underlined, however, that in his view international law as a whole

[20] ICJ, Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania).
[21] ICJ, Legality of the Threat or Use of Nuclear Weapons.

clearly applies by default to cyber operations, without any need to show that there is specific cyber-related practice.

- ***Presentation on the topic of "The application of international humanitarian law in cyberspace" held by Doctor Cordula Droege (Chief Legal Officer/Head of Legal Division, ICRC)***

158. Doctor Droege underlined that the use of cyber operations is already a reality in armed conflict and that it carries a potential human cost, which is of particular concern to the ICRC. The categories of cyber operations that can be identified as part of modern military operations, are, among others, the defence of one's own networks with cyber capabilities, espionage, interruption or deception of enemy communication systems such as air defence systems, cyber operations in support of kinetic operations such as target identification, or cyber operations aimed at causing physical attacks against military or civilian infrastructure.

159. The interconnectivity that characterises cyberspace means that whatever is connected to the internet can be targeted from anywhere in the world. Some key areas that are vulnerable to cyber attacks are, for example, the healthcare sector and critical civilian infrastructure such as power plants, electrical grids, or water systems. Another risk is the risk of escalation of violence and human harm, due to the unknown intentions of the attackers and covert nature of the operations. In addition, some cyber-attack tools have the capability to self-propagate and may create indiscriminate collateral damage. Lastly, she elaborated on the complexity of the attribution of responsibility in the case of cyber-operations.

160. With regard to the applicability of international humanitarian law in cyber operations, Doctor Droege explained that, for the ICRC, there is no question that International Humanitarian Law (IHL) applies to, and therefore limits, cyber operations during armed conflict. It is now critical for States to focus on questions of 'how and when' IHL applies to cyber operations. IHL is part of the general international law and, as supported by Professor Akande, applies to the cyberspace entirely. As per the ICJ *Advisory Opinion on the legality of the threat of use of nuclear weapons*[22], excluding cyber operations from IHL's scope of application would be incompatible with the intrinsically humanitarian character of the legal principles and questions which permeates the entire law of armed conflict and applies to all forms of warfare and to all kinds of weapons.

161. Doctor Droege further raised the question whether a cyber operation can trigger the application IHL, i.e., whether it can actually in itself trigger an armed conflict. According to her, it is less clear whether cyber operations that do not physically destroy or damage military or civilian infrastructure could be considered as resort to armed force governed by IHL in the absence of kinetic hostilities. Another issue is the possibility that third States might become involved or provide cyber assistance in an ongoing international armed conflict, which leads to the question whether cyber assistance makes the third State a party to this ongoing armed conflict. Another specific question was the relation between cyber operations and the notion of attack, which is a technical term under IHL. In this regard, Article 49 of the Fist Additional Protocol to the Geneva Conventions defines attacks as acts of violence against the adversary, whether in offence or defence, and it is widely accepted amongst experts that cyber operations which would be expected to cause death, injury or physical damage would constitute such an attack under IHL. In the ICRC's view, this includes harm due to the foreseeable direct and indirect effects of an attack. She underlined that it is the view of the ICRC that the notion of damage should include the loss of functionality of systems and infrastructure, because it should make no difference whether an object does not function because it is physically damaged or because it stopped functioning.

162. Another issue discussed related to cyber operations and the notion of objects under IHL. It is important for States to agree on an understanding on whether civilian data, such as civil registries, insurance data, taxation data, medical data, are protected by the rules of IHL that protect civilians and civilian objects Indeed, deleting or tampering with such data could lead to large scale disruptions of the important civilian usages of cyberspace. The diverging views in this respect are: that for something to be an object, it must be visible and tangible, and thus

[22] ICJ, Legality of the Threat or Use of Nuclear Weapons.

personal data does not qualify as a civilian object; that all civilian data has to be protected as civilian object; or a third, hybrid approach, that one must distinguish between the types of data, so that content data must be protected, but that operational data, such as the code, is not necessarily protected. Doctor Droege emphasised the importance of reaching a consensus on this relatively open legal question.

