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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW

(CAHDI)

Meeting report

66th meeting
11-12 April 2024

Strasbourg, France (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, Mr Helmut TICHY

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 66th meeting in Strasbourg (France) on 11-12 April 2024, with Mr Helmut TICHY (Austria) 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 Chair reported on the fruitful Seminar on the Special Tribunal for the case of Aggression against Ukraine and the role of Regional Organisations the CAHDI had organised jointly with the Permanent Representation of Ukraine to the Council of Europe and the Liechtenstein Presidency of the Committee of Ministers the previous day.

1.2 Adoption of the agenda

3. The CAHDI adopted its agenda as it appears in **Appendix II** to this report.

1.3 Adoption of the report of the 65th meeting

4. The CAHDI adopted the report of its 65th meeting (document CAHDI (2023) 25), held on 28-29 September 2023 in Strasbourg (France), 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 and by the Chair of the CAHDI

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

5. Mr Jörg POLAKIEWICZ, Director of Legal Advice and Public International Law (DLAPIL) informed the delegations of recent developments within the Council of Europe since the last CAHDI meeting.

6. The speaking notes of Mr POLAKIEWICZ are set out in **Appendix III** to this report.

- ***Information provided by Mr Helmut TICHY, Chair of the CAHDI***

7. The Chair reported on his participation in two events of significance to the CAHDI since the last meeting.

8. On 29 November 2023, he had held an exchange of views with the Committee of Ministers at the 1482nd meeting of the Minister's Deputies in Strasbourg. The exchange was an opportunity to highlight the CAHDI's work in 2023, particularly the CAHDI's advisory role to the Committee of Ministers. In the Chair's opinion, the meeting was particularly fruitful and engendered renewed support from the Deputies for the CAHDI and its work which they recognised as "more essential than ever in the current context".

9. Second, the Chair briefly highlighted his participation in the Second Meeting of the Secretary General of the Council of Europe with Presidents of intergovernmental committees of the Organisation which was held on 1 February 2024. The discussion had been a similarly fruitful opportunity to disseminate the work of the CAHDI and the Chair had taken note of an intriguing sharing of experiences from the other participants on how to bring in a "youth perspective" in intergovernmental work in line with the Reykjavik Declaration, adopted at 4th Summit of Heads of State and Government (16-17 May 2023). In light of this, and in light of the potential use of young people's skills to encourage innovation in intergovernmental decision-making and cooperation, the Chair suggested the potential of addressing students in Vienna in the framework of the next CAHDI meeting in September in Vienna (Austria). Not for the purpose of consulting youth representatives on the work of the CAHDI but to encourage and communicate with youth to broaden the visibility of the work of the CAHDI.

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

2.1 Opinion of the CAHDI on Recommendation 2266 (2024) of the Parliamentary Assembly of the Council of Europe (PACE)

10. The Chair introduced the sub-item by recalling that, on 7-8 February 2024, the Ministers' Deputies, at their 1488th meeting, had agreed to communicate Recommendation 2266 (2024) of the Parliamentary Assembly of the Council of Europe ("PACE") on "A democratic future for Belarus" to the CAHDI, for information and possible comments. The Chair, with the assistance of the Secretariat, had prepared a draft opinion (document CAHDI (2024)1 *Restricted*) that had been sent to delegations in advance of this meeting. Before opening the floor for delegations' comments on the draft opinion, the Chair noted that the Committee of Ministers was awaiting to receive the CAHDI's opinion by 26 April 2024.

11. The CAHDI examined the draft opinion. Several delegations made amendment proposals to the text of the draft before the CAHDI could unanimously adopt the opinion as amended.

2.2 Invitation to the CAHDI to provide an indicative overview of possible avenues under international law aimed at securing the payment by the Russian Federation of just satisfaction awarded by the European Court of Human Rights

12. The Chair introduced the next sub-item by reiterating that, at their 1448th meeting on 7-8 February 2024, the Ministers' Deputies, recalling that the Russian Federation was no longer a member state of the Council of Europe and had ceased complying with its obligations under Article 46, paragraph 1 of the European Convention on Human Rights ("ECHR", "Convention"), had 1) invited the CAHDI to explore all possible avenues consistent with international law aimed at securing the payment by the Russian Federation of just satisfaction awarded by the European Court of Human Rights ("ECtHR"), respecting the immunities of states and their property while, 2) indicating that, in doing so, the CAHDI should take into account relevant work of the United Nations, the European Union and other international actors and, 3) requested the CAHDI to provide an indicative overview of possible avenues in the restricted regime by the end of September 2024. "Restricted regime" meant that the overview would be distributed to member Governments and the Secretariat of the Council of Europe, but that it will not be immediately published on the website of the CAHDI – in difference to the usual practice with CAHDI opinions. Public access to the overview will hence only be possible a year after its adoption.

13. The Chair noted that, with a view to preparing the requested overview, the CAHDI would hold a discussion with special guests on compensation under international law with a focus on options for enforcement of payments awarded by international human rights courts under item 7.1 of the agenda in the afternoon of the same day. Under this sub-item 2.2 the CAHDI was therefore only to discuss the procedure it would envisage applying when preparing the overview given that it would be too late to do much more than adopt the prepared overview at its next plenary meeting in Vienna in September 2024 just before the expiry of the deadline set by the Committee of Ministers for its submission. The Chair noted that the CAHDI could consider setting up a working group to coordinate and participate in the drafting of the overview the first draft of which could be provided by the Secretariat. This working group could meet online and even invite experts for an exchange of views should this be considered as a helpful tool. The working group composed of a limited number of delegations would naturally not be in a position to adopt the overview. Instead, the drafts produced by it would need to be shared with all delegations for rounds of comments in a written procedure.

14. Delegations taking the floor welcomed the proposed way forward for preparing the overview. France, Georgia, Germany, the Republic of Moldova, the Netherlands, Poland, Switzerland and Ukraine volunteered right away as members of the working group. The Chair announced that the other delegations could let the Secretariat know by the end of April 2024 whether they too wished to participate in the working group that would presumably hold its first meeting in the beginning of June. At this first meeting, the working group would already discuss a first draft of the overview prepared by the Secretariat.

2.3 Examination of the request by the Permanent Court of Arbitration (PCA) to be granted observer status to the CAHDI

15. The Chair informed delegations of the request submitted by the Permanent Court of Arbitration (PCA) on 27 October 2023 to be granted observer status with the CAHDI, as contained in document *CAHDI (2024) 2 Restricted*. He explained PCA, established in 1899, to be the first permanent intergovernmental organisation to provide a forum for the resolution of international disputes through arbitration and other peaceful means. The PCA provides services for the resolution of disputes involving various combinations of states, state entities, intergovernmental organisations, and private parties. The PCA's Secretariat, the International Bureau headed by its Secretary-General, has as its primary function to provide administrative support in respect of arbitration, conciliation, mediation, fact-finding, expert determination and other dispute resolution proceedings. Its caseload reflects the breadth of PCA involvement in international dispute resolution, encompassing territorial, treaty, and human rights disputes between states, as well as commercial and investment disputes, including disputes arising under bilateral and multilateral investment treaties. The PCA can further assist in the selection of arbitrators and may be called upon to designate or act as appointing authority. The PCA currently has 122 Contracting Parties.

16. 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. As a general rule, observers shall be admitted upon their request to the secretary general on the basis of a unanimous decision by the committee itself. In the event where unanimity is not reached, the matter may be referred to the Committee of Ministers at the request of two thirds of the members of the committee concerned.

17. Noting his belief that the PCA would be likely to bring an added value to discussions of the CAHDI, especially when it comes to topics like the peaceful settlement of disputes, the Chair then opened the floor for any views on the request to be granted observer status by the PCA.

18. The representative of Poland supported the PCA's request. He shared the opinion that the PCA could bring an added value to the work of the CAHDI.

19. The representative of Türkiye noted that some ambiguity existed as to the requirements for observer status under CM/Res(2021)3. More reflection should be put into the question whether international courts could be accepted as observers.

20. Several representatives argued that this question did not rise in the case concerned as the PCA was clearly an international organisation for which observer status could be granted under CM/Res(2021)3.

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

2.4 Terms of reference of the CAHDI

22. The Chair then turned to the next sub-item and informed delegations that new terms of reference for the years 2024-2027 had been drafted for intergovernmental committees, those of the CAHDI appeared in document *CAHDI (2024) Inf 1 Restricted*. When adopting the adjustments to the Programme and Budget for 2023, the Committee of Ministers had decided that a detailed and full examination of the Programme and Budget would be undertaken in light of their reflection on the long-term strategic role of the Organisation for 2024 and beyond, thereby ensuring a strong and focused Council of Europe that can adapt to the fundamentally changed geopolitical landscape. In that context, a new four-year Programme had been prepared as from 2024, building on the outcome of the 4th Summit of the Council of Europe Heads of State and Government held in Reykjavik (Iceland) on 16-17 May 2023. The Budget consists of two consecutive biennial budgets for 2024-2025 and 2026-2027.

23. The Chair went on to explain that according to its terms of reference, one of the tasks of the CAHDI was to "hold an exchange of views annually in order to evaluate its activities and advise

the Committee of Ministers and the Secretary General on future priorities in its sector, including possible new activities and those that might be discontinued". The CAHDI had undertaken an evaluation in this regard at its 61st meeting (23-24 September 2021 in Strasbourg, France) as a result of which the CAHDI's agenda was reshaped and streamlined quite extensively. The Chair invited the CAHDI to hold an exchange of views on the current CAHDI activities and, if relevant, to make any proposal in this regard. No delegation took the floor under this sub-item.

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

24. The Chair presented a compilation of the Committee of Ministers' decisions of relevance to the CAHDI's activities (document CAHDI (2024) 3 *Restricted*) prepared by the Secretariat. The Chair explained Chapter 1 of this document to deal with the decisions concerning directly the CAHDI, such as the decisions by which the Committee of Ministers requested the Committee's opinion on PACE Recommendation 2266 (2024) or the preparation of the overview on ways of securing the payment by the Russian Federation of just satisfaction awarded by the ECtHR. Chapter 2 of the document contained links to the stocktaking document of the Latvian presidency of the Committee of Ministers, which took place from May to November 2023. Latvia then handed over the presidency of the Committee of Ministers to the current presidency of Liechtenstein ending in May 2024, and whose priorities are equally linked in the document. The Chair ended his overview of the document by noting its Chapter 3 to be again devoted to the situation in Ukraine. No delegation took the floor under this sub-item.

3 CAHDI DATABASES AND QUESTIONNAIRES

25. 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. He informed delegations that since the last CAHDI meeting, Albania, Austria, Greece, and Switzerland had sent new or updated contributions to the questionnaire on the *"Settlement of disputes of a private character to which an international organisation is a party"* (document CAHDI (2024) 13 prov *Confidential Bilingual*), Türkiye to the questionnaire on *"Immunity of state-owned cultural property on loan"* (document CAHDI (2024) 14 prov *Confidential Bilingual*), Albania, Germany, Greece, Romania and Switzerland to the questionnaire on *"Service of process on a foreign state"* (document CAHDI (2024) 9 prov *Confidential Bilingual*), Albania, Italy, Romania and the Slovak Republic to the questionnaire on *"Exchange of national practices on possibilities for the Ministry of Foreign Affairs to raise public international law issues in procedures pending before national tribunals and related to states' or international organisations' immunities"* (document CAHDI (2024) 10 prov *Confidential Bilingual*) and, finally, Italy to the database on *"Practice of national implementation of UN sanctions and respect for human rights"*.

26. The Chair then turned to the issue of "Lifting the confidentiality of certain CAHDI questionnaires" and recalled that, at its 63rd meeting (23-24 September 2022 in Strasbourg, France), the CAHDI had examined the possibility of making public the replies to some of its questionnaires that were still held confidential at the time. An inquiry was then conducted by the Secretariat which revealed that around half of the delegations having replied to one or more of the questionnaires agreed to the replies being made public after the delegation concerned would be granted the possibility to review its contribution. Subsequently, at its 65th meeting (28-29 September 2023 in Strasbourg, France) the CAHDI decided to lift the confidentiality of the following three questionnaires, namely, those concerning *"Settlement of disputes of a private character to which an international organisation is a party"*, *"Service of process on a foreign state"* and on 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"*. As a next step, the delegations concerned received an individual message from the Secretariat on 14 or 15 February 2024 containing the current versions of their contributions to these questionnaires with the invitation to review them or to object to their publication by 1 April 2024. By the deadline, 12 delegations had submitted their updated contribution to the Secretariat or confirmed that their previous contribution could

be published as it was. No delegation conveyed an objection to the publication of its contribution on the CAHDI website. The CAHDI agreed that the Secretariat could proceed to the publication step after the meeting.

