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CAHDI (2024) 27

COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)

List of items discussed and decisions taken Abridged report

67th meeting (hybrid meeting)
19-20 September 2024

Vienna, Austria

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

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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)**67th meeting, Vienna, 19-20 September 2024****List of items discussed and decisions taken
Abridged report****1. Introducing the meeting.**

1.1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 67th meeting in Vienna, Austria, on 19-20 September 2024, with **Mr Helmut Tichy** (Austria) as Chair.

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

1.3. The CAHDI examined and adopted the **report of its 66th meeting** (Strasbourg, 11-12 April 2024), and authorised its publication on the CAHDI website.

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

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

2.1. The CAHDI examined the draft **indicative overview of possible avenues under international law aimed at securing the payment of just satisfaction by the Russian Federation awarded by the European Court of Human Rights**. This document was prepared by a Working Group established by the CAHDI, to assist it in preparing the document requested by the Committee of Ministers in **Decision CM/Del/Dec(2024)1488/10.5**. The Working Group was composed of fourteen delegations, representatives from the European Union, other experts, and the CAHDI Secretariat.

Following its discussion, the CAHDI decided to:

- treat the current document as a confidential background paper, neither reflecting a position of CAHDI, nor the consensus of the members of the Working Group or the positions of the members of CAHDI;
- instruct the Secretariat to prepare a concise draft document outlining the relevant issues and indicating, where applicable, their still controversial nature;
- provide CAHDI members with the opportunity to comment on the draft document with a view to its adoption by written procedure by the end of November 2024;
- instruct the Secretariat to inform the Committee of Ministers in September on CAHDI's ongoing reflections on these issues.

2.2. Following the decisions of 30 April 2024 and 10 July 2024 of the Committee of Ministers communicating to the CAHDI *Recommendation 2271 (2024) of the Parliamentary Assembly of the Council of Europe (PACE) on "Support for the reconstruction of Ukraine"*, *Recommendation 2279 (2024) of the PACE on "Legal and human rights aspects of the Russian Federation's aggression against Ukraine"* and *Recommendation 2281 (2024) on "Reparation and reconciliation processes to overcome past conflicts and build a common peaceful future – the question of just and equal redress"* for information and possible comments, the CAHDI **adopted three opinions** on these Recommendations incorporating the amendments formulated by delegations during the meeting, as

contained in documents CAHDI (2024) 19 Restricted, CAHDI (2024) 24 Restricted and CAHDI (2024) 25 Restricted.

2.3. The CAHDI examined and **agreed** to the **request by the International Institute for the Unification of Private Law (UNIDROIT) to be granted observer status with the CAHDI** according to paragraph C. 8 a. of Resolution *CM/Res(2021)3 on intergovernmental committees and subordinate bodies, their terms of reference and working methods*, and to inform the Committee of Ministers of this decision.

2.4. The CAHDI took note of **decisions of the Committee of Ministers relevant to the work of the CAHDI**, as contained in document CAHDI (2024) 20 Restricted.

3. Concerning the subject of **“CAHDI databases and questionnaires”**:

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

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

3.2. The CAHDI was informed that, in accordance with its decision adopted during its 66th meeting (Strasbourg, 11-12 April 2024), the replies to the questionnaires on **“Immunity of state-owned cultural property on loan”** and on **“Immunities of special missions”** were published.

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

In this regard, the CAHDI also decided that, as a general rule, CAHDI members who have provided information under the item privileges and immunities will be invited to provide their contributions in writing soon after the meeting for an early distribution by the Secretariat.

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

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

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

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

6.1. The CAHDI held an exchange of views concerning **non-legally binding instruments in international law**. It took note of the presentations and fruitful discussions held during the Second practitioner’s workshop on this subject held on 18 September 2024. The CAHDI tasked the Secretariat to produce a compilation of national approaches and materials in a structured manner with a focus on practical insights. This document will be non-prescriptive and may propose areas where tools could be

developed. The CAHDI also decided to make available, through the Secretariat, to the International Law Commission (ILC) the report on non-legally binding instruments and related material that the CAHDI had decided to make public.

6.2. The CAHDI took note of the replies to the questionnaire on **treaties not requiring parliamentary approval** (CAHDI document (2024) 6 prov Confidential Bilingual, dated 28 August 2024) and of the main trends arising from the replies to the questionnaire (document CAHDI (2024) 11 prov Confidential dated 31 March 2024). The CAHDI invited delegations which had not yet responded to this questionnaire to do so at their earliest convenience and to reflect on possible further developments in this regard.