163. Another focus of the ICRC was the involvement of civilians in cyber hostilities with States at times encouraging civilians to engage in offensive cyber operations. For the ICRC, these trends are concerning as they may put civilians at risk. While the ICRC is still reflecting on whether and which types of involvement of civilians might amount to direct participation in hostilities, it is clear – as has already been seen in the conflict between the Russian Federation and Ukraine – that it can put civilians at risk.

164. Finally, the ICRC remained concerned about cyber operations directed against medical and humanitarian actors. In this regard, the ICRC has raised the idea of developing a 'digital emblem' as a possible solution, an equivalent of the Red Cross or the Red Crescent in cyberspace in order to signal the presence of protected objects. Doctor Droege acknowledged that by signalling this presence there might also be a risk of making the protected infrastructure the target of malevolent attacks. However, this was a similar risk as exists in the kinetic world, and on balance, the protective benefit of an emblem appears to be higher than its risks. The ICRC will continue to work on the technical development, validation and verification of possible solutions.

- ***Presentation on the topic of "Responsible State behaviour in cyberspace" held by 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)***

165. Ambassador Patriota explained that the work of the GGE was conducted in a closed environment, where discussions happened freely, allowing to test the limits of the positions of all the members. The resolution that created the GGE adopted a new nomenclature of advancing responsible State behaviour in cyberspace in the context of international security, which lead the group to adopt the idea of responsible State behaviour as the main thrust of efforts at achieving agreements and consensus on a new, challenging issue that has a relationship with developments in technology that are changing the structure of relationships in global affairs in a very striking manner.

166. The GGE built upon existing agreements and aimed to move beyond these agreements, to create an evolving framework of norms, rules and principles of State behaviour, that would also be backwards compatible with the decisions adopted before 2018. The work of the GGE began by reaffirming agreements achieved before and expanding the views on threats that emanate from the growing reliance or pervasiveness of ICTs. This expansion included a higher awareness of persistent threat actors, an accumulation of malicious actions that can grow and become threatening to international peace and security, the recognition that the ICTs can have an influence on policy and systems and the overall stability of another State, the idea that new technologies that are growing very rapidly exponentially expand the threat surface. Ambassador Patriota also mentioned, as topics of discussion in the GGE, the different capacities of countries to secure, to protect and to respond against ICT incidents, as well as the difficulty of attributing the source of an ICT incident.

167. Ambassador Patriota indicated that norms on arms, rules and principles for the responsible behaviour of States and existing international laws sit alongside each other, there being an avoidance of establishing a hierarchy between them. Norms do not seek to limit or prohibit action that is otherwise consistent with international law, but the norms also reflect the expectations of the international community and set standards for responsible State behaviour. These norms are valuable because they are consensus based, which has its own meaning and impact, and they can even lead to the possibility of establishing legal, internationally binding obligations for States.

168. He noted the eleven norms that were discussed in the GGE. The first one deals with cooperation with regard to threats in order to minimise the impact of malicious cyber activities

on international peace and security. The second one is on ICT incidents and the response to be followed to them in a manner compatible with all provisions of the UN Charter regarding the settlement of disputes by peaceful means. The next norms discussed were on the use of territory for wrongful acts, terrorist and criminal uses of ICTs as well as the effects of critical infrastructure. Ambassador Patriota emphasised that the main issue is building multilateral consensus, which is then referred back to each State to implement the norms nationally and to cooperate on them regionally. With respect to the critical infrastructure, each State defines its own critical infrastructure, which then becomes part of something they have the right to protect. There were also new critical infrastructures that were proposed, depending on a variety of factors, such as electoral processes, the general availability of internet, or infrastructure for humanitarian actions.

169. On the protection of critical infrastructure, the GGE had concluded that there should be a long-standing resolution of the UN, creating a global culture of cybersecurity, with an annex including a lot of measures that can be recommended for States to adopt. Further norms were discussed on ICT safety and security under a lifecycle approach, cooperation and assistance for ICT protection which should have no bearing on responsibility for the attacks, trade related aspects, supply chain integrity, cybersecurity response teams and their protection.