27. The Chair then recalled that at its 65th meeting, the CAHDI had expressly omitted to decide on the lifting of confidentiality of states' replies to the questionnaire on *"Immunity of state-owned cultural property on loan"*. This question could be returned to either now or at one of the next meetings of the CAHDI.

28. The representative of Türkiye drew the attention of the CAHDI to the fact that his delegation had only recently replied to the questionnaire concerned. All the replies that his delegation deemed necessary were contained in the reply that had been submitted to the CAHDI Secretariat under this item. The representative underlined that this was to say that all appropriate answers to allegations put forward by the previous speaker could be found in his delegation's replies to the questionnaire. He furthermore stated his delegation to have no objections to the publication of the replies to this questionnaire.

29. The representative of Cyprus expressed her delegation's rejection of Türkiye's allegations contained in its reply to question 4 of the questionnaire. This reply would be offered by Türkiye under the pretext of a national reply, yet it was clear to Cyprus that its statements wholly concerned and purported to promote the illegal secessionist regime that Türkiye has set up in the occupied area of Cyprus contrary to the relevant United Nations Security Council ("UNSC") Resolutions. The Cypriot representative underlined that Türkiye's allegations were, as a matter of substance, unfounded and contrary to international law, including in particular, the relevant UNSC resolutions on Cyprus, as well as the principles on which the Council of Europe was founded. She ended her intervention by stating that her country would expressly reserve its right to review and update its own replies to this questionnaire should the CAHDI decide to lift the confidentiality of the replies to this questionnaire.

30. After confirming that no other delegation wished to take the floor on this question, the Chair concluded that given that there were no objections raised by delegations, also the confidentiality of the replies to the questionnaire on "*"Immunity of state-owned cultural property on loan"* would be lifted. The same procedure as applied with regard to the previous questionnaires would come into play this time as well. The Secretariat would send the current versions of the replies to the state concerned who would have the possibility to review these within an adequate deadline after which all replies would be published on the CAHDI's website.

31. Finally, the Chair noted that although the replies to the CAHDI questionnaire on *"Immunities of special missions"* had been published in a CAHDI book on the same subject in 2019, the same replies as well as their potential updates remained to be treated as confidential in document *CAHDI (2020) 5 prov Bilingual*. The Chair wished the CAHDI to now use the opportunity to discuss the possibility of publishing also these replies on its website. No delegation objected to this proposal by the Chair. And the CAHDI agreed, also as regards this final questionnaire, that, after the meeting, the Secretariat would contact each delegation that has replied to this questionnaire and offer an opportunity to update its contribution within a set deadline before all the replies so far submitted would be made public on the CAHDI website.

32. The Chair concluded the item by encouraging delegations to send their new or updated contributions to all questionnaires and databases under this item to the Secretariat. These represented an important outreach activity of the CAHDI that should not be underestimated.

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

33. The Chair noted that there had been no proposals for exchanges of views on topical issues in relation to the subject matter of the item. The Chair invited delegations to share information on recent developments concerning state practice and relevant case-law in their countries regarding the topic of immunities.

34. The representative of Austria drew the attention of delegations to the ongoing negotiations within Interpol regarding a draft general convention on privileges and immunities. The representative emphasised Austria's special connection to Interpol, which Austria believes to be an international organisation, given that it was founded in Vienna and its 100th anniversary conference took place there last fall. The representative noted that the negotiations were taking place in Lyon in hybrid format, however not all delegations were fully informed about the issue of privileges and immunities. He encouraged delegations to liaise with their representatives participating in these discussions and to assist in improving the draft text, particularly noting the difficulty in reaching agreement concerning some draft terms.

35. The representative of Czechia echoed the concerns of the representative of Austria, noting that the negotiations had thus far been conducted in an unorthodox manner. The representative noted that the exercise needed to be conducted properly in order not to frustrate the goal of drafting the convention.

36. The representative of the United States of America (US, USA) reported on several relevant cases. He noted that the People's Republic of China (PRC) was a defendant in a number of COVID-related civil proceedings before US courts, including litigation brought by the Attorneys General of the states of Missouri and Mississippi, although the PRC has not appeared to defend itself to date. On 10 January 2024, the 8th Circuit Federal Court of Appeals ruled in *The State of Missouri v. The Peoples Republic of China*[1] that PRC defendants were not entitled to sovereign immunity under the Foreign Sovereign Immunities Act for claims related to alleged hoarding of personal protective equipment (PPE). In the early months of the pandemic, the 8th Circuit found that PPE hoarding constituted commercial activity which is exempted from sovereign immunity and reversed the dismissal of that claim by the District Court. That matter has now returned to the District Court. On 5 March 2024, in *State of Mississippi v. People's Republic of China et al*, the US District Court for the Southern District of Mississippi entered a default against the PRC and other named defendants. The representative of the United States of America noted that sovereign immunity issues under the Foreign Sovereign Immunities Act are within the purview of the judicial branch and the United States does not have the ability to represent the PRC or any other state in US courts or raise defences on its behalf. The PRC has to date not appeared in COVID-related litigation to defend itself. However, it is expected that a defendant state appears before a court to raise jurisdictional and other defences, including sovereign immunity from suit.

37. The next cases involved litigation under the heading *Nextera Energy Global Holdings B.V. et all v Kingdom of Spain*,[2] *9REN Holding S.A.R.L. v Kingdom of Spain*,[3] and *Blasket Renewable Investments LLC v. Kingdom of Spain*,[4] all in the D.C. Circuit Federal Court of Appeals. These concerned efforts to confirm three arbitral awards against Spain and the United States. In January, the DC Circuit had requested the views of the United States on the construction of the waiver and arbitration exceptions to the sovereign immunity under the Foreign Sovereign Immunities Act, and on the propriety of an anti-suit injunction issued by a US District Court against Spain in *Nextera*. On 2 February 2024, the United States had filed a statement of interest in these consolidated cases, providing views on the provisions of the FSIA at issue and strenuously opposing the imposition of an anti-suit injunction against Spain. The United States reiterated these views in oral argument on 28 February 2024, and is now awaiting the ruling of the DC Circuit.

38. The last case involved the Vienna Convention on Diplomatic Relations ("VCDR") and the protections that documents and archives of a mission may be entitled to. In October 2023, the District Court in Washington DC[5] had adopted a framework proposed by the US Government Statement of Interest regarding the proper legal standard for Article 24 protections in assessing documents held by outside parties where a claim of archival inviolability under the VCDR has

[1] *The State of Missouri v. The Peoples Republic of China*, No. 22-2495 (8th Cir. 2024).
[2] No. 23-7031 (U.S. Court of Appeals, D.C. Circuit).
[3] No. 23-7032 (U.S. Court of Appeals, D.C. Circuit).
[4] No. 23-7038 (U.S. Court of Appeals, D.C. Circuit).
[5] *Broidy Capital Management LLC et al v. Muzin et al*, 1:2019cv00150 (US District Court for the District of Columbia).

been asserted. This essentially concerned, for example, contractors of an embassy. The US Government framework asked the court to consider whether the document is "of the mission", taking into account the nature of the relationship between the outside party and the mission, whether the mission had a reasonable expectation of continued confidentiality, and whether the documents were provided for the purpose of carrying out mission functions. Applying that framework, the court rejected Qatar's arguments that documents held by its third-party contractor were part of its mission's inviolable archives.

39. The representative of Norway reported that his country had seen four relevant cases this year. He recalled that the Norwegian Supreme Court in 2004 had, prior to the United Nations Convention on Jurisdictional Immunities of States and Their Property, based itself on the theory of absolute immunity. The representative noted that the jurisprudence of the Norwegian courts had since changed and was now applying a restrictive theory of state immunity, on the basis that the Convention reflected customary international law even though not yet in force. Two cases of interest were mentioned in particular. The first concerned a country that was in the process of buying a property which was intended to be an embassy. Negotiations broke down before the final conclusion of the agreement and then the state concerned argued before the court that it was entitled to sovereign immunity and therefore no reparations could be paid. The court rejected this claim for immunity because the property had not yet become an embassy and therefore could not be considered to be property of that kind. The situation was equated to when a private company buys property for use as offices.

40. The next cases mentioned by the Norwegian representative concerned employees who had been recruited to perform functions in the exercise of governmental authority. In the first of these cases, the state invoked state immunity and the case was dismissed on that ground. In the second, that state was asked by the judges if they wished to invoke immunity and the state replied that it did not. The case therefore went forward, despite agreement that the person had performed functions in the exercise of governmental authority. This was, therefore, quite a particular case underlying the development that Norwegian courts now adhere to the restrictive theory of state immunity.

41. The representative of the Netherlands informed the CAHDI of a recent judgment by the Dutch Supreme Court.[6] The case concerned a Hague Court of Appeal judgment from June 2022 which had lifted the attachments on shares held by a Kazakh company in another Kazakh company that had been levied by the state parties in an attempt to enforce an arbitral award that they had obtained against Kazakhstan. The Supreme Court rejected an appeal against this judgment, confirming that the states enjoyed immunity from execution under customary international law. The Supreme Court held that the Hague Court of Appeal had correctly taken, as a starting point, that it was up to the parties to prove that the state has no public purpose and – taking into account the activities of the company in the dispute – the appellant had failed to do so.

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

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

43. The representative of France informed the CAHDI of the upcoming ECtHR judgment in the case of *M.M. v France*. The case concerns a 2014 complaint against the President of Egypt, Abdel Fattah Al-Sissi, for crimes of torture, and raises the issue of immunity of foreign heads of state under official custom as he was prosecuted while on an official state visit. The French courts had ruled that custom precluded his prosecution. The case now before the ECtHR

[6] Rechtbank Den Haag 13 september 2023, ECLI:NL:RBDHA:2023:13780

raised several questions concerning jurisdiction under Article 1. France considers that the Court has neither territorial nor extraterritorial jurisdiction. The Court is currently deliberating, with judgment expected soon.

44. The representative of Switzerland informed the CAHDI about the recent judgment of 9 April 2024 in the case of *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*. The representative noted that Switzerland was still analysing the judgment, which raised several interesting questions. The representative noted that this decision may impact upon other proceedings and that some aspects of the judgment should not be considered surprising: for example, the threat posed by climate change upon fundamental human rights, and the fact that all states, not just Switzerland, were not doing enough to combat climate change. In this respect the relevance of Switzerland in this case was very much an accident, as this was not a special situation in Switzerland and the relevance of this case was indeed much larger. That being said, the representative of Switzerland noted some aspects of the judgment which were unexpected and required further analysis. These matters included the standing of the association before the Court; the question of causality; and that the fact that the challenge of climate change was now being addressed through the human rights track. The representative stressed that it would be important for the CAHDI to help all states and the Court to make the best out of the judgment, not to overdramatise it, and to strengthen and maintain the authority of the Court – in a manner which views this judgment as helpful from the perspective of climate change and human rights.

45. The representative of Portugal noted that the case involving Switzerland was very interesting and a powerful statement by the Court. He noted, however, that the Court had made several caveats concerning the internal and legislative measures required to tackle climate change. In this regard and noting the challenge of understanding the scope of implementation of the judgment and the likelihood of future cases on the same topic, the representative of Portugal asked if Switzerland could keep the CAHDI informed as to how it intended to implement the judgment. The representative stated that it would be a good topic to keep on the CAHDI's agenda.

46. The representative of Switzerland promised to keep the CAHDI informed. Implementation was also an aspect his country was contemplating about. He noted that, without a full analysis of the case, there seemed to be a contradiction in one of the reasons put forward by the Court in holding that Switzerland would have failed to fulfil the necessary standard. On the one hand, the Court stated that Switzerland did not have quantified national emission reduction targets; on the other hand, the Court also found that Switzerland had not met its targets. The representative noted that Switzerland does have targets which it has met, including the Kyoto ones. Switzerland was still seeking to identify the real criticism by the Court. According to the representative another difficulty arose from the circumstance that, on first reading, an impression was given that the Court did not fully penetrate Swiss climate law or the requirements of the Paris Agreement. Engaging with issues that were highly technical such as targets under the Paris Agreement and the criteria for formulating such targets made the matter complicated from a human rights perspective. The representative noted that this will be complicated and challenging for all states, albeit all states agreed that more must be done with respect to climate change and the protection of human rights from its effects. However, the way in which this ought to be done was not easy and states had the right to choose how to implement this judgment under the supervision of the Committee of Ministers, which from the Swiss perspective means that this does not intrude upon or threaten sovereignty. The representative stressed that Switzerland will be able to implement the judgment, only that it must first understand the exact criteria in order to implement it in an adequate manner.

47. Mr POLAKIEWICZ, noted with interest that the Committee of Ministers will now be competent in matters which are also within the domain of the Paris Agreement Implementation and Compliance Committee, albeit with quite different procedures.

