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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW

(CAHDI)

List of items discussed and decisions taken Abridged report

65th meeting
28-29 September 2023

Strasbourg, Palais de l'Europe, room 9

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

cahdi@coe.int - www.coe.int/cahdi

COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)**65th meeting, Strasbourg, 28-29 September 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 65th meeting in Strasbourg, France, on 28-29 September 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 64th meeting** (Strasbourg, France, 23-24 March 2023) 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 CAHDI took note of the **draft terms of reference** prepared by the Committee of Ministers for 2024-2027.

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) 15 Restricted.

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

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

- 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 19 delegations to the inquiry on whether they would be ready to render public their replies to these questionnaires respectively. The CAHDI decided to lift the confidentiality of replies to three questionnaires, namely the questionnaires on "Settlement of disputes of a private character to which an international organisation is party", "Service of process on a foreign State" and "Possibility for

the MFA to raise public international law issues in procedures pending before national tribunals and related to States' or international organisations' immunities". The delegations will have the possibility to review their contributions until 1 April 2024. The individual contributions to those three questionnaires will then be published on the CAHDI website unless the contributing state explicitly objects to its publication within this deadline. It was decided that the CAHDI will come back to the fourth questionnaire on immunity of state-owned cultural property on loan at a later stage.

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 **"National implementation measures of UN sanctions and respect for human rights"**, the CAHDI took note of the information provided by delegations. It further invited delegations to keep the Committee informed on developments in this regard.

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

6.1. The CAHDI held an exchange of views concerning **non-legally binding instruments in international law**. It took note of the "Revised report and annexes on the practice of States and international organisations regarding non-legally binding agreements" (CAHDI document (2023) 17), dated 30 June 2023, and discussed the possible next steps relating to the CAHDI project on non-legally binding instruments in international law on the basis of a non-paper prepared by the Secretariat (CAHDI document (2023) 18, dated 11 September 2023). The CAHDI agreed to consider organising a workshop with a practical orientation in order to look at existing material provided in the answers to the CAHDI questionnaire on the topic and address some open issues identified in the discussion. Such a workshop would clarify the possible added value of the CAHDI elaborating best practices or guidelines on non-legally binding instruments in the future. The results of the workshop could further be reflected in an updated version of the CAHDI report on the topic.

6.2. The CAHDI held an exchange of views on **treaties not requiring parliamentary approval** on the basis of the replies received so far to a questionnaire on this topic. It invited the remaining delegations to submit their replies at their earliest convenience in order to enable the Secretariat to proceed to an analysis of the replies to be summarised in a future working document of the CAHDI.

6.3. The CAHDI approved the questionnaire on **"International soft law: implications for Legal Departments of Ministries for Foreign Affairs"** as contained in document CAHDI (2023) 19 prov Restricted, dated 2 August 2023 and invited delegations to submit their replies to this questionnaire at their earliest convenience.

6.4. Within the framework of its activity as the **European Observatory of Reservations to International Treaties**, the CAHDI examined a list of 10 reservations and declarations to international treaties concluded within and outside the Council of Europe, subject to objection.

6.5. In addition, the CAHDI took note of document CAHDI (2023) Inf 3 containing the reactions to reservations and declarations to international treaties previously examined by the CAHDI and for which the deadline for objection had already expired.

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**.

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

7.3. The CAHDI held an exchange of views on the **work of the International Law Commission (ILC)** with **Ms Patricia Galvao Teles** (Chair of the ILC). Subsequently, the CAHDI continued its

discussion after a presentation on “**Sea-level rise in relation to international law**” by **Mr Bogdan Aurescu** and **Ms Nilüfer Oral** (members of the ILC and Co-Chairs of the Study Group on this issue).

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. On the subject **recent developments concerning the International Criminal Court (ICC) and other international criminal tribunals** in the light of document CAHDI (2023) 9 prov, the CAHDI held also an exchange of views with **Ms Silvia Fernández de Gurmendi**, Chair of the Diplomatic Conference for the Adoption of a Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and other International Crimes (15-26 May 2023, Ljubljana/Slovenia) and President of the Assembly of State Parties to the Rome Statute of the ICC. Subsequently, the CAHDI took also note of the information provided by delegations on this matter.

8. Concerning any **other issues**:

8.1. In accordance with [Resolution CM/Res\(2021\)3](#) on *intergovernmental committees and subordinate bodies, their terms of reference and working methods*, the CAHDI re-elected Mr Helmut Tichy (Austria) and Ms Kerli Veski (Estonia), respectively, as Chair and Vice-Chair of the Committee, for a term of one year, from 1 January to 31 December 2024.

8.2. The CAHDI decided to hold its **66th meeting** in Strasbourg (France), on **11-12 April 2024**. The CAHDI instructed the Chair of the CAHDI, in co-operation with the Secretariat, to prepare in due course the provisional agenda of this meeting.

8.3. The CAHDI **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 64th meeting
- 1.4. Information provided by the Secretariat of the Council of Europe

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

- 2.1. Exchange of views in order to evaluate CAHDI activities and advise the Committee of Ministers and the Secretary General on future priorities in its sector
- 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. Cases before the European Court of Human Rights involving issues of public international law
- 5.2. 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
- 6.2. Law and practice relating to reservations and interpretative declarations concerning international treaties: European Observatory of Reservations to International Treaties

7. CURRENT ISSUES OF PUBLIC INTERNATIONAL LAW

- 7.1. Topical issues of public international law
- 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

8. OTHER

- 8.1. Election of the Chair and the Vice-Chair
- 8.2. Place, date and agenda of the 66th meeting of the CAHDI
- 8.3. Any other business
- 8.4. Adoption of the Abridged Report and closing of the 65th meeting