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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW

(CAHDI)

Meeting report

67th meeting
19-20 September 2024

Vienna, Austria (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 67th meeting in Vienna (Austria) on 19-20 September 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 Second Practitioners' Workshop on Non-Legally Binding Instruments in International Law, which had taken place the previous day, also in Vienna, co-organised by the Austrian Federal Ministry for European and International Affairs and the CAHDI Secretariat, and in which most of the CAHDI delegations had participated. The workshop had aimed to shed light on the most pressing questions surrounding non-legally binding instruments. The workshop also sought to identify the way forward and to discuss the usefulness and appropriateness of potential tools that could be developed by the CAHDI in this area.

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 66th meeting

4. The CAHDI adopted the report of its 66th meeting (document CAHDI (2024) 16), held on 11-12 April 2024 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 and Vice-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. The speaking notes of Mr POLAKIEWICZ are set out in **Appendix III** to this report.

- ***Information provided by Mr Helmut TICHY and Ms Kerli VESKI, Chair and Vice-Chair of the CAHDI***

6. The Chair informed delegations that it had unfortunately not been possible to organise the usual exchange of views with the International Law Commission (ILC) this year due to the shortened session of the ILC. Usually, the Chair of the CAHDI goes to Geneva to report on activities of the Committee. The Chair expressed his hope that the CAHDI and the ILC will be able to resume this regular exchange of views very soon in order to continue this helpful and established practice which allows the two committees to exchange on their activities and explore possible synergies.

7. Next, the Vice-Chair, Ms Kerli VESKI (Estonia) reported to the CAHDI on her participation at a meeting of the Council of Europe *Drafting Group on Eradication of Impunity for Serious Human Rights Violations* (CDDH-ELI) on 15 May 2024 (online). The Drafting Group was established by the Council of Europe Steering Committee on Human Rights (CDDH) to conduct preparatory work on a study on the need for and feasibility of additional non-binding instrument(s) to complement the *Guidelines on eradicating impunity for serious human rights violations* adopted by the Committee of Ministers (CM) in 2011. The CDDH is expected to adopt this study by the end of 2025. In particular, Ms VESKI drew attention to the potential for future cooperation of the CAHDI with the CDDH-ELI. The CDDH-ELI had showed significant interest in future positive collaboration with the CAHDI with the purpose of the CAHDI providing advice on issues of public international law to the Drafting Group. Ms VESKI noted that the CAHDI should look forward to this cooperation and hope to send representatives to future meetings of the CDDH-ELI to help drive this important and critical development of the 2011

guidelines forward, hopefully into a stronger conceptualisation of guidelines on the eradication of impunity for serious violations of human rights. The speaking notes of Ms VESKI are set out in **Appendix IV** to this report.

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

- ***Information provided by the Secretariat***

8. The Secretariat introduced the sub-item by recalling that the CM had requested[1] the CAHDI to prepare, in "restricted regime", an indicative overview of possible avenues aimed at securing the payment by the Russian Federation of just satisfaction awarded by the European Court of Human Rights (ECtHR, the Court) by the end of September 2024. At its 66th meeting (10-11 April 2024 in Strasbourg, France), the CAHDI had decided to establish a working group on just satisfaction (WG), composed of interested delegations, to prepare the requested overview. Fourteen delegations representing CoE member states, the European Union (EU) and several other independent legal experts participated in the WG, which met three times. A draft overview was circulated to CAHDI delegations on 28 August 2024 and delegations were invited to submit comments for consideration during the 67th CAHDI meeting.

9. Several delegations took the floor to thank the participants in the WG and the Secretariat for preparing the preliminary text during the summer, in challenging circumstances and under very tight deadlines. They commended the detailed legal analysis of the complex issues and recognised the valuable insights it provided. However, given the controversial nature of certain elements and the novelty of some approaches, they stressed the need for a more concise document outlining the main issues and, where necessary, acknowledging the remaining points of contention.