48. The representative of Poland informed the CAHDI about a Chamber judgment of 14 March 2024 in the case of *Association of People of Silesian Nationality (In Liquidation) v. Poland*. This case concerned a court order to liquidate the Association of People of Silesian Nationality on

the grounds that the association's status was contrary to the law because it referred to Silesian nationality, which does not exist in the Polish legal order. The association was asked to amend its status to comply with the law and, in particular, to change its name and to modify two provisions referring to people belonging to the Silesian nation. These changes were not made by the association. The Chamber considered that the Polish national authorities had failed to show that the name of the applicant association, and the wording of two provisions of the association's status which referred to the Silesian nationality, could constitute a threat to public order. In the absence of concrete evidence showing that, by choosing a name, the applicant association advocated a policy that posed a real threat to the public order of democratic society, the Chamber considered that an assumption based on the association's name and the wording of only two provisions of the statute could not, in itself, justify the dissolution of the association. The representative noted that the Polish Government was yet to decide whether to apply for an referral of the case to the Grand Chamber.

49. The representative of Georgia informed the CAHDI of the recent judgment in the inter-state case of *Georgia v. Russia (IV)* on 9 April 2024. This historic judgment concerned a case initiated by Georgia in 2018 against the Russian Federation concerning unlawful administrative practices resulting in multiple human rights violations of Georgians committed in the context of Russia's unlawful borderisation policy between the occupied regions of Georgia and the government-controlled territory. This judgment affirmed Georgia's sovereignty and territorial integrity, and unanimously found the Russian Federation responsible for violating several rights and freedoms protected under the ECHR including the right to life, prohibition of inhuman treatment, right to liberty and security, right to respect for private and family life, protection of property, right to education and freedom of movement. The representative of Georgia underlined that, in addition to the present judgment, two other landmark judgments rendered by the ECtHR in the previous inter-state case and the *Mamasakhlisi and Others v. Georgia and Russia* case affirmed that South Ossetia/Tskhinvali Region (Georgia) and Abkhazia (Georgia) have been under the effective control of the Russian Federation since the early 1990s entailing its responsibility for human rights violations committed in these regions during this whole period.

50. Before closing the discussion on this item, the Chair noted the Grand Chamber's inadmissibility decision of 9 April 2024 in the case of *Duarte Agostinho and Others v. Portugal and 32 Others* which was of relevance to a number of states participating in the CAHDI.

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

51. No delegation took the floor under this sub-item.

6 TREATY LAW

6.1 Exchanges of views on topical issues related to treaty law

- *Exchange of views on non-legally binding instruments in international law*

52. The Chair presented the revised analytical report (document CAHDI (2024) 12 *prov Confidential*) based upon the replies by 33 delegations that were reproduced in document CAHDI (2024) 5 *prov Bilingual*. He recalled that at the previous CAHDI meeting in September 2023, the CAHDI decided to organise a follow-up workshop on non-legally binding instruments with a practical orientation. In order to identify the issues that delegations would be interested to further discuss in this workshop, the CAHDI Secretariat had prepared an inquiry (document CAHDI (2024) 4 *Confidential Bilingual*) to which 12 delegations had replied until 26 March 2024. The summary of the responses was appended to document CAHDI (2024) 4 *prov Confidential Bilingual*, dated 31 March 2024.

53. The Chair then presented the draft concept note for the second workshop contained in the same document. He explained that the second practitioners' workshop was proposed to be organised on 18 September 2024, the day before the next CAHDI meeting in Vienna. The workshop was supposed to last a whole day. The inquiry had identified following topics as being of most interest to the CAHDI delegations: firstly, a discussion on good practices to avoid

misunderstandings as to the legal nature of instruments titled “MoU”; secondly, a discussion on potential indirect legal effects of non-legally binding instruments, thirdly, a discussion on the possible “circumvention” of treaty procedures by non-legally binding instruments; fourthly, a potential follow-up for CAHDI to undertake in the area of non-legally binding instruments. On this basis, the draft concept note suggested four panels: a first panel on the presentation and discussion of different terminology – or blocks of text – used in daily practice; a second panel showcasing practical examples of potential indirect legal effects of non-legally binding instruments as experienced in some CAHDI jurisdictions. In this context, it was proposed to also discuss the types of provisions that should not be the object of non-legally binding instruments; a third panel for an exchange between states that have experienced examples of possible “circumvention” of treaty procedures by non-legally binding instruments and would like to share their lessons learned and potential good practices to mitigate this risk; and a fourth and last panel, focusing on the way forward, discuss and try to reach an agreement on the usefulness and appropriateness of a potential model text for non-legally binding instruments, CAHDI guidelines, compilation of good practices or a glossary.

54. The Chair further pointed out that each panel would start with a short introductory presentation by a legal practitioner either from a CAHDI delegation or from outside the CAHDI. For every panel, two CAHDI delegations would be asked to present their, perhaps contrasting, practice. Delegations could volunteer if they were interested to do one of these presentations by contacting the Secretariat. The rest of the sessions would be reserved to exchanges of perspectives of CAHDI delegations to highlight their practical experience in the everyday practice of states. The fourth panel would differ as it would start with the presentation of the examples for the different follow-up options concerning the work of the CAHDI concerning non-legally binding instruments. The rest of the remaining time would then be reserved to a discussion between CAHDI delegations on the way forward. The Chair invited the delegations to comment whether they agreed on the concept note and share their comments or feedback.

55. The representative of Germany announced that his delegation would be happy to participate actively in the workshop.

56. The representative of the Republic of Korea proposed that the first panel should not only focus on best practices but also ask for “worst practices” as most probably several CAHDI delegations might have encountered a situation where there was a disagreement on the legal nature of an instrument. This could have occurred because of an oversight in the choice of terminology, misunderstanding between different authorities at national or the international level, the lack of a centralised system, or any combinations of these factors.

57. The representative of Slovenia expressed his support for the proposal of the Republic of Korea as this would emphasise the key issue, i.e., how to avoid diverging views on the nature of the instrument. He further stressed the importance of engaging the line ministries in any discussion given their involvement with the development and conclusion of non-legally binding instruments and to have clear guidance also for their practice.

58. The representative of Finland noted that the topics suggested for the panels would touch upon many of the most interesting and pressing questions surrounding non-legally binding instruments and that her delegation was looking forward to the workshop.

59. The representative of Greece remarked that the current practices of delegations might perhaps not have “best” in front but that her delegation would be very happy to contribute to the next workshop and share its experiences.

60. The representative of Ireland expressed his view that the four topics suggested for the workshop were very interesting and noted that, while his delegation did not have any experience with attempts to “circumvent” treaty procedures, it would be interesting to learn from others who have been subject to such attempts.

61. The representative of the United States expressed his delegation’s firm belief that the flexibility of non-legally binding instruments was their specific advantage. He cautioned against any attempts of formalising, regulating or codifying practice on non-legally binding instruments which could result in hampering this flexibility. He further mentioned that he would also be

worried what such a development would mean for past agreements. Furthermore, the representative shared that starting from the beginning of September 2023, the US State Department was required to report to Congress on a monthly basis on those non-legally binding arrangements that could reasonably be expected to have a significant impact on the foreign policy of the United States or had been the subject of requests by certain congressional committees. The same information would equally be provided on the State Department's website.

62. The representative of Czechia underlined the topic to be of utmost importance and of great impact on the daily practice. He also expressed his hope that after the workshop, further work could be undertaken in the CAHDI framework with a view to arriving at guidelines, compilation of best practices or other useful documents for practitioners on this issue.

63. The representative of Norway shared some insights from discussions with their line ministries, highlighting that in his delegation's view, these instruments should not be referred to as "soft law" as the purpose was just to avoid that these instruments would become something more than non-binding.

64. The representative of Portugal shared his Ministry's experience after having produced an internal guide of practice on non-legally binding instruments. After the guide had been distributed to the line ministries, his Ministry had faced a considerable increase in workload as they were now constantly contacted with questions. Thus, he cautioned, good practice might come at some cost.

65. The representative of Slovenia commented on the example shared by the Portuguese representative. His delegation had the opposite experience, as the line ministries would now solely use the guidelines and would not see a need to further consult the Ministry of Foreign Affairs as they had all the information, they considered necessary. However, he cautioned that guidelines could also be misinterpreted.

66. The Chair thanked the delegations for their contributions and assured that the CAHDI would not be working on a Vienna Convention on Non-Treaties. He also highlighted the importance of the workshop in light of the ongoing works of the International Law Commission ("ILC") on this topic and that it would be important to think about the input the CAHDI could make concerning their work.

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

67. The Chair introduced the questionnaire prepared by the Slovenian delegation on "Treaties not requiring parliamentary approval". He explained that the CAHDI had approved the questionnaire by written procedure on 15 June 2022 as it appeared in document CAHDI (2022) 3 *rev Confidential*. He also pointed to document CAHDI (2024) 11 *prov Confidential* compiling the 23 replies received so far. The Chair further introduced the preliminary analysis of the main trends arising from the replies to the questionnaire in document CAHDI (2024) 11 *prov Confidential*.

68. The representative of the Republic of Korea commented upon the term "ratification," as used in the last paragraph of the foreword of the CAHDI questionnaire ("*This questionnaire explores national rules on treaties that do not require parliamentary procedure of ratification. Since all treaties are legally binding, the differentiation is more nuanced and needs to be considered in comparison to treaties ratified by the Parliament*.") He drew the attention to the expressions "parliamentary procedure of ratification" and "treaties ratified by the Parliament" and contrasted it to the wording of Article 2 of the Vienna Convention on the Law of Treaties, where "ratification" was defined as an "international act … whereby a State establishes on the international plane its consent to be bound by a treaty." Thus, the expressions "parliamentary procedure of ratification" and "treaties ratified by the Parliament" would not be correct in his view.

69. The Chair thanked the representative of the Republic of Korea and promised that the wording would be changed accordingly.

70. The Slovenian representative expressed his agreement with the comment made by the representative of the Republic of Korea. The replies showed that there was a common understanding concerning these treaties. However, internal legislation differed due to different internal procedures. He explained the background for the questionnaire as being ongoing internal discussions in the view of preparing a new domestic law on treaties. His delegation was observing a certain political tendency to have more and more treaties being approved by e.g., the government instead of the parliament. He thanked the CAHDI delegations for the exchange on state practice as it helped his delegation in drafting the proposals for the new domestic law but also the day-to-day practice concerning these treaties. He called upon delegations that had not yet responded to the questionnaire to do so at their earliest convenience in order to have a more complete picture of the practice in this area.

- ***Exchange of views on soft law instruments***

71. The Chair then introduced the questionnaire on "Soft law instruments". He explained that the issue had been included to the CAHDI's agenda at its 63rd meeting (22-23 September 2022 in Bucharest, Romania) on the initiative of the Italian delegation. At its 65th meeting (28-29 September 2023 in Strasbourg, France), the CAHDI had adopted the questionnaire on "International soft law: implications for Legal Departments of Ministries for Foreign Affairs" as prepared by the Italian delegation and amended after consultation amongst the CAHDI (document CAHDI (2023) 19 *Restricted*). The Chair explained that to date, four delegations had responded to the questionnaire and these replies could be found in document CAHDI (2024) 7 *prov Confidential*.

72. The representative of Italy highlighted the importance Italy attributed to this matter. His delegation perceived a sense of fatigue for the amount of legally binding instruments and an interest to have instruments that were more adapted to the needs of current times. He explained that Italy was working closely with UNIDROIT on this question. He also announced that his delegation would submit the answers to the questionnaire and welcomed the planning of the workshop. In his delegation's view, the first, third and fourth topic would be of particular interest.

73. The representative of the Republic of Korea expressed his appreciation to Italy for their effort in bringing up this subject and putting together the questionnaire. He highlighted the conceptual distinction between soft law emanating from a multilateral forum and non-legally binding instruments being mostly concluded in a bilateral setting and also the connection with the theme of the 2022 online seminar concerning "A soft multilateral law-making." Along this line, the representative was glad to see the CAHDI discussions on soft law moving forward to complement - and not to overlap with - other CAHDI initiatives. While soft law-making covered diverse areas, his delegation would be in particular interested in monitoring soft law in the area of artificial intelligence. The representative stressed that identifying the main trends should remain an objective and that one possible way forward was to take a sectoral approach – focusing on specific topics one by one, beginning with artificial intelligence at CAHDI's next meeting.

74. The representative of Switzerland stated that, in his view, the questionnaire prepared by Italy was a very good tool which could enable the CAHDI to understand the different national perspectives on soft law. His delegation considered it an important basis for achieving a common understanding of the opportunities and challenges of international regulation and democratic legitimisation in this area. According to the representative, the topic should remain on the CAHDI's agenda.