170. With respect to the international law aspect, members of the GGE had been aware that international law is delicate, a very sensitive issue and that no one wants to provide or produce statements or agreements that might hamper, diminish or affect our global understanding of international law and the obligations of States, while still providing an additional layer of understanding on how international law applies to the cyberspace. Ambassador Patriota also mentioned that international law, and in particular the UN Charter, is applicable and essential to maintaining peace and stability and for promoting an open, secure, stable, accessible environment, even while not mentioning explicitly that this applies to cyberspace. Ambassador Patriota emphasised the fact that there was no consensus as to the use of the term cyberspace, which was not explicitly used, but replaced by the concept of ICTs, and that the mandate of the GGE dealt with how international law applies to the use of ICTs by States in the context of international security.

171. An emphasis was also put on the peaceful resolution of disputes, to mitigate and prevent disruptions of international peace and on the recognition of sovereignty, of the right of States to exercise jurisdiction over the ICT infrastructure over their own territory. This may be done by setting policy and law and establishing the necessary mechanisms to protect ICT infrastructure on a State's own territory from ICT related threats.

172. With regard to the topic of applicability of international humanitarian law in cyberspace, Ambassador Patriota indicated that IHL applied in situations of armed conflict, but that there was no formal recognition that IHL applied in cyberspace, since it was very difficult to reach a consensus on this.

173. Another important aspect underlined by Ambassador Patriota was a restatement of the principles of humanitarian law of humanity, necessity, proportionality and distinction, with a balancing phrase stating that the principles by no means legitimise or encourage conflict. Another idea brought forward had been to include an annex to the report containing the respective views of each member of the GGE, national views or individual views of experts on the subject, which was eventually implemented as a companion available on the website.

174. Finally, on the issue of attribution, Ambassador Patriota noted that it was not furthered at the level of the GGE as such due to its sensitive nature. The conclusion was that a further deepening on this topic will be done on a national basis, each country developing its own body of thinking as to how to deal with attribution under a technical, political and legal perspective, the three dimensions of it, and how to respond to it, as well as how to determine the threshold of defining an armed attack as per the UN Charter and how to identify the application of international law to the use of ICTs by States.

- ***Discussion***

175. The Irish representative asked Ambassador Patriota whether the GGE report was adopted by voting or by consensus given that the GGE was part of the First and not the Sixth Committee. The representative also formulated a question for Professor Akande and Doctor Droege regarding the fact that there were difficulties in how activities and behaviour were characterised in cyberspace by reference to activities in the real world, asking whether terms and concepts used in the real world can be understood to apply in this context. The Irish representative also inquired whether it was the opinion of the speakers that there should be a new instrument to reach an agreement on definitions and understandings or whether States should be encouraged to develop their own practice and try to reach common understandings through these.

176. The representative of Poland asked the panellists whether they considered that the norms of responsible behaviour that are being developed with respect to cyberspace should be considered as strengthening or weakening international law and the development of customary international law. To this end, the Polish representative explained that these norms were intentionally drafted as non-binding instruments, yet they were not always in line with customary international law.

177. The Portuguese representative drew attention to the fact that, while it was clear that international law did apply to cyber operations, there was a bigger challenge in defining how it applies, and that there needed to be more development in this field, by involving more actors, such as those from academia. The representative then asked if, since States do not always conduct cyber-operations through their own means, there might be a risk of the emergence of cyber mercenaries or purely cyber terrorist organisations.

178. Ambassador Patriota first responded that the GGE report had been adopted by consensus, adding that this was a major breakthrough after two and a half years of sometimes difficult discussions. With respect to the nature of the effects of norms of responsible behaviour on international law, he did not have a clear answer, but agreed with the reflection offered by the Polish representative. Ambassador Patriota also mentioned that this was the instrument of choice for some important stakeholders due to its efficiency and speed where binding international law would have been a slower process.