6.3. The CAHDI took note of the replies to the questionnaire on **“International soft law: implications for Legal Departments of Ministries for Foreign Affairs”** as contained in document CAHDI (2024) 7 prov Confidential Bilingual dated 30 August 2024 and invited delegations to submit their replies to this questionnaire at their earliest convenience.

6.4. Within the framework of its activity as the **European Observatory of Reservations to International Treaties**, the CAHDI examined a list of 12 reservations and declarations to international treaties concluded within and outside the Council of Europe, subject to objection.

6.5. In addition, the CAHDI took note of document CAHDI (2024) Inf 3 containing the reactions to reservations and declarations to international treaties previously examined by the CAHDI and for which the deadline for objection had already expired.

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

7.1. The CAHDI held an exchange of views on the **Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine and a future Claims Commission**, with an introductory presentation by **Prof. Chiara Giorgetti** (University of Richmond), who is a member of the Board of the Register.

The CAHDI also held an exchange of views on the **public international law aspects of the current situation of aggression against Ukraine** and took note of the information provided by delegations on accountability issues.

7.2. The CAHDI held an exchange of views on the **peaceful settlement of disputes** and took note of the information provided by the Permanent Court of Arbitration.

7.3. The CAHDI held an exchange of views on the **work of the ILC**, with an introductory presentation on the work of the ILC by **H.E. Marcelo Vázquez-Bermúdez**, Chair of the ILC. The CAHDI also held an exchange of view on **“Compensation for the damage caused by internationally wrongful acts”** following a presentation on this subject by **Prof. Mārtiņš Pāparinskis** (University College of London), who is also a member of the ILC. It also heard **Prof. August Reinsch** (University of Vienna) on the subject of **“Settlement of disputes to which international organisations are parties”** which he is working on as special rapporteur of ILC.

7.4. With regard to the **consideration of current issues of international humanitarian law**, the CAHDI took note of the information provided by the International Committee of the Red Cross and other delegations on this subject.

7.5. The CAHDI discussed and took note of the information provided by delegations on the **recent developments concerning the International Criminal Court (ICC) and other international criminal tribunals** in the light of document PIL-ICT (2024) 2.

8. Concerning any **other issues**:

8.1. In accordance with [Resolution CM/Res\(2021\)3](#), the CAHDI elected **Ms Kerli Veski** Undersecretary for Legal and Consular Affairs, Ministry of Foreign Affairs of **Estonia** and **Mr Declan Smyth**, Legal Adviser, Director General of the Department of Foreign Affairs of **Ireland**, respectively,

as **Chair** and **Vice-Chair** of the Committee, for a term of one year, from 1 January to 31 December 2025.

8.2. The CAHDI decided to hold its **68th meeting** in Strasbourg (France), on **17-18 March 2025**. The CAHDI instructed the Chair of the CAHDI, in co-operation with the Secretariat, to prepare in due course the provisional agenda of this meeting.

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

APPENDIX I

1. INTRODUCTION

- 1.1. Opening remarks
- 1.2. Adoption of the agenda
- 1.3. Adoption of the report of the 66th 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. 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
- 2.2. Opinions of the CAHDI on Recommendations of the Parliamentary Assembly of the Council of Europe (PACE)
- 2.3. Examination of the request by the International Institute for the Unification of Private Law (UNIDROIT) to be granted observer status to the CAHDI
- 2.4. 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

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

- 4.1. Exchanges of views on topical issues in relation to the subject matter of the item
- 4.2. State practice and relevant case-law

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

- 5.1. Cases before the European Court of Human Rights involving issues of public international law
- 5.2. National implementation measures of UN sanctions and respect for human rights

6. TREATY LAW AND SOFT LAW INSTRUMENTS

- 6.1. Exchanges of views on topical issues related to treaty law
- 6.2. Law and practice relating to reservations and interpretative declarations concerning international treaties: European Observatory of Reservations to International Treaties

7. CURRENT ISSUES OF PUBLIC INTERNATIONAL LAW

- 7.1. Topical issues of public international law
- 7.2. Peaceful settlement of disputes
- 7.3. The work of the International Law Commission
- 7.4. Consideration of current issues of international humanitarian law
- 7.5. Developments concerning the international Criminal Court (ICC) and other international criminal tribunals

8. OTHER

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

- 8.2. Place, date and agenda of the 68th meeting of the CAHDI: Strasbourg (France), 17-18 March 2025
- 8.3. Any other business
- 8.4. Adoption of the Abridged Report and closing of the 66th meeting