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***

75. 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 noted that the reservations and declarations to international

treaties still subject to objection were contained in document CAHDI (2024) 8 *Confidential*, which included 15 reservations and declarations made with regard to treaties concluded outside (9 in total) and within the Council of Europe (the remaining 6). Out of the fifteen items, eight had been newly added since the last CAHDI meeting. The Chair also drew the attention of the delegations to document CAHDI (2024) Inf 2 containing reactions to reservations and declarations to international treaties previously examined by the CAHDI and for which the deadline for objecting had already expired.

76. With regard to the **declarations** made by **Türkiye** to the *Convention on Road Signs and Signals (1968)*, *the European Agreement Supplementing the Convention on Road Signs and Signals (1971)* and the *Protocol on Road Markings, Additional to the European Agreement Supplementing the Convention on Road Signs and Signals (1973),* Türkiye declared that its decision to become a party to these instruments "should in no way be construed as implying any form of recognition of the Greek Cypriot Administration's pretention to represent the 'Republic of Cyprus', nor as implying any obligation on the part of Türkiye to enter into any dealing with authorities or institutions of the so-called 'Republic of Cyprus' within the framework of the activities specified in the said Convention and its supplements". The Chair noted that these declarations, that were already discussed in the last CAHDI meeting, might be considered problematic as ones falling under the category of declarations implying the exclusion of any treaty-based relationship between the declaring state and another state party to the treaty – a matter the CAHDI had already discussed at length in 2021 and 2022. The representative of Türkiye explained that these declarations would be self-explanatory and were used in a standard form.

77. With regard to the **declaration** made by **Belarus** to the *Protocol against the Smuggling of Migrants by Land; Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime (2000 – Protocol, 2000 – Convention)*, the Chair noted that Belarus had made a declaration on 31 July 2023 that was newly added to the list. The declaration read as follows: "The Republic of Belarus proceeds from the assumption that the provisions of paragraphs 2 – 4 of Article 20 of the Protocol shall be interpreted in good faith as not binding for the States Parties to the Protocol with the obligations to settle disputes in the International Court of Justice ("ICJ") with that State Party to the Protocol which withdraws its reservation on non-recognition of its jurisdiction, in situations when disputes concerning the interpretation or application of the Protocol have arisen from and/or become the subject of peaceful settlement, inter alia through negotiations and/or arbitration, before, on, or immediately after the withdrawal of such a reservation". This declaration had already been objected to by Lithuania "in so far as it seeks to modify treaty obligations and as such amounts to an invalid reservation that is devoid of any legal effect." The Chair invited Lithuania to provide further information on the objection. The representative of Lithuania explained that Lithuania had an inter-state dispute with Belarus in accordance with the above-mentioned Protocol on the Smuggling of Migrants. In May 2023, Lithuania had withdrawn its reservation on the ICJ's jurisdiction, resulting in Article 20 paragraph 2 becoming binding between Lithuania and all other states parties that have ratified the protocol with no reservations. Subsequent to this withdrawal, Belarus had made the above cited "interpretative declaration" which would seek to exclude from the jurisdiction of the Court situations where disputes concerning the interpretation or application of the protocol have arisen and become the subject of peaceful settlement. The "interpretative declaration", according to the representative of Lithuania, would in fact be a reservation which would only be permissible when made at the time of signature, ratification, acceptance or approval or accession to this protocol in accordance with Article 20 paragraph 3 of the Protocol. Further to this explanation by Lithuania, the representatives of Austria, Finland and Poland noted that they would further examine the "declaration" to determine whether to object to it.

78. With regard to the **declaration** to the *Minamata Convention on Mercury (2013)* by which **Georgia** declared that "the application of the Convention and its Annexes in relation to Georgia's regions of Abkhazia and Tskhinvali region/South Ossetia - occupied by the Russian Federation as a result of its illegal military aggression - shall commence once Georgia's *de facto* jurisdiction over the occupied territories is fully restored", the Chair remarked that Georgia

had made similar declarations in the past, e.g., in 2019, to the International Agreement on Olive Oil and Table Olives (2015). The representative of Georgia explained that the main reason behind this declaration was to demonstrate the factual situation in the regions occupied by the Russian Federation that would not be under the control of Georgia. No delegation wished to make a comment with regard to this item.

79. With regard to the **declaration** to the *Convention abolishing the requirement of Legislation for Foreign Public Documents (1961)* by which **Rwanda** declared that it wished to exclude documents that provide Power of Attorney for property from certification under the Apostille Convention due to internal considerations, the Chair noted that this declaration reminded of a declaration made by the Republic of Indonesia stating that documents issued by the prosecutor's office as the prosecuting body in the Republic of Indonesia were not considered to be included in public documents as understood in Article 1. This declaration by the Republic of Indonesia had been considered a reservation by the Netherlands and Germany that had objected to it. The declaration by Rwanda might be considered similarly problematic as it substantively restricted the material field of application of the Convention and for this reason could be considered incompatible with the object and purpose of the Convention. No delegation wished to make a comment with regard to this item.

80. With regard to the **reservation** made by **Oman** to the *Convention on the Privileges and Immunities of the Specialized Agencies (1947)* concerning Section 32 that foresees the competence of the ICJ for differences arising out of the interpretation or application of the said Convention, the Chair explained that this reservation resembled other reservations made for instance by China to Section 32 which was objected to by, e.g., the United Kingdom. The representative of Austria and of the Netherlands indicated that they would assess the reservation and its compatibility with the object and purpose of the instrument. The representative of Austria also referred to the ICJ 2006 ruling in *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Rwanda)* in which the Court regarded Rwanda's reservation to the dispute settlement clause in Art. IX of the Genocide Convention as not incompatible with the object and purpose of the treaty and thus permissible (see paras. 66 to 69).

81. With regard to the **reservation** by **Bhutan** made on 13 March 2024 upon ratification to the *Convention on the Rights of Persons with Disabilities (2006)* that foresees that it would not consider itself bound by paragraph 1(a) and paragraph 2 of Article 18, paragraphs 1(b) and (c) of Article 23, paragraphs 1(c) of Article 27, and section (a) (ii) of Article 29 of the United Nations Convention on the Rights of Persons with Disabilities, the Chair noted that these reservations concerned, *inter alia*, the right to acquire and change a nationality, the right of registration of children after birth, the elimination of discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, e.g., the right to decide freely on the number of children and to retain their fertility, the right to work and right of effective and full participation in political and public life and the right to vote. Therefore, the Chair continued, one could conclude that these articles relate to fundamental principles of the Convention and that the exclusion of the application of these articles was contrary to the object and purpose of the Convention. Reservations incompatible with the object and purpose of the Convention were explicitly prohibited by Article 46 of the Convention. The representatives of Austria, Finland, the Netherlands, Poland and Switzerland indicated that they were currently still assessing the above-mentioned reservation and its compatibility with the object and purpose of the convention.

82. With regard to the **declaration** made by **El Salvador** upon accession on 21 March 2024 to the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965)* stating that El Salvador "totally excludes the application of the provision contained in paragraph one of Article 8, since the State of El Salvador contemplates in its domestic legislation the procedure by which such proceedings will be carried out", the Chair pointed out that the wording of this declaration was slightly larger than foreseen by Article 8 of the Convention. The representative of Austria noted that his country shared the concern and that it is therefore currently examining this declaration and whether to object to it.

83. With regard to the **reservations** made by **Iceland** to the *Additional Protocol to the Convention on Cybercrime, concerning the Criminalisation of Acts of Racist and Xenophobic Nature Committed through Computer Systems (ETS No. 198 – 2003)* the Chair referred to the discussion of this item during the last CAHDI meeting. No delegation took the floor.

84. With regard to the **declarations** made by **Cyprus, Greece and Estonia** 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. 182 -2001)* (European MLA Convention) designating the European Public Prosecutor's Office as a judicial authority for the purposes of mutual legal assistance under the Convention and its protocols, no delegation wished to make a comment.

85. With regard to the **declaration** made by **Azerbaijan** concerning the *Convention against trafficking in human organs (2015 – ETS No. 216)* that it would not apply the provisions of the Convention in relation to Armenia "until the consequences of the conflict are completely eliminated and relations between the Republic of Armenia and the Republic of Azerbaijan are normalized"; the Chair explained that the declaration resembled the three declarations made by Azerbaijan that had been examined in previous CAHDI sessions and declarations implying the exclusion of any treaty based relationship between the declaring state and another state party to a treaty discussed in the CAHDI in 2021 and 2022. No delegation wished to make a comment with regard to this item.

86. With regard to the **declaration** by **Latvia** made on 10 January 2024 upon ratification of the *Convention on Preventing and Combating Violence against Women and Domestic Violence (2011 – CETS No. 210)*, the Chair highlighted that Latvia "emphasizes that the term 'gender' included in the Convention shall not be considered to be relating to an obligation to introduce any other understanding of sex (women and men) in the legal and educational system of the Republic of Latvia and shall not impose an obligation to interpret the norms and values established in the Constitution of the Republic of Latvia differently." The Chair explained that parts of this declaration reminded of other "declarations" made to the same Convention, e.g., by Ukraine, which had been objected to by a number of CAHDI delegations (Austria, Finland, Germany, the Netherlands, Norway, Sweden and Switzerland). The representative of Latvia explained that the declaration did not seek to modify or exclude the application of the terms of the convention. In fact, the draft of this declaration was instrumental for the public discussions in Latvia during the lengthy ratification process of the convention. The declaration was drafted in the light of the judgment of the Constitutional Court of Latvia, which recognised that the convention was fully compatible with the Constitution of Latvia. The representatives of Austria, Finland, and Switzerland stated that they were currently examining the declaration.

7 CURRENT ISSUES OF PUBLIC INTERNATIONAL LAW

7.1 Topical issues of public international law

- *Exchange of views on the aggression against Ukraine*

87. The Chair introduced this sub-item by recalling that Resolution CM/Res(2023)3 establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine had become fully operational since the last CAHDI meeting and was officially opened to claims on 2 April 2024. The Chair noted that discussions regarding the establishment of a Special Tribunal for the Crime of Aggression against Ukraine were ongoing within the 'Core Group', which were complemented by the Seminar held in Strasbourg on 10 April 2024 titled 'Special Tribunal for the Crime of Aggression against Ukraine – What Role for Regional Organisations such as the Council of Europe?'.

88. The representative of Ukraine began by highlighting that the major concern for Ukraine regarding this topic was in relation to accountability. The top priority of the Ukrainian people was not compensation or restoration, but instead they wish to see the individuals responsible to be held accountable. This is one of the key issues which the Ukrainian Government is presently working on. The arrest warrants issued by the International Criminal Court ("ICC") were praised by the Ukrainian people and were interpreted as an important sign that justice is

coming. The representative highlighted the importance of a Special Tribunal for the Crime of Aggression and noted Ukraine's reliance on the support of the Council of Europe and the Core Group in establishing the Tribunal.

89. The representative of Ukraine updated the CAHDI regarding the inter-state cases before the ICJ and other international tribunals. The first of two cases before the ICJ – *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*[7] – was finalised on 31 January 2024. This was the first ever case brought in relation to the International Convention for the Suppression of the Financing of Terrorism before the ICJ and the first to proceed past the jurisdiction phase with respect to the International Convention on the Elimination of All Forms of Racial Discrimination. Ukraine concerns this important decision to be a huge victory as the Court found the Russian Federation to be in violation of both conventions. This was the first time the Russian Federation had been found in violation of international law by the ICJ, which also emphasised that Russia had breached international law by not complying with provisional measures ordered by the Court in 2017. The Court had importantly stated that launching the 'special military operation', recognising the DPR and LPR as states, and attaching them to the Russian Federation is a separate violation of the provisional measures ordered in 2017. The representative of Ukraine noted that this judgment was an important development in the history of the Court, particularly regarding how it interpreted the conventions and facts in a way which showed how the dispute has been aggravated.

90. Oral hearings in the second ICJ case – *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*[8] – were held in September 2023. A large number of states supported Ukraine in this case and at the jurisdictional phase. The representative of Ukraine remarked that the day of interventions was likely the most interesting and inspiring day in the history of the Court, because the unity and spirit of states helping Ukraine was on display. The case has now proceeded to the merits as the Court decided to bifurcate the case. Supporters of Ukraine are invited to intervene in the future merits stage to show unity with Ukraine and its people. The further procedural steps will be determined after the Russian Federation is required to present its counter memorial by 2 September 2024, however it is expected that there will be a further round of written pleadings or that the case will proceed to oral hearings. The representative highlighted that the decision on provisional measures of March 2022 was still in force and continues to be violated by the Russian Federation.

91. The representative of Ukraine also noted another two cases brought against the Russian Federation under the United Nations Convention on the Law of the Sea (UNCLOS). The first case was brought with respect to coastal state rights in the Kerch Strait, Sea of Azov, and the Black Sea,[9] and was commenced in 2017 but slowed down significantly due to the COVID-19 pandemic. Oral hearings will be held on the merits at the end of September and beginning of October this year. The case will be administered by the Permanent Court of Arbitration, noting that rules of tribunals under the UNCLOS are strict and therefore not all procedures will be available to the public. Only the first speeches by the agents will be available and a decision is expected in early- to mid-2025. The second case concerns the detention of Ukrainian servicemen, which commenced in 2018 before the International Tribunal for the Law of the Sea and resulted in provisional measures that Russia should immediately return the servicemen and the vessel to Ukraine.[10] The servicemen and vessels have now returned to Ukraine and the case is moving toward oral hearings as part of the merits phase. The

[7] ICJ, *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, application instituting proceedings on 16 January 2017.
[8] ICJ, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, application instituting proceedings on 27 February 2022.
[9] PCA, *Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. the Russian Federation)* (2017-06).
[10] ITLOS, *Case concerning the detention of three Ukrainian naval vessels (Ukraine v. Russian Federation)* (No. 26)

jurisdictional phase was completed in 2022, however the case has been postponed due to the Russian Federation challenging the arbitrators. The oral hearings will most likely take place in early 2025 and the decision could be rendered by the end of 2025. This is one of the only cases in which Ukraine is seeking compensation, and earlier discussion within the CAHDI under Item 7.1 is important in this respect as Ukraine is presently trying to establish moral damage and damage to the servicemen and their health. The practice of the ECtHR is also helpful for understanding the quantum, however Ukraine will not publicly announce the quantum sought due to the sensitivity of the issue.

92. The representative for Ukraine then provided an update regarding four inter-state cases before the ECtHR. The first case concerns Crimea;[11] the second is *Ukraine and the Netherlands v Russian Federation*,[12] concerning human rights violations in the temporarily occupied territories of Donetsk and Luhansk regions; the third concerns servicemen captured on 25 November 2018;[13] and the fourth concerns the administrative practice of political assassination by the Russian Federation.[14] The first two cases had passed the admissibility stage and Ukraine was now waiting for the decision on timing regarding the case of Crimea. There would be oral hearings on 12 June in the second case (*Ukraine and the Netherlands v Russian Federation*) and Ukraine was still waiting on decisions regarding admissibility for the latter two cases, as the Court was considering when to hold oral hearings or the continuation of written proceedings.

93. The representative of Lithuania announced that Lithuania will hold the presidency of the Committee of Minsters of the Council of Europe from 17 May 2024. An important event during their presidency would be the informal conference of the Minsters of Justice held on the 5 September 2024 in Vilnius, on the topic ‘towards accountability for international crimes committed in Ukraine’.

94. The representative of Slovenia informed the CAHDI that preparations were under way to conclude a memorandum of understanding on security cooperation with Ukraine. Among other topics, it is envisaged that this memorandum would address the promotion of accountability, compensation for losses, injuries and damages caused by Russian aggression and sanctions.

95. The representative of Germany reiterated their support for Ukraine and asked how the ICJ will view the future of interventions in light of the interventions made in the genocide case. The representative also asked if new declarations of intervention were required now that the case has proceeded to a new phase, or whether the existing declarations remain valid. The representative of Ukraine replied that the order issued by the ICJ indicates that intentions to intervene should be filed before Russia files its counter memorial. This is only a declaration of intention rather than substance.

96. The representative of Sweden also reiterated their support for Ukraine and suggested that it would be useful for the CAHDI to revisit and consider the horizontal development of the role of the ICJ and the broader increase in litigation.

- ***Exchange of views with AALCO***

97. The Chair invited the representative and Secretary-General of the Asian African Legal Consultative Organization (“AALCO”), H.E. Dr Kamalinne PINITPUVADOL, to inform the CAHDI about the important work of AALCO and ways in which the CAHDI could increase co-operation with the AALCO.

98. Dr PINITPUVADOL began by thanking the CAHDI for the opportunity to present the work of the AALCO and noted that co-operation between AALCO and the Council of Europe had begun in 1976. AALCO had been a Participant in the CAHDI since 2018. The representative noted the similarity in the work of the CAHDI and AALCO, as both aim to contribute to the codification and progressive development of international law. Dr PINITPUVADOL informed the CAHDI of

[11] ECtHR, *Ukraine v. Russia (re Crimea)* (nos. 20958/14 and 38334/18).
[12] ECtHR, *Ukraine and the Netherlands v. Russia* (nos. 8019/16, 43800/14 and 28525/20).
[13] ECtHR, *Ukraine v. Russia (VIII)* (no. 55855/18).
[14] ECtHR, *Ukraine v. Russia (IX)* (no. 10691/21).

the background of AALCO, an organisation founded in 1956 comprising 48 members from the Afro-Asian continents. Of this number, there are 32 Asian states, 16 African states (including three French-speaking states), states in common with CAHDI (such as Cyprus and Türkiye), and two permanent observer countries – Australia and New Zealand. AALCO has established close relations with the United Nations, UN specialised agencies, and several international organisations such as the African Union Commission on International Law, the ILC, the ICC, and the Hague Conference on Private International Law. The functions and purpose of AALCO are, as a rule-based organisation: 1) to serve as an advisory body the member states in the field of international law; 2) to consider issues related to international law that may be referred to the organisation by member states; 3) to examine subjects under consideration by the ILC and to forward the view of the AALCO to the Commission; and 4) to exchange views and information on matters of concern and having legal implications, and to make recommendations if deemed necessary.

99. Dr PINITPUVADOL also informed the CAHDI of the contribution of the AALCO to the codification and development of international law. Since its inception in 1956, the AALCO has worked on a wide range of areas of international law such as matters related to the work of the ILC, the law of the sea, the environment and the UN Sustainable Development Goals (SDGs), the status and treatment of refugees, legal protection of migrant workers, legal aspects related to violence, extremists and terrorism, human rights in Islam, international law instruments against corruption, international law in cyberspace, trade and investment law, and peaceful settlement of disputes. Just recently, at the last session in Bali, two member states had proposed two new topics: an asset recovery expert forum and legal issues in outer space. AALCO organises an annual session every year which acts as its plenary organ, where decisions of the organisation on substantive matters are taken by consensus in the form of recommendations and resolutions. These sessions welcome high-level representatives of member states – in practice, the Minister in charge of international law, i.e., the Minister of Foreign Affairs – as well as many observer delegations representing non-member states. The next session of the AALCO, being the 62nd session, will be held by the Kingdom of Thailand in September. AALCO also has a meeting of the AALCO Legal Advisers, composed of Legal Advisers who work on matters of international law for the Ministries of Justice or Foreign Affairs. This meeting is convened in New York each year during the International Law Week of the 6th Committee and provides a forum for exchanging views among member states. AALCO has also conducted special studies on particular issues. For instance, the AALCO has a working group on the issue of international law in cyberspace as well as on the issue of unilateral sanctions under international law.

100. Dr PINITPUVADOL stated that AALCO looks forward to future co-operation with the CAHDI. Both organisations have common goals and are composed of legal advisers. As a result, AALCO would like to see close co-operation with CAHDI in the future, for example through consultation during the United Nations General Assembly (UNGA) 6th Committee meeting in New York or through organised webinar events. For an enhanced cooperation between the CAHDI and the AALCO, a first step would be to identify common issues of international law.

101. The Chair thanked Dr PINITPUVADOL for his presentation and noted that there was much interest in co-operation between the CAHDI and the AALCO. The Chair extended an invitation to the AALCO to send representatives to workshops of the CAHDI, for instance the upcoming workshop on non-legally binding instruments in Vienna on 18 September 2024.

- ***Discussion on compensation under international law with a focus on options for enforcement of payments awarded by international human rights courts:***

102. The Chair welcomed and introduced Ms Christina BEHARRY, Partner in the international law firm Foley Hoag, Mr Martins PAPARINSKIS, Professor of Public International Law at the University College London and Member of the ILC, and Ms Veronika FIKFAK, Senior Associate Professor of International Law, Deputy Director for Research, and Co-Director of the Institute for Human Rights, also at the University College London. Their presentations are set out in **Appendix IV** to this report.

Discussion

103. The representative of Poland raised three questions. His first question was addressed to Ms BEHARRY concerning her proposal of establishing a compensation mechanism similar to the Register of Damages for Ukraine ("RD4U"). He sought to understand the added value of creating a register of ECtHR judgments not implemented by the Russian Federation, inspired by RD4U. Ms Christina BEHARRY explained that she had approached this question partly as a thought experiment, considering that this register could be one of the options on the table, insofar as it could be established based on the RD4U model. It could be combined with the latter to increase efficiency. However, as most of the cases against Russia predate the invasion of Ukraine changes to the RD4U may be necessary.

104. In response to the second question posed by the Polish representative on whether it could be inferred, *a contrario*, from Article 50 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts ("ARSIWA") that the rules on state immunity and the rules on diplomatic immunity do not constitute obligations affected by countermeasures, Professor PAPARINSKIS pointed out that Article 50 had to be treated with the utmost caution, particularly in relation to other provisions on countermeasures, as there was a considerable degree of disagreement within the ILC, as well as in the comments from states on the conceptual underpinnings of these particular rules. Mentioning another example, that of fundamental human rights, Professor PAPARINSKIS explained that while the ILC was able to agree on the wording, there was considerable disagreement as to whether the rationale reflected peremptory rules, the multilateral character of obligations or the individual character of beneficiaries. He therefore preferred to be cautious in trying to derive a broader consistent normative message from it. However, he considered that this implied that the answer to the question was likely to be in the affirmative, in the sense that any inference, if cautiously drawn, allowed one to avoid drawing a broader and more uncertain inference in this regard. The fact that some obligations were not affected by countermeasures did not mean that these would not have to comply with the usual rules on countermeasures. It simply meant that they were possible in principle.

105. The Polish representative's third question was addressed to Professor FIKFAK, asking whether she considered that the enforcement of judgments should be assessed primarily from the perspective of domestic law (primary norms) or international law (secondary norms). In addition, he asked her to explain why she did not consider the inducing element for countermeasures as fulfilled in the context of property confiscation.

106. Professor FIKFAK stated that it was not her priority to have recourse to national courts, but that she considered that this was the only option currently available that would allow claimants to benefit from a solution and to have access to the funds in question. With regard to the inducement element, she referred to the ARSIWA that stated that the purpose of a countermeasure was to encourage or to even persuade a state to change its behaviour. When its assets were confiscated and its debts were already been paid on its behalf, it would no longer be a question of persuading it, but of performing the obligation in its stead. In her view, this would go beyond the requirement of inducement since, as far as compensation is concerned, once assets have been confiscated and the debt paid, there is no longer any inducement left since the obligation has already been fulfilled. The question was therefore broader and concerned whether states should move away from the notion of inducement reflected in the ARSIWA. In her view, this issue was far more relevant to the compensation discussion than to the one concerning war operations and damages to Ukraine related to the invasion.

107. The representative of the Netherlands began by asking about a procedural aspect in relation to the criteria that could be used to prioritise claims for the payment of just satisfaction. In his view this raised important legal, practical and human challenges. He gave several examples of prioritisation criteria. A first example could be based on the gravity of the violation of the ECHR. Another example of a criterion could be the age of the applicants, e.g., starting with the oldest. In this connection, the representative also wondered whether inspiration could be drawn from human rights law, recalling that human rights courts and bodies did not prioritise different categories of victims. In that regard, he wondered whether the Committee of Ministers or a future claims commission could be entrusted with that task.

108. Professor PAPARINSKIS pointed out that the question of priority in the rules governing the enforcement of judgments was one of the points on which it could be said that there were few rules at the level of public international law. In the context of domestic law, there were some contexts that address these issues by giving priority to certain types of claims and others that adopt a pro rata approach. However, some controversy remained in this regard. It could also be argued that some of the more important structural rules of international law, such as those governing state responsibility, could provide guidance in this area. In this context, he referred in particular to the proposal in Article 41 paragraph 1 of the ARSIWA on the adoption of lawful measures, although this appeared to be a rather narrow proposal, referring only to the cessation of the serious violation and not to substantive responsibility. He added that, in his view, political wisdom rather than legal principle was behind this proposal.

109. Professor FIKFAK stressed that the situation was extremely complicated because of the composition of the relevant case law. First, there was a significant number of individual applications by Russian citizens relating to facts having taken place within the Russian Federation, which could not be paid out without the consent of the latter. Secondly, there were several inter-state cases where the injured state could, as Ukraine has done, confiscate the assets on its own territory and enforce the judgment there. Thirdly and finally, there were the forthcoming judgments, which will mostly concern cases of Ukrainian applicants, but which are not connected to the invasion of Ukraine since 24 February 2022.

110. In response to the representative of the Netherlands' question about setting a time limit on 2022 while claims relating to Eastern Ukraine and Crimea, stemming from the 2014 invasion and annexation of Crimea by the Russian Federation also involved violations of jus cogens norms, Professor FIKFAK explained her emphasis on the date, 24 February 2022, because both the UNGA and the Committee of Ministers resolutions used this date for the future compensation mechanism. There was no reference to 2014 in the documents by the United Nations. She mentioned a proposal in the PACE to change the reference to 2014, which will be discussed at its Spring Session in April 2024.[15] Currently, the 2022 date would be used to differentiate between claims, complicating prioritisation. In her view this raised the question of whether a future claims commission should focus narrowly on the invasion or cover all claims against the Russian Federation, regardless of the date.

111. The representative of Türkiye expressed concern about the scope of agenda item 2.2., noting that it did not fully encompass the issue at hand - the execution of judgments of the Court within a broader system overseen by the Committee of Ministers. He questioned whether the introduction of alternative avenues for securing payment of just satisfaction awards would not interfere with and encroach upon some of the prerogatives of the Committee of Ministers, which alone was competent to decide on the general and individual execution measures to be adopted to execute a judgment. If that was the case, the representative wondered whether the Committee of Ministers should not adopt a decision acknowledging that it was unable to ensure the execution of the judgments rendered against the Russian Federation and that it was prepared to cede its competence in respect of those cases to another authority. In his view, this would help to clarify the matter.

112. Ms BEHARRY noted that this was a very pertinent question. It would indeed be important to determine whether possible alternative measures to secure the payment of just satisfaction would be adopted separately or in parallel with the measures adopted by the Committee of Ministers. If there would be a parallelism, it would also be necessary to determine whether they would apply only to cases in which the Russian Federation was the respondent state or more

[15] Recommendation 2271 (2024) of the Parliamentary Assembly of the Council of Europe "*Support for the reconstruction of Ukraine*", Text adopted by the Assembly on 16 April 2024 (10th sitting), paragraph 4.4: "consider including, in the scope of the future international compensation mechanism, once established, the damage caused by the Russian Federation's internationally wrongful acts committed in the Autonomous Republic of Crimea, the city of Sevastopol and the temporarily occupied territories of the Donetsk and Luhansk oblasts before 24 February 2022, in so far as they were caused by the aggression against Ukraine started in 2014, in particular in relation to breaches of international law confirmed by international adjudicative bodies such as the European Court of Human Rights."

generally to all High Contracting Parties. Professor PAPARINSKIS, echoed the remarks of the representative of Türkiye on the interaction between unilateral powers and the functions of the Committee of Ministers, noting that this was a key issue that he had addressed in his conclusion. In his view, international law remained, once again, largely silent on the practicalities of multilateral obligations. In his opinion, one way forward that would be politically wise and consistent with looking at this issue through a kind of "*lex specialis* lens" would be to consider that in certain situations it is necessary to depart from the enlightened elegance of conventional European enforcement mechanisms insofar as they fail to enforce responsibility. However, where these mechanisms, such as the Committee of Ministers, still offered a multilateral course of action and solutions, they should be used. Turning to Article 41 paragraph 1, Professor PAPARINSKIS stressed that it was not the rule itself but the idea behind it that referred to co-operation. It was therefore an important guiding principle and, whether or not it could be considered an international obligation, it seemed to be a reasonable way of proceeding.

113. Professor FIKFAK, agreeing with the representative of Türkiye, emphasised the supervisory role of the Committee of Ministers in the execution process and that, in a sense, states had some leeway in deciding how to comply with the judgments of the ECtHR. However, the question that arose, and which was relevant also at the level of domestic courts, was what leeway states enjoy in relation to the monetary aspect of the judgment. This aspect, i.e. the compensation or award in the judgment, was, in fact, the only element on which the ECtHR is explicit, defining precisely the sums owed to the applicant. The Venice Commission, when discussing this issue in 2000 in relation to the Russian Federation, had stated that monetary awards should not be the area where states have leeway nor where the Committee has broad powers. It was in relation to other measures, whether individual or general, that the Committee's powers really come into play and where it exercises its supervisory power. As far as financial awards were concerned, these simply must be paid.

114. The representative of Australia agreed with Professor PAPARINSKIS that, consistent with the Australian position in the case of *Timor-Leste v. Australia*[16] before the ICJ, the better view was that there was no general overarching principle of immunity. He also highlighted that this dispute was resolved amicably in the context of the first-ever application of compulsory conciliation through Part XV and Annex V of the United Nations Convention on the Law of the Sea, which led to the 2018 Maritime Boundary Treaty between Timor-Leste and Australia being concluded. The representative of Australia asked about the argument made by Professor Phillippa WEBB, author of a study by the European Parliamentary Research Service on “Legal options for confiscation of Russian state assets to support the reconstruction of Ukraine”,[17] and the extent to which the validity of that argument depended on whether the domestic legal system was monist or dualist, given that Professor PAPARINSKIS had also mentioned the *Medellín v. Texas*[18] decision of the US Supreme Court with regard to judgments that are not clearly self-executing at first sight.

115. Professor PAPARINSKIS expressed full agreement with Australia's position on the question of immunity. He left open the question of the availability of coercive measures in general, but certainly felt that this was an example of peaceful settlement of international disputes that everyone should seek to emulate. On the question of Professor Philippa WEBB's argument about the verticality of international courts and tribunals, he felt that particular weight should be given to the approach that the domestic legal order takes to international law. He was therefore cautious on this issue, albeit in a civil context. In his view, it was simply a creative argument on which reasonable people could disagree.

116. The representative of Denmark raised a question on the more specific aspect of the manner in which the Russian Federation had ceased to be a High Contracting Party to the ECHR and

[16] ICJ, *Questions relating to the Seizure and Detention of Certain Documents and Data* (*Timor-Leste v. Australia*), 2014.
[17] P. Webb, “*Legal options for confiscation of Russian state assets to support the reconstruction of Ukraine*”, European Parliamentary Research Service, 23 February 2024.
[18] *Medellín v. Texas*, 552 U.S. 491 (2008).

the consequences of leaving the legal regime implemented by it. It could be assumed that once a state was no longer subject to a special regime of secondary rules of state responsibility, it returned to the regime of the more general rules of state responsibility. He therefore asked whether it could be argued that this particular case of cessation and the formal declarations made by the Russian Federation in this regard could affect the options available under the special regime to which it no longer belonged.

117. Professor PAPARINSKIS replied that he would have to think about this more carefully. However, he thought that reverting to the general regime once the special regime had been exhausted seemed a rather pragmatic and relatively straightforward conclusion. He added that states could draw on many elements of Article 41 of the ARSIWA in this respect.

118. The representative of Austria was particularly interested in Professor FIKFAK's reference to various examples of member states where judgments of the ECtHR were enforceable in domestic courts and thus self-executing. He noted that in Austria the ECHR had constitutional rank, but that judgments were still addressed to the Government and it was up to the Government to implement them. He was interested to hear more from the special guests on this point. He considered that, although in some states the judgments of the Court might be self-executing, this was not the case for the majority of states and that in the few cases at hand they were self-executing only in relation to the defendant state and within its own jurisdiction. However, the present situation was different, since it concerned an applicant seeking to enforce an award of just satisfaction against a High Contracting Party in the jurisdiction of another High Contracting Party by bringing the claim before the courts of that state relying on its enforceability in order to confiscate the assets of the respondent High Contracting Party. In his view, the additional problem here was that of the "third party effect". Finally, the representative raised the question of the property owned by the defendant state. Although there had been many lengthy discussions about state immunity and central bank assets and their possible confiscation, in his view these were not the first state-owned assets that lawyers, and their strategies would turn to. Instead, they were more interested in state assets used for commercial purposes. The applicants were looking for other assets, and perhaps this was an avenue that should be explored further.

119. Professor PAPARINSKIS pointed out that this was a question of international law as well as domestic constitutional law and even domestic judicial practice. In his view, there were significant differences in practice with regard to these approaches, with different tendencies at different times, even in countries which might appear to have similar approaches overall. In this respect, he considered it preferable to consider these two aspects as separate issues. As an international argument, however, it would work in any context, regardless of the national constitutional perspective.

120. Professor FIKFAK replied that the concepts of "self-execution" or "directly applicable" were mainly used for judgments directed against the respondent state and intended to be enforced in the respondent state. With regard to third states, she noted precedents involving two Cypriot cases mentioned in her presentation, where the constitutional legal order and the hierarchy of the Convention within that legal order were used to enforce an award against a third state. The applicants had therefore not used the *res judicata exequatur* route assuming that, since it was an ECtHR judgment and the Convention held the highest status in the domestic legal order, the judgment was directly applicable and enforceable in that legal order. Countries could provide clarity by legislating on this presumptive direct applicability of judgments in relation to the part concerning the award or the individual measures. Regarding just satisfaction awards, only one case had been brought in relation to a third country. Concerning a respondent state, one case had been brought before the Italian courts but did not proceed because Italy had paid the money by the time the suit was filed. State practice on this issue varied. Professor FIKFAK referred to a map of assets prepared in the context of the ERC-funded project "Human Rights Nudge", which she was conducting and which she would be ready to share with delegations. She explained that the assets she was referring to were commercial assets and not state assets or state property protected by immunity. The case law she cited on sovereign wealth funds, referred to two Belgian and Swedish decisions finding that these funds were not immune from execution because they functioned like private investments to maximise returns.

The legal avenues proposed by her could potentially confiscate €9 billion, covering all cases and compensation owed by the Russian Federation. Lawyers could either go after these sovereign wealth funds, or target the money of Russian oligarchs', which would, however, raise a whole different set of issues.

121. The representative of the International Development Law Organisation ("IDLO") recalled some historical steps in the emergence of the commercial exception to sovereign immunity which crystallised over two decades. The first courts to apply it in the 1920s and early 1930s were Belgian and, in particular, Italian courts. It took about twenty years for larger countries like the United States to follow suit with the so-called “Tate Letter” of 1952, which marked the US adoption of the restrictive theory of sovereign immunity. The representative stressed this historical background in light of recent discussions distinguishing state property from commercial property. The 2014 ruling of the Italian Constitutional Court[19] on the non-enforceability of the 2011 ICJ judgment in the case of *Germany v. Italy: (Greece intervening)*[20] stated that sovereign immunity was not intended to shield states from accountability for gross human rights violations amounting to violations of peremptory norms of international law. In this regard, he asked Professor PAPARINSKIS and other special guests, if they thought this might signal the emergence of a new norm, where violations of peremptory norms of international law are no longer shielded by sovereign immunity, especially considering the current violations by the Russian Federation in Ukraine.

122. Professor PAPARINSKIS emphasised that international law-making processes were fairly agnostic as to the content of emerging rules, unless they were covered by broad consensus. For a new norm to develop, it would be important for the actors initiating the process to clearly and explicitly articulate the rationale behind the norm and to back it with widespread, systematic state practice. In this sense, the matter would be in the hands of states. He referred to the pending case of the *Islamic Republic of Iran v. Canada*[21] at the ICJ, noting that historically the ICJ has ruled at an early stage on rules that were evolving and developing, and some observers may have thought that this would have the effect of freezing the development of certain norms of international law. In sum, he believed such a norm could emerge, but noted that structural and conceptual constraints in international law would need to be addressed.

123. Ms BEHARRY, agreed with Professor PAPARINSKIS that this was a matter for states to decide whether to allow for enforceability through their own legal systems. She highlighted the choice between pursuing these efforts in the context of the enforceability of judgments against the respondent state itself as opposed to third states, or whether these efforts should be pursued at the multilateral level in a forum such as the Council of Europe. She suggested that these approaches should be combined. One important issue would be to identify purely commercial state assets, a task that many lawyers and specialists were working on, despite varying levels of difficulty, but there was a well-established practice in this regard.

124. Professor FIKFAK emphasised that the outcome of the discussion depended on how priorities would be set. She noted ongoing discussions on a future claims commission for war reparations and the confiscation of Russian assets to fund Ukraine's war effort. A new aspect of the debate was how to compensate for all claims against the Russian Federation. These three elements - reparations, asset confiscation, and broad compensation – would compete with each other complicating the discussion. When establishing a new international mechanism or commission, it was crucial to think carefully about what it will include, its timeframe and what it will exclude, recognising that what it excludes is unlikely to be compensated for.

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[19] Italian Constitutional Court, Judgment No. 238/2014, 22 October 2014.

[20] ICJ, *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment of 3 February 2012.

[21] ICJ, *Alleged Violations of State Immunities (Islamic Republic of Iran v. Canada)*, application instituting proceedings on 27 June 2023.

125. In concluding the discussion, the Chair warmly thanked the special guests for their excellent presentations, which had generated a large number of relevant questions from the delegations, and for the expert answers they had provided.