179. Doctor Droege answered the question of the Irish representative by explaining that this depended on whether there was a gap in the existing law. If IHL provisions were interpreted according to the Vienna Convention principles (object, purpose, good faith), it would likely provide sufficient protection for civilians. However, the lack of clarity on some key issues, such as the protection of civilian data, meant that the question whether IHL is sufficient was still open. The ICRC has encouraged States to pronounce themselves, and at the moment clarification rather than development was needed. However, the interplay between the interpretation of IHL and the harm seen on the ground will determine the position of a humanitarian organisation such as the ICRC on whether there is a need to develop new law, noting that development of the law comes with its own challenges, given the difficulty of reaching international consensus at the moment. She added that there were doubts on whether one could have consensus today, even on the practice. She concluded that the field of IHL was very much attached to the idea of a codified body of law that must be applied by everyone, and that there was usually a sense of urgency to develop the law quickly, but this was not felt with regard to cyberspace. With respect to the effect that the voluntary norms might have on the development of international law, Doctor Droege responded that it was her belief that these might actually expand upon the levels of protection afforded by traditional international law and give an opportunity to broaden its scope, however they cannot replace, nor should they weaken binding law.

180. Professor Akande added that ordinarily it is not the case that one needs a new instrument in international law in order to clarify a situation such as the one described by the representative of Ireland, but that this depended on each field and particular area of international law. He reiterated that significant progress in achieving some clarifications can be made in some areas through instruments that are non-binding. With respect to the question on whether the norms could be regarded as strengthening or weakening international law, Professor Akande agreed with Doctor Droege's perspective, but voiced his concern that, if a certain non-binding norm

included an existing rule of international law that is binding, that rule might start to be perceived as non-binding, in this sense downgrading certain existing rules. In response to the Portuguese representative, Professor Akande mentioned that there were three areas one should consider with regard to non-state actors. One such area was where the rules of international law apply to non-state actors, such as IHL. Secondly, this topic was particularly relevant in the area of attribution, raising the question to what extent under the rules of State responsibility could one establish that the activities of a non-state actor are to be regarded as attributable to a State. Thirdly, Professor Akande mentioned the situation where international law imposes obligations on States with respect to how those States conduct themselves vis-à-vis the actions of a non-state actor.

181. The representative of Sweden mentioned that his country had submitted a position paper on the application of international law in cyberspace to the UN. He then asked Doctor Droege what definition of civilian objects under IHL within the cyber domain she preferred, and whether she considered there to be a specific way of capturing the elements that need to be part of this definition.

182. The Estonian representative mentioned that his country had also submitted a similar position paper and inquired about the strategy for going forward in want of sufficient State practice and development in the topic. She further wondered whether more time will allow States to develop more State practice, or whether States should consider digging deeper and attempt to go into more specialised topics.

183. The Swiss representative added that her country supported the applicability of international law, including IHL and human rights, to cyberspace and that the roadmap of the Open-Ended Working Group precisely recommended more specific discussions on specialised topics. The representative then asked which were the topics that should be dealt with as a priority and why.

184. The Australian representative asked Professor Akande to expand more on the Open-Ended Working Group process and the work of the GGE, as well as how he thought that people like himself could best engage with that, especially with a focus on malicious actors.

185. On the question of the Swedish representative, Doctor Droege explained that the law was not entirely settled in terms of the question of whether civilian data is protected and, if so, to what extent. The ICRC's position was that essential civilian data should be considered to be protected. Interpreting IHL according to its object and purpose to protect civilians from attack, it should not make a difference if the data was on paper or electronic. Doctor Droege also emphasised that there is a lot of work being done in this field not only by the ICRC, including work that expands on other specific areas.

186. Ambassador Patriota explained that the Group sees a strong role for regional organisations to carry on the discussions and to deepen them; discussions foreseen as a means of building and further enhancing this framework of norms, which could be seen as a steppingstone towards debates in the future on a possible binding treaty. He then compared the evolving nature of law in cyberspace to that of outer space law, adding that all the actions taken in outer space were attributable to States, regardless of whether they are carried out by private actors, and that they are also mainly governed by the same approach of non-binding voluntary norms. He explained that these norms were a wave of the moment and that he believed they will continue to be used extensively, because they represent a fast method.