10. The Chair therefore instructed the Secretariat: to treat the current draft overview document as a confidential background paper that does not reflect a position of the CAHDI, nor the consensus of the members of the WG, nor the positions of CAHDI members; to prepare a revised, simplified version of the draft overview, focusing on key points and avoiding complicated legal discussions, in line with the comments, structural orientations and guidance provided by delegations during the 67th CAHDI meeting; and to provide CAHDI members with an opportunity to comment on the draft document with a view to its adoption by written procedure by the end of December 2024. To this end, the CAHDI also instructed the Secretariat to inform the CM, in September, of the CAHDI's ongoing deliberations on these issues and to request an extension of the deadline for submitting the final overview to the CM between the end of November and the end of December 2024.[2]

2.2 Opinions of the CAHDI on Recommendations of the Parliamentary Assembly of the Council of Europe (PACE)

11. The Chair introduced the sub-item by recalling that, on 30 April and 10 July 2024, the Ministers' Deputies, at their 1497th and 1504th meetings, had agreed to communicate Parliamentary

[1] CM/Del/Dec(2024)1488/10.5, decision adopted by the Committee of Ministers on 7-8 February 2024 at the 1488th meeting of the Ministers' Deputies: "*The Deputies, Recalling that the Russian Federation is no longer a member State of the Council of Europe and has ceased complying with its obligations under Article 46 § 1 of the European Convention on Human Rights; 1. invited the Committee of Legal Advisers on Public International Law (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, while respecting the immunities of States and their property; 2. indicated that, in doing so, the CAHDI should take into account relevant work of the United Nations, the European Union and other international actors; 3. requested the CAHDI to provide an indicative overview of possible avenues in the restricted regime by the end of September 2024*".

[2] CM/Del/Dec(2024)1509/10.8, decision adopted by the Committee of Ministers on 9 October 2024 at the 1509th meeting of the Ministers' Deputies.

Assembly of the Council of Europe (PACE) Recommendation 2271 (2024) on "*Support for the reconstruction of Ukraine*", Recommendation 2279 (2024) 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*" to the CAHDI, for information and possible comments. The Chair, with the assistance of the Secretariat, had prepared three draft opinions (documents CAHDI (2024) 19 *Restricted*, CAHDI (2024) 24 *Restricted* and CAHDI (2024) 25 *Restricted*) that had been sent to delegations in advance of the meeting. Before opening the floor for delegations' comments on the draft opinions, the Chair noted that the CM was awaiting to receive the CAHDI's opinions by the end of September 2024.

12. The CAHDI examined the draft opinions. Several delegations made amendment proposals to the texts of the drafts before the CAHDI could unanimously adopt the opinions as amended.

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

13. The Chair informed delegations of UNIDROIT's request for observer status with CAHDI. He explained that UNIDROIT was an independent intergovernmental organisation based at the Villa Aldobrandini in Rome, which focused on the modernisation, harmonisation and coordination of private and commercial law between states and regions. Its work results in uniform legal instruments, both binding and non-binding, which strengthen the rule of law in the matters of its competence. Originally established in 1926 as an auxiliary body of the League of Nations, the Institute was reconstituted by multilateral agreement in 1940 following the dissolution of the League. It now has 65 member states from five continents, representing a wide variety of legal, economic, political and cultural systems and covering 74 per cent of the world's population.

14. 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 CM at the request of two thirds of the members of the committee concerned.

15. Noting his belief that UNIDROIT 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 by UNIDROIT to be granted observer status.

16. The representative of Italy recalled that his country was proud to be the host country of this organisation. He considered that the request of UNIDROIT deserved the support of the CAHDI, taking into account the similarity of this organisation with many of the institutions already following the work of the CAHDI. He recalled that UNIDROIT, founded almost a century ago, was one of the oldest international organisations. The modernisation and harmonisation of private law that UNIDROIT has carried out throughout its history has contributed to the creation of a more stable legal environment at the national and international level, which is favourable to the promotion of trade, investment and economic growth. With its 65 members representing a variety of legal, economic and political systems, UNIDROIT possessed, in his view, a valuable capital of knowledge and its participation as an observer would bring benefit to the CAHDI. Over the years, UNIDROIT had prepared a number of important international conventions, the most recent being the 1995 Convention on Stolen or Illegally Exported Cultural Objects and the 2001 Convention on International Interests in Mobile Equipment (the Cape Town Convention).

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

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

18. The Chair presented a compilation of CM decisions of relevance to the CAHDI's activities (document CAHDI (2024) 20 *Restricted*) prepared by the Secretariat containing, among others,

decisions by which the CM requested the CAHDI's opinions on the above-mentioned PACE Recommendations.