7.2 Peaceful settlement of disputes

126. The Chair opened the floor for discussion on the peaceful settlement of disputes. The Chair referred to document CAHDI (2023) 23, which contains an overview of the declarations of states represented in the CAHDI, which recognised the jurisdiction of the ICJ as compulsory. No delegation took the floor under this item.

7.3 The work of the International Law Commission

127. The Chair opened the floor for discussion on the work of the ILC. The Chair indicated that he hopes to be invited to address the ILC once again in July, the findings of which will be reported back to the CAHDI at the next meeting in September. The Chair further proposed to invite three current members of the ILC based in Vienna to participate in a side-event of the CAHDI to hold an exchange of views.

128. The representative of Ukraine noted, with reference to discussions at the CAHDI Seminar on the Special Tribunal for Aggression and with reference to discussions held under item 7.1, her country's position as to functional immunity and its applicability to all core international crimes in light of draft Article 7 of the Draft Articles on Immunities of State Officials from Foreign State Jurisdiction.

129. The representative of Portugal drew the CAHDI's attention to meetings held by the Committee on Crimes against Humanity in New York the previous week. Portugal will chair the committee during its upcoming session. The representative stated that the vast majority of positions had been positive with openness towards negotiating meetings on a Convention on Crimes against Humanity. There was only marginal opposition to the process, which was an encouraging sign.

7.4 Consideration of current issues of international humanitarian law

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

131. The representative of the International Committee of the Red Cross ("ICRC") underlined the challenging international environment in which the International Conference of the Red Cross and Red Crescent, to be held on 28-31 October 2024, would take place. The representative used this context to promote the importance of discussion and dialogue on issues of humanitarian concern in order to improve the protection of people affected by armed conflict. The representative highlighted the nonpoliticised and decontextualised nature of the discussions at the conference, and emphasised that the 'draft zero' resolutions were already published on the conference website.

132. The representative continued to highlight the two of the resolutions that will be discussed at the conference. The first is a general international humanitarian law ("IHL") resolution toward a universal culture of compliance with IHL. This resolution has two stated objectives. First, it is to reaffirm state commitment to core principles and assumptions, reflecting a consensus on the continued relevance of IHL even as the nature of warfare evolves. Within this, it draws attention to the issues of non-compliance and response of making IHL a political priority to influence other states and non-state armed groups.

133. The second resolution to be discussed at the conference concerns cyber and information operations. The first objective of this proposed resolution is to address the threats posed by these operations to civilians, medical facilities and humanitarian operations. Secondly, it aims to identify ways to prevent or mitigate harm to people affected by armed conflict. The ICRC representative mentioned that these resolutions were developed by taking into account the feedback that was received from states and national societies on the draft elements that were shared. Particularly in the case of the second resolution on cyber, the ICRC representative highlighted the three changes made. First, they narrowed the scope of the issues addressed in the resolution. Second, they made the terminology as clear as possible: renaming the

resolution from digital threats to cyber and information operations. Finally, they aimed to recall the consensus that was achieved in the UNGA and endorsed by all states in 2021 to develop an additional layer of understanding as to the impacts of digital threats for the protection of civilians, medical facilities and humanitarian operations. On this platform, the ICRC representative requested all participants to really engage in the resolution process and provide feedback before 24 May 2024.

134. The ICRC representative then continued to address other potential resolutions that were to be discussed on 6 and 7 May 2024 in Geneva in the framework of the preparatory meeting. Noting that the 34th International Conference will also be a moment to mark the 75th anniversary of the Geneva Conventions, the ICRC representative continued to implore states "by their words and by their actions, to stand up for interpretations of IHL" that uphold its primary purpose of protecting people affected by armed conflict.

135. The representative of the ICRC then continued to briefly address the 2013 Arms Trade Treaty, and recalled the ICRC's very longstanding position on arms transfers regarding states that supply arms to a party to an ongoing armed conflict and that these shouldered a special responsibility to leverage their particular influence to reduce harm to civilians and others affected by war. The representative then continued to address the importance of humanitarian exemptions in sanctions regimes and their positive impact for humanitarian work in terms of procurement and financial transactions, for instance. She emphasised the importance of the renewal of the application of UNSC Resolution 2664 (2022) to the sanctions regime established by UNSC Resolution 1267 (1999) that is due in late 2024, highlighting that not renewing the humanitarian exemption would have dramatic and negative effects, as it is the regime that has the widest impact on humanitarian operations, applying in contexts like Syria, Iraq, Afghanistan and Yemen.

136. The representative of the ICRC highlighted the gravity of the situation in Northeast Syria, where the humanitarian situation is worsening in the camps over the years. They congratulated the political will and balancing of humanitarian and security imperatives of several states who conducted repatriation operations of women and children over the last two years.

137. The representative of the ICRC drew the CAHDI's attention to a report launched on IHL and a gender perspective in the planning and conduct of military operations: International Humanitarian Law and a Gender Perspective in the Planning and Conduct of Military Operations | International Committee of the Red Cross. The report was an outcome of an expert meeting that was organised jointly by the Nordic Centre for Gender in Military Operations, the Swedish Red Cross and the ICRC.

138. Finally, the representative of the ICRC felt it critical to draw attention to the ongoing situation in Israel and the occupied territories. The representative stated that the civilian death toll and the ongoing captivity of hostages was unacceptable and that a steady, robust flow of humanitarian aid to match their needs was only part of the solution. In order to alleviate the humanitarian catastrophe in Gaza, the ICRC representative stated that there needed to be a clear will and measures that safeguard civilian life and human dignity. The representative emphasised that both sides must conduct their military operations in a way that spares the civilians caught in the middle. She stressed that International Humanitarian Law provides a way out of the downward spiral we currently see and that all states had a stake in this. She also highlighted the ICRC's concerns regarding humanitarian situations that were less reported on, namely, the situation in the Democratic Republic of the Congo, Mozambique, Myanmar, the Sahel, Sudan, and Yemen, where the ICRC continues to carry out vital humanitarian activities.

139. The representative of the United Kingdom drew the CAHDI's attention to his country's voluntary report on the implementation of IHL at the domestic level, first published in 2019. The updated and expanded version of the report was currently being prepared and was due to be published in due course. The representative also drew the CAHDI's attention to an online toolkit to enable other States to research and draft their reports more easily. The toolkit features a guidance document, and voluntary report templates, and is now available in an expanded set of languages.

140. The representative of Slovenia highlighted two events to be organised in this country in 2024. The first one, to be held in Ljubljana on 11 and 12 June, would address the protection of civilians in contemporary armed conflicts, and the second one, the Slovenian annual Bled Strategic Forum to be held on 3 September including a panel on the application of international law in cyberspace. The representative also informed the CAHDI that his delegation was in the process of finalising its position paper for the ICRC Conference.

141. The representative of Cyprus drew the CAHDI's attention to the work being done to facilitate the provision of humanitarian relief to Gazan civilians. She underlined, in particular, the dedicated one-way maritime humanitarian corridor, the 'Amalthia' plan aimed at providing for sustained and high-volume humanitarian aid originating from the international community via Cyprus, which was, however, not a substitute for land routes via Egypt and Jordan, but complemented existing and future crossings by scaling up the capacities of all entry points.

142. The representative of Switzerland fully supported the intervention of the ICRC, stating that his country fully supported the promotion of IHL as a medium of alleviating the harsh realities of armed conflict. The representative then continued, drawing the CAHDI's attention to the discussion on the UN Human Rights Council with regards to the possible organisation of a meeting of the high contracting parties of the Fourth Geneva Convention. It was proposed that the General Assembly mandates Switzerland, as depositary, to organise such a conference to discuss the situation in the Occupied Palestinian Territory. The representative of Switzerland explained that, in order to convene a Conference of High Contracting Parties, the depositary must receive a mandate from an entity that is sufficiently universal in this respect to express the will of the international community as a whole, namely the General Assembly of the United Nations. This enables the depositary to fulfil its duty of impartiality. He welcomed, in this context, the fact that the resolution adopted by the Human Rights Council is along these lines.

143. The representative of Italy informed the CAHDI that, having charged an inter-ministerial committee with the task in 2021, his country had finalised and presented a voluntary report on the implementation of IHL in 2023. The representative stated that the report was the result of a partnership with the Italian Committee of the Red Cross and it emphasised the importance of peace keeping forces deployed around the world.

144. The representative of Austria informed the CAHDI that the Austrian foreign Ministry was organising a conference named "Humanity at the Crossroads: Autonomous weapon systems and the challenge of regulation" on 29 and 30 April in Vienna. The representative highlighted that there would be four multidisciplinary expert panels on a breadth of critical topics under this topic.

145. The representative of Australia informed the CAHDI of his country's attendance at the International Conference of Prosecutors on Accountability for Conflict-Related Sexual Violence and thanked the Netherlands for the convening of the conference. The representative further informed the CAHDI of Australia's collaboration with the group Legal Action Worldwide to establish an innovative global gender justice practitioner's hub as part of their collective commitment to advancing gender equality, ending the culture of impunity and advancing compliance with IHL.

146. The representative of the United States of America clarified his country's position as to the importance of ensuring that all possible steps are taken to minimise civilian harm and to increase the flow of humanitarian assistance in and to Gaza. The US is working hard daily to realise this. The representative further drew the CAHDI's attention to his Government's announcement of an effort to launch a political declaration on responsible military use of AI and autonomy, stating that this non-legally binding declaration would contain a set of foundational principles on the responsible development, deployment, and use of AI by state militaries, including that states should take appropriate steps to ensure their military AI capabilities remained consistent with their international law and IHL obligations. The representative stated that 52 states had now endorsed the Declaration. The US had hosted the first plenary event in relation to the Declaration on 19 and 20 March 2024 during which three working groups had been formed to facilitate and coordinate the implementation of the Declaration.

147. The representative of Romania informed the CAHDI that Romania had signed an agreement on the privileges and immunities of the ICRC in Romania on 19 March 2024. She further informed the CAHDI that, on the same date, Romania signed an agreement with the International Federation of the Societies of the Red Cross and Red Crescent on the legal status in Romania and on the establishment of a Delegation on the territory of Romania. The representative considered that this was an important document to contribute to the consolidation of the humanitarian assistance provided in Ukraine.

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

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

149. The representative of Denmark emphasised that his country, as fully supportive of the ICC, considers it crucial that the ICC has access to relevant information and evidence necessary to carry out its investigations effectively. As already referred to at the previous meeting of the CAHDI in September 2023, Denmark had deployed its first investigation team into Ukraine to assist the ICC in its investigations as well as supported the ICC with extraordinary financial contributions, particularly supporting its Office of the Prosecutor in what is known as Project Harmony.

8 OTHER

8.1 Place, date and agenda of the 67th meeting of the CAHDI

150. The CAHDI decided to hold its 67th meeting on 19-20 September 2024 in Vienna (Austria). The CAHDI instructed the Chair to prepare the provisional agenda of this meeting in due course in co-operation with the Secretariat.

8.2 Any other business

151. No item was handled under this agenda point.

8.3 Adoption of the Abridged Report and closing of the 66th meeting

152. The CAHDI adopted the Abridged Report of its 66th meeting, as contained in document CAHDI (2024) 15, and instructed the Secretariat to submit it to the Committee of Ministers for information.

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

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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 65th meeting
1.4. Information provided by the Secretariat of the Council of Europe and by the Chair of the CAHDI

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

2.1. Opinion of the CAHDI on Recommendation 2266 (2024) of the Parliamentary Assembly of the Council of Europe (PACE)
2.2. Invitation to the CAHDI to provide an indicative overview of possible avenues under international law aimed at securing the payment by the Russian Federation of just satisfaction awarded by the European Court of Human Rights
2.3. Examination of the request by the Permanent Court of Arbitration (PCA) to be granted observer status to the CAHDI
2.4. Terms of reference of the CAHDI
2.5. 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. 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. Place, date and agenda of the 67th meeting of the CAHDI: Vienna (Austria), 19-20 September 2024
8.2. Any other business
8.3. Adoption of the Abridged Report and closing of the 66th meeting

APPENDIX III – SPEAKING POINTS OF MR JÖRG POLAKIEWICZ

Dear Helmut,
Dear colleagues and friends,

- As has been the practice, I will present to you the most important developments within the Council of Europe ("CoE") since we met last time six months ago.
- I am very happy to see you, all the new and older faces, during a truly international law week in Strasbourg. We had the delivery of the climate change decisions and judgment at the European Court of Human Rights ("ECtHR") on Tuesday – I will come back to those later in my intervention.

- **Special Tribunal for the Crime of Aggression against Ukraine – CAHDI Seminar**
- The Seminar on the Special Tribunal for the Crime of Aggression against Ukraine co-organised by the Liechtenstein Presidency of the Committee of Ministers ("CM"), the Permanent Representation of Ukraine to the CoE and the CAHDI yesterday was another highlight of the week. We were happy to see that most CAHDI delegations could be present in person at the Seminar that approached the issue from the angle of examining the possible role of regional organisations such as the CoE in the establishment of such a tribunal. This topic was not chosen out of the blue or *in abstracto*. At the heart of this lie ideas emanating from the Core Group, the informal group of 40 states, the European Union and the Council of Europe called together by Ukraine in January 2023 to discuss, at the technical legal level, the feasibility and the features of such a Special Tribunal.
- I draw your attention to the draft decisions that are on the agenda of the Rapporteur Group on Legal Cooperation at their forthcoming meeting on 19 April 2024. It is important that these decisions are adopted by the Committee of Ministers before the next meeting of the Core Group on 10 May 2024. They will provide a clear mandate for the Secretary General to submit the necessary documents to contribute to the consultations within the Core Group.

- While many open questions remain, we have made real progress towards the establishment of a Special Tribunal.

- **Elections for Secretary General**
- The times are interesting also as regards internal matters at the CoE. The mandate of the current Secretary General will terminate in September. The election process for the successor is hence already up and running.

- At their 1493rd meeting on 20 March 2024 the Ministers' Deputies submitted the three candidatures by order of preference to the PACE for election at its June Session: Mr Alain Berset (presented by Switzerland), Mr Indrek Saar (presented by Estonia) and Mr Didier Reynders (presented by Belgium). The appointment will take effect from 18 September next.

- **Register of Damage for Ukraine**
- The Register of Damage Caused by the Aggression of the Russian Federation represents a flagship example of the CoE's ability to take action towards bringing tangible and durable relief for Ukraine. Since our last meeting in September 2023, there have been significant developments with regard to the Register which I would like to share with you.

- First, the Conference of Participants of the Register came together for its 3rd meeting on 16 November 2023 and elected the seven members[22] of the Register's Board, which is responsible for proposing the rules and regulations governing the work of the Register and ultimately for recording eligible claims, as provided by Article 6 of the Register's Statute.

[22] Yulia Kyrpa (Ukraine), Norbert Wühler (Germany), Chiara Giorgetti (Italy), Robert Spano (Iceland), Veijo Heiskanen (Finland), Lucy Reed (United States) and Aleksandra Mężykowska (Poland) were elected for a three-year term (renewable once).

- Subsequently, at its inaugural meeting in The Hague on 11-15 December 2023, the Board elected Mr Robert Spano, former President of the European Court of Human Rights, as its Chair, and Dr Chiara Giorgetti, Professor at Richmond Law School, as its Vice-Chair. It also adopted its Rules of Procedure and discussed as a matter of urgency the categories of claims that would be eligible for submission to the Register.

- From an organisational and logistical point of view, a major step was taken with the opening of the Register's satellite office in Kyiv on 23 March 2024. It will help the Register raise awareness amongst various stakeholders within Ukraine and further enhance the collaboration between the Register and the Ukrainian Government on legal and technical matters concerning the submission of claims to the Register.

- Lastly, on 2 April 2024, the Register opened for the submission of claims. The Register begins its operations with one critical category – damage or destruction of residential property. War-related damage and destruction of residential property often result in the displacement of civilians, leading to immense suffering and trauma. They also disrupt the normal functioning of society, exacerbate humanitarian crises and can have long-lasting economic impacts on communities. Between 300,000 and 600,000 claims are expected in this category. Other categories of claims will be launched in the near future, including claims from individuals that have been most affected by the war, as well as claims related to damage or destruction of Ukraine's critical infrastructure. Claimants will be able to submit claims through "Diia" – a multifunctional mobile application and a web portal developed by the Ukrainian Government to provide various e-governance services to its citizens. This is the world's first use of public digital infrastructure on this scale in a claims process.
- "The path to reparations will not be fast. Its timeline is measured in years, not months. Every journey begins with a first step. By submitting a claim, people in Ukraine can make their first step" (Executive Director Markiyan Kliuchkovskyi).

- **Application by Kosovo* for membership of the Council of Europe ("CoE"):**
- Another remarkable institutional development relates to the Kosovo's application for membership in the Organisation, submitted by a letter of 12 May 2022 addressed to the Secretary General.

- This letter was forwarded to the CM, which is competent under Article 4 of the Statute to invite any European State which is deemed to be able and willing to fulfil the values and principles of the Organisation as enshrined in Article 3 of the Statute to become a member. Subsequently, on 24 April 2023, the CM decided to transmit the letter to the Parliamentary Assembly of the Council of Europe ("PACE") for consultation, in pursuance of Statutory Resolution (51)30A of 3 May 1951. The decision on the transmission clarifies that it is "*without prejudice to the Committee of Ministers' future consideration of this application to accede to the Council of Europe*."

- After having taken note of the "Report by the eminent lawyers on the conformity of Kosovo*'s legal system with Council of Europe standards" of 27 November 2023, the Committee on Political Affairs and Democracy of the PACE adopted, on 27 March 2024, a "Draft opinion on the Application by Kosovo for membership of the Council of Europe" recommending that Kosovo be invited to become a member of the CoE. The PACE is due to adopt its opinion after a plenary debate on the application at its spring part-session in Strasbourg next week (15-19 April 2024). Subsequently, the CM will continue its consideration of the accession request.

- **Credentials of the delegation of Azerbaijan to the PACE**
- Another development concerning the PACE relates to Azerbaijan and the decision of the Assembly, on 24 January 2024, not to ratify the credentials submitted by the Parliamentary delegation of Azerbaijan.
- In the respective Resolution 2527 (2024), the Assembly "deplores that more than twenty years after joining the Council of Europe Azerbaijan has not fulfilled major commitments stemming therefrom. Very serious concerns remain as to its ability to conduct free and fair elections, the separation of powers, the weakness of its legislature vis-à-vis the executive, the independence of the judiciary and respect for human rights."

- The CM took note of Resolution 2527 (2024), stressed the importance of an open and inclusive dialogue in compliance with member States' commitments and the Statute of the Council of Europe and agreed to remain seized of the issues raised in the course of the discussions at their 1489th (14 February 2024) and 1490th (21 and 23 February 2024) meetings.
- From an institutional point of view, this incident reminds of a similar situation the two statutory organs were faced with in 2018 when the credentials Parliamentary delegation of the Russian Federation had repeatedly not been ratified and the Russian Federation had hence, as a reaction to the non-ratification, suspended its payments to the ordinary budget of the Organisation as a whole.

- At the Helsinki Ministerial session in May 2019, the CM adopted a decision which recalled *"that all member States shall be entitled to participate on an equal basis in the two statutory organs of the Council of Europe, as long as Articles 7, 8 or 9 of the Statute have not been applied"*, *"noted the urgent need to develop synergies and provide for co-ordinated action by the two statutory organs, in recognition of their respective mandates, in order to strengthen the Organisation's ability to react more effectively in situations where a member State violates its statutory obligations or does not respect the standards, fundamental principles and values upheld by the Council of Europe"* and *"instructed its Deputies to develop – in co-operation with the Parliamentary Assembly – a clearly defined complementary procedure, which could be initiated by either the Parliamentary Assembly, the Committee of Ministers or the Secretary General, and in which all three of them would participate."*

- Subsequently, the PACE eliminated the withdrawal of voting rights from the catalogue of possible 'sanctions'. The possibility not to ratify credentials or to annul existing ones remained, however, in PACE's rules of procedure also after the Helsinki ministerial session and despite the establishment of the complementary procedure. It is exactly this Rule 10.1.b that has now been applied by the PACE in the case of Azerbaijan.

- **Framework Convention on Artificial Intelligence**
- Despite the significant legal and political challenges of negotiating a first global legal instrument in this novel and rapidly evolving field, the Committee on Artificial Intelligence (CAI), was able to finalise a draft. Nearly 60 member and observer states participated in the drafting plus an impressive number of civil society organisations. Following PACE's adoption of an opinion on the draft text, the treaty will be formally adopted on the occasion of the forthcoming CM's ministerial session in Strasbourg on 17 May.

- Important issues such as the scope of application of the convention to private actors and the question of whether the convention should also apply in the field of internal security, remained unresolved until the very end of the negotiations. Compromise solutions were the price to pay to make a truly global initiative reality.

- **Latest developments related to the ECHR and the execution of ECtHR judgments**
- I would now like to move on to a point devoted to the European Convention on Human Rights (ECHR) and the execution of judgments of the ECtHR.

- The case of **Kavala v. Türkiye** remains regularly on the CM's agenda. As you already know, in the context of infringement proceedings, the ECtHR found, on 11 July 2022, that the respondent state had failed to fulfil its obligations under Article 46 (1) ECHR. Notwithstanding these findings, the applicant remains in detention as a convicted prisoner.

- Since our last meeting, some important developments took place. On 13 November 2023, the SG paid an official visit to Türkiye where she met with the Minister for Foreign Affairs, Mr Hakan Fidan the Deputy Minister for Foreign Affairs, Mr Ahmed Yıldız, and discussed, *inter alia*, the importance of ensuring the implementation of the judgments of the Court and, in this context, raised also the Kavala case. In addition, a high-level technical meeting was held in Ankara on 15 February 2024 to discuss the means available within the Turkish legal system capable of securing the applicant's release.

- Most recently, during its 1492nd (Human Rights) meeting, held on 12-14 March 2024, the CM "*strongly exhorted the authorities to take all steps in their power to ensure the use of all available judicial or other means to ensure the applicant's immediate release."* Acknowledging that such means exist at national level, including the rapid examination by the Constitutional Court of the applicants' pending applications, the CM found that "*Türkiye remains in serious breach of its obligations under the Convention and the principles of the rule of law*".

- Another remarkable development relating to the European Court of Human Rights is as recent as 48 hours old. This Tuesday, the Court handed down a judgment and two decisions concerning climate change which are of considerable international significance. Critically, in the case of ***Verein KlimaSeniorinnen Schweiz and Others v. Switzerland***, the Court held that the Swiss Confederation had failed to comply with its duties under the Convention concerning climate change and had thereby violated Article 8 of the Convention. In doing so, the Court defined, for the first time, the scope of the positive obligations binding the States under Article 8 in the context of climate change. For that purpose, it distinguished three types of measures: mitigation measures, adaptation measures, and procedural safeguards, all being in principle required for the assessment of whether the State remained within its margin of appreciation. According to the Court, the Swiss authorities had exceeded their margin of appreciation by not acting in time and in an appropriate way to devise, develop and implement legislation and measures in this case. The Court also unanimously found a violation of Article 6, paragraph 1, as the Swiss courts had not provided convincing reasons as to why they had considered it unnecessary to examine the merits of the applicant association's complaints; had failed to take into consideration the compelling scientific evidence concerning climate change; and had failed to take the complaints seriously. The Court otherwise rendered the claims made in the cases of ***Duarte Agostinho and Others v Portugal and 32 Others*** and ***Careme v France*** inadmissible. While these are only the high-level conclusions from each case, the judicial reasoning behind these three decisions will undoubtedly be of interest to all states around the world.

- **Closing remarks**
- I wish you a smooth and fruitful meeting. The Secretariat rests at your disposal for all questions you may have.
- Thank you very much for your attention.

- **Appendix: Accessions to Council of Europe conventions by non-member States**[23]
- Since the last CAHDI meeting, 6 non-member states have asked to be invited to become party to a Council of Europe treaty:
- **Chad -** Council of Europe Convention on the counterfeiting of medical products and similar crimes involving threats to public health (CETS No. 211);
- **Chile** – European convention on Extradition and its First and Second Additional Protocols (ETS Nos. 24, 86 and 98)
- **Grenada and Mozambique** – Convention on Cybercrime (ETS No. 185) ;
- **Kazakhstan** - Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198)
- **Tunisia** - Council of Europe Convention on the Manipulation of Sports Competitions (CETS No. 215)
- In addition, 1 signature was affixed by non-member states:
- **Tunisia** – Council of Europe Convention on counterfeiting of medical products and similar crimes involving threats to public health (CETS No. 211) ;
- Lastly, there were 2 accessions by non-member states:
- **Cameroon and Tunisia** – Convention on Cybercrime (ETS No. 185) ;

[23] 154 of the total number of 224 conventions are open to non-member States.

APPENDIX IV – PRESENTATIONS OF SPECIALS GUESTS

- **Ms Christina L. BEHARRY**

Partner, International Arbitration and Litigation Department, Foley Hoag

The presentation of Ms Christina L Beharry is available at the following link.

- **Professor Martins PAPARINSKIS**

Member of the International Law Commission/University College London”

The presentation of Prof. Martins Paparinskis is available at the following link.

- **Professor Veronika FIKFAK**

Co-Director of University College London Institute for Human Rights

The presentation of Prof. Veronika Fikfak is available at the following link.