187. Professor Akande first responded to the questions regarding the process moving forward, explaining that, on the one hand, States were currently thinking about this issue, engaging with other States on this question and developing a position and, on the other hand, having discussions on a global level, trying to reach a consensus. He suggested there to be a middle ground, in trying to develop some common, consensus interpretations, but not necessarily at a global level and not necessarily only by States. In response to the question regarding the most important topics going forward, Professor Akande explained that there were two different approaches that can be taken to establish that: the first was to think about the rules of law in abstract and to see which of them are the most important, and the second was to consider the practical problems we are currently facing and to use that as a criterion. He explained the

second approach to be the one currently followed, leading to a focus on topics such as healthcare or electoral interference, but one could also choose to take the first approach and focus on rules that arise from the UN Charter, including non-intervention, sovereignty, due diligence.

188. The Canadian representative emphasised the importance of establishing a clearer understanding of the way in which international law and cyberspace interact, especially in the context of Russian aggression, on questions such as: Is one party to a conflict, is one engaged in an attack? The representative then voiced a number of conclusions, such as the perspective that sovereignty is a principle that animates a number of international rules, including a rule of territorial sovereignty and non-intervention, that due diligence does not amount to a legal obligation per se, but that no State should knowingly allow its territory to be used for cyber acts contrary to the rights of another State, that international law and countermeasures were a particularly relevant area in maintaining stability and security in cyberspace, but that collective countermeasures were not permitted as there is no sufficient legal basis for these to date.

189. The representative of Israel enquired on whether the best approach would be taking some general principles and norms of international law and applying them to different fields. The representative explained that it could be very useful to apply existing principles to new situations and fields, but there was a risk of trying to fit some concepts into an area where they might not be suitable.

190. The Japanese representative brought forward the idea that the non-binding norms provided potential ideas for consensus, even in places where existing international law is not convincing enough, and that there was some degree of consensus between national positions and norms from the GGE reports, and that consensus should be built upon these small common elements for more important agreements in the future.

191. The representative of the United States of America commended the fact that many States made public their view on how international law applies in cyberspace, as well as the work of the GGE in reaching explicit consensus that IHL does apply in cyberspace, along with the rest of international law. The US representative further stated that his country did not believe that there was a need for specific State practice in cyberspace to prove that existing rules apply, but that State practice could help clarify how the rules apply more precisely. The representative added that they believed there existed principles that would cover new cyberspace scenarios, but these were very specific and that more discussion and State practice on this topic would definitely be very helpful.

192. The representative of the United Kingdom agreed that international law is fundamental in cyber space for maintaining security and stability, and that it does apply to the field, including IHL, as well as that the next steps needed to move from a general to a more specific analysis. The representative then referenced a speech of the British Attorney General and explained that the focus of the speech was on the practical application of the non-intervention principle in four key sectors: essential medical services, essential energy supplies, economic stability and democratic processes. The representative further explained that the speech, discussed the various response options open to States to respond to malicious cyber activity, ranging from legal proceedings to acts of retorsion through to countermeasures. Finally, the representative voiced some concerns with regard to the application of a new treaty in this field for the same reasons that other representatives had voiced before.

193. Doctor Droege made two final remarks. Firstly, she shared the idea of the Japanese representative that the topic of discussion included difficult areas, but there were equally elements of consensus, and these discussions contributed to the development of norms, processes, and research. Secondly, she explained that cyber operations had many ramifications in the real world, and it would take a long time for all of them to be discovered and addressed. In response to the Israeli delegate's question, she added that, whilst cyber was a new domain, cyber operations did not stay in this domain only. Wars were still fought to defeat the enemy and would cause death and injury. She emphasised that it was not just about applying the same principles in cyber space but about the implications of cyber operations. n this context, a parallel could be drawn to Article 49, paragraph 3 of the First Additional Protocol to the Geneva Conventions which stipulates that the rules on the conduct of hostilities,

distinction, proportionality and precaution apply to all warfare, be it at sea, in the air and on land, that affect civilians on land. Similarly, these rules should apply to cyberspace, because cyber operations also affect civilians on land.

8 OTHER

8.1 Election of the Chair and the Vice-Chair

194. In accordance with *Resolution CM/Res(2021)3 on intergovernmental committees and subordinate bodies, their terms of reference and working methods*, the CAHDI elected Mr Helmut Tichy (Austria) and 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 Place, date and agenda of the 64th meeting of the CAHDI

195. The CAHDI decided to hold its 64th meeting in Strasbourg (France), 23-24 March 2023. The CAHDI instructed the Chair to prepare the provisional agenda of this meeting in due course in co-operation with the Secretariat.

8.3 Any other business

196. The CAHDI discussed the proposal by the Italian delegation to include the issue of soft law instruments on the agenda of future CAHDI meetings.

197. The Italian representative explained this proposal to have its origins in the online seminar on "Legislative guides, model laws, recommendations, principles: a "soft multilateral law-making" for international governance?" held in the margins of the 62nd meeting of the CAHDI on 22 March 2022. The seminar had produced an executive summary that had been distributed to all CAHDI delegations. The representative stated soft law instruments to have grown in relevance in recent years. Such instruments had proven to be an effective tool to overcome difficulties to obtain agreement within the international community on legally binding conventions, in particular in areas such as international trade and investment law but also with regard to environmental protection. Other international bodies such as The Hague Conference on Private International Law (HCCH) or the United Nations Institute for Training and Research (UNITAR) were discussing some effective solutions in this regard. Italy believed that it could be interesting and timely to discuss the issue of alternatives to instruments belonging to the so-called hard international law also within the CAHDI. This issue would also be connected to the discussions on non-legally binding agreements in international law that the CAHDI had recently introduced to its agenda.

198. The Italian representative further informed delegations of a hybrid seminar on "Soft Law in International Governance" organised by the International Institute for the Unification of Private Law (UNIDROIT) on 15 December 2022 in Rome. Due to the organiser's profile, the seminar will be mostly centred on international private law, international trade law and similar but also international family law but it will have also a more general perspective on relations between soft law and hard law and the way how States participating in the development of soft law try to adapt and adopt solutions internally. The organisers would be very pleased to find participants among members of the CAHDI. Further information on the seminar would be distributed via the CAHDI Secretariat closer to the event.

199. The Swiss representative noted her country to be particularly interested and concerned by issues regarding soft law since the UN Global Compact for Migration. With regard to the Italian initiative, however, overlaps with the discussions within CAHDI on non-legally binding agreements should be avoided as far as possible in the interest of efficacy. The representative further informed delegations of a side-event on soft-law instruments to be organised by Switzerland during the International Law Week in October 2022 in New York.

200. The CAHDI decided to rename item 6 on its agenda, which has until now been called "Treaty law", to "Treaty law and soft law instruments", and to include a sub-item to that topic titled "Soft law instruments". The Italian delegation was tasked with the preparation of a concept note to structure the discussion under this sub-item at future meetings.

201. As a final point before the item was closed, the representative of the United Kingdom took the floor to inform delegations of the London Conference on International Law, a conference organised by the United Kingdom Foreign Commonwealth and Development Office along with a number of other partners on 10-11 October 2022 on “States in emergency - international law at a time of reckoning”. The representative encouraged colleagues to have a look at the programme and consider attending.

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

202. The CAHDI adopted the Abridged Report of its 63rd meeting, as contained in document CAHDI (2022) 18, and instructed the Secretariat to submit it to the Committee of Ministers for information.

203. Before closing the meeting, the Chair thanked all CAHDI experts for their participation and efficient co-operation in the good functioning of the hybrid meeting. She also thanked the CAHDI Secretariat and the interpreters for their invaluable assistance in the preparation and the smooth running of the meeting.

APPENDICES

APPENDIX I

23 September / septembre 2022 CAHDI (2022) LP2
Bilingual / *Bilingue*

COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW /
COMITE DES CONSEILLERS JURIDIQUES SUR LE DROIT INTERNATIONAL PUBLIC
(CAHDI)

63rd meeting / *63è réunion*
22-23 September 2022 - Bucharest, Romania
22-23 septembre 2022 - Bucarest, Roumanie

Palace of the Parliament, the Senate Hall
Strada Izvor 2-4

(hybrid meeting / *Réunion au format hybride*)

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APPENDIX II

AGENDA

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 observer 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)*
    - *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. 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