3 CAHDI DATABASES AND QUESTIONNAIRES

19. The Chair introduced the item by recalling the questionnaires and databases entertained by the CAHDI, especially those 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, the Secretariat had received the following updated or new replies from delegations: from Austria to the questionnaire on the *Settlement of disputes of a private character to which an international organisation is a party*; from Estonia and Switzerland to the questionnaire on *Immunity of state-owned cultural property on loan*; from Bulgaria, Croatia, Slovenia, Switzerland and the USA to the questionnaire *Immunity of special missions*; from Ireland and the United Kingdom to the questionnaire *Service of process on a foreign state*; from Austria to the questionnaire on the *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*; from Japan to the questionnaire on the *Organisation and functions of the Office of the Legal Adviser of the Ministry of Foreign Affairs*; and finally, from Latvia to the database on *The implementation of United Nations sanctions*.

20. The Chair then recalled that at its 66th meeting (11-12 April 2024 in Strasbourg, France) the CAHDI had decided to render public also the replies to the two last questionnaires that were at that point still kept confidential, the questionnaires on *Immunity of state-owned cultural property on loan* and *Immunity of special missions*. This July all delegations having previously replied to one or both of these questionnaires had been contacted by the Secretariat offering the possibility to update their replies before their publication. With the exception of a few delegations that were still updating their replies, the Secretariat had now published all the replies to these questionnaires on the CAHDI website. This meant that all the questionnaires under this agenda item 3 had now been made publicly available, representing an important outreach activity of the work of the Committee.

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

21. 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. Thus, he invited delegations to share information on recent developments concerning state practice and relevant case-law in their countries regarding the topic of immunities.

22. The representative of Germany informed CAHDI delegations about a recent development in German legislation regarding the immunity of state officials from foreign criminal jurisdiction. In 2021, the German Federal Court of Justice had decided that low-ranking officials did not enjoy immunity under customary international law before criminal courts when charged with war crimes. In February 2024, the same court had extended this jurisprudence finding that no state official independent of rank was protected by immunity with regard to charges of international crimes. Following these decisions, the German Parliament had enacted a new law, Section 20 of the Courts Constitution Act now providing that functional international immunity does not apply when it comes to international crimes before German courts. The representative underlined that the decision of the Federal Court of Justice and the new law only applied to immunity *ratione materiae* and not to immunity *ratione personae*. Furthermore, they were restricted and limited to criminal jurisdiction. However, this represented a development that Germany will take into account when reporting on the ILC Draft Article 7 on Immunity of state officials from foreign criminal jurisdiction. Germany would provide written comments in this regard, as requested by the ILC, by November 2024.

23. The representative of Belgium drew the attention of the CAHDI to a case of interest. On 11 December 2019, two German nationals, Mr Beowulf von Prince and Ms Karine Leiffe, had sued Germany, Switzerland, Belgium and the EU in the District Court of Columbia in a dispute for

compensation. The plaintiffs claimed that the Free City of Danzig (Gdansk in Poland) never lost its status because the Allied Powers' decision to have it administered by Poland was conditional on the signing of a peace treaty, which was never signed or executed. Therefore, according to the plaintiffs, the administration of the city of Gdansk was to be under the control of the United States until a peace treaty was signed. The first plaintiff claimed to be an official of the Free City of Danzig and as such a civilian representative of the Allied Powers, namely the United States. According to him, this capacity allowed him to issue official documents of the City of Danzig. He alleged that he was thus falsely charged, extradited, convicted and imprisoned for issuing these documents. He claimed that Belgium illegally extradited him to Germany after being informed of a European arrest warrant, that Switzerland and the EU approved this extradition and the ill-treatment of nationals of the Free City of Danzig, and that Germany illegally prosecuted him. The second plaintiff, Karin Leffer, presented herself as a representative of the German people and of the Free City of Danzig. She lives in Switzerland because of her alleged political persecution. Before the District Court, the plaintiffs sought a ruling that the District Court had jurisdiction and claimed damages. On 26 March 2021, the District Court declared the action inadmissible for lack of material jurisdiction regarding Belgium, Germany and Switzerland.[3] The court declared that the Foreign Sovereign Immunity Act (FSIA) was the only basis for jurisdiction over a foreign state in the US courts, its provisions being absolute. Unