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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW

(CAHDI)

List of items discussed and decisions taken Abridged report

64th meeting
23-24 March 2023

Strasbourg, Palais de l'Europe, room 11

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

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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)**64th meeting, Strasbourg, 23-24 March 2023****List of items discussed and decisions taken
Abridged report****1. Introducing the meeting**

1.1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 64th meeting in Strasbourg, France, on 23-24 March 2023, with **Mr Helmut Tichy** (Austria) as Chair.

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

1.3. The CAHDI examined and adopted the **report of its 63rd meeting** (Bucharest, Romania, 22-23 September 2022), and authorised its publication on the CAHDI website.

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

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

2.1. The delegations took note of the **Opinion of the CAHDI on the participation of the Russian Federation and Belarus in the Committee of the Parties to the Council of Europe Convention on the counterfeiting of medical products and other similar crimes involving threats to public health (CETS No. 211; "Medicrime Convention")**, adopted on 31 January 2023 by means of written procedure, as contained in document CAHDI (2023) 10 Restricted. In this regard, the CAHDI also took note of the information by the Secretariat, on the current state of play of the participation of the Russian Federation and Belarus in open Council of Europe conventions establishing a follow-up mechanism.

2.2. The delegations took note of **decisions of the Committee of Ministers relevant to the work of the CAHDI**, as contained in document CAHDI (2023) 1 Restricted.

3. Concerning the subject of "CAHDI databases and questionnaires",

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

- Questionnaire on "Settlement of disputes of a private character to which an international organisation is a party";
- Questionnaire on "Immunity of state-owned cultural property on loan";
- Questionnaire on "Immunities of special missions";
- Questionnaire on "Service of process on a foreign State";
- Questionnaire on "Possibility for the Ministry of Foreign Affairs to raise public international law issues in procedures pending before national tribunals and related to States' or international organisations' immunities";
- Database on "The immunities of States and international organisations";
- Questionnaire and database on "Organisation and functions of the Office of the Legal Adviser of the Ministry of Foreign Affairs (OLA)"
- Database on "The implementation of United Nations Sanctions".

3.2. The CAHDI **examined the possibility of making public the replies to the four questionnaires that are currently still confidential**, concerning: the "Settlement of disputes of a private character to which an international organisation is a party", the "Immunity of state-owned cultural property on loan", the "Service of process on a foreign State" and the "Possibility for the Ministry of Foreign Affairs to raise public international law issues in procedures pending before national tribunals and related to States' or international organisations' immunities". The CAHDI took note of the

responses submitted by 18 delegations to the inquiry on whether they would be ready to render public their replies to these questionnaires respectively. The CAHDI further invited delegations that have not yet replied to the inquiry to do so at their earliest convenience and decided to resume consideration of this item at its 65th meeting.

4. Concerning the subject of **“Immunities of States and of international organisations, diplomatic and consular immunities”**:

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

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

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

5.2. The CAHDI took note of the information provided by delegations concerning cases before the European Court of Human Rights involving issues of public international law. It further invited delegations to keep the Committee informed on developments in this regard as well as on other relevant pending cases.

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

6.1. The CAHDI held an exchange of views concerning **non-legally binding agreements in international law**. It examined the 26 replies by States and international organisations to the questionnaire on “The practice of States and international organisations regarding non-legally binding agreements”, contained in document CAHDI (2023) 5 prov Confidential Bilingual. The CAHDI also took note of the analytical report, presented by Prof. Andreas Zimmerman (University of Potsdam/Germany), on the basis of the 22 responses received until the end of 2022, as present in document CAHDI (2023) 6 Confidential. The delegations then discussed the report and decided to keep the item under its **new denomination “Non-legally binding instruments in international law”** on the agenda and to task the Secretariat with the preparation of a working document on this subject in view of elaborating best practices and, where relevant, guidelines. The CAHDI further agreed that the analytical report could eventually be transmitted to the International Law Commission (ILC) after having given the States and international organisations mentioned in the report the opportunity to provide clarifications of their practice and having taken into account new replies received since the preparation of the report.

6.2. The CAHDI held an exchange of views on **treaties not requiring parliamentary approval**. The CAHDI examined the replies by States to the related questionnaire, contained in document CAHDI (2023) 7 prov Confidential Bilingual. The CAHDI noted that, to date, 18 delegations have replied to the questionnaire on this matter and invited the delegations that have not done so to submit their replies at their earliest convenience so that the CAHDI could consider next steps with regard to the subject matter at the next meeting of the CAHDI in September 2023.

6.3. The CAHDI held an exchange of views on the topic of **soft law instruments**. At its 63rd meeting (22-23 September 2023 in Bucharest (Romania)), the CAHDI examined and agreed to the proposal by the delegation of Italy to include the issue of soft law instruments on the agenda of future CAHDI meetings. The CAHDI took note of the presentation by the delegation of Italy of a non-paper on this matter, contained in document CAHDI (2023) 11 prov Confidential. The CAHDI agreed with the Italian proposal that they will prepare and circulate a draft questionnaire on soft law instruments for possible written comments by delegations. The questionnaire could then be approved at the next meeting of the CAHDI.

6.4. Within the framework of its activity as the **European Observatory of Reservations to International Treaties**, the CAHDI examined a list of 7 reservations and declarations to international

treaties concluded within and outside the Council of Europe, subject to objection. Furthermore, the CAHDI discussed the possibility to also examine reservations and declarations to treaties deposited with the Hague Conference on Private International Law (HCCP) and decided to include the examination of such reservations and declarations in its work as European Observatory of Reservations to International Treaties.

6.5. In addition, the CAHDI took note of document CAHDI (2023) Inf 1 containing the reactions to reservations and declarations to international treaties previously examined by the CAHDI and for which the deadline for objection had already expired.

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

7.1. The CAHDI held an exchange of views on the **public international law aspects of the current situation of aggression against Ukraine** and took note of the information provided by the representative of Ukraine on accountability issues, particularly of the possibility of establishing a Register of damage and an ad hoc Special Tribunal on the crime of aggression as well as the role of the 4th Council of Europe Summit of Heads of State and Government in this regard.

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

7.3. The CAHDI held an exchange of views on the **work of the International Law Commission (ILC)**.

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

7.5. The CAHDI discussed the **recent developments concerning the International Criminal Court (ICC) and other international criminal tribunals** in the light of document CAHDI (2023) 9 prov. The CAHDI took note of the information provided by delegations on this matter.

7.6. Regarding **the use of new technologies and international law**, the CAHDI took note of the presentation on the topic of ***“The application of international law in cyberspace”*** by **Prof. Aurel Sari** (University of Exeter/United Kingdom) and held an exchange of views on the subject.

8. Concerning any **other issues**:

8.1. The CAHDI decided to hold its **65th meeting** in Strasbourg (France), on 28-29 September 2023. The CAHDI instructed the Chair of the CAHDI, in co-operation with the Secretariat, to prepare in due course the provisional agenda of this meeting.

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

APPENDIX I

1. **INTRODUCTION**

- 1.1. Opening remarks
- 1.2. Adoption of the agenda
- 1.3. Adoption of the report of the 63rd 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 the participation of the Russian Federation and Belarus in the Committee of the Parties to the Council of Europe Convention on the Counterfeiting of Medical Products and other Similar Crimes Involving Threats to Public Health (CETS No. 211; "Medicrime Convention")
- 2.2. 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 AND SOFT LAW INSTRUMENTS

- 6.1. Exchanges of views on topical issues related to treaty law
 - ***Exchange of views on non-legally binding agreements in international law with Prof. Andreas Zimmermann (University of Potsdam/Germany)***
 - ***Exchange of views on treaties not requiring parliamentary approval***
 - ***Exchange of views on soft law instruments***
- 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
- 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: Exchange of views with Prof. Aurel Sari (University of Exeter/United Kingdom)***

8. OTHER

- 8.1. Place, date and agenda of the 65th meeting of the CAHDI: Strasbourg (France), 28-29 September 2023
- 8.2. Any other business
- 8.3. Adoption of the Abridged Report and closing of the 64th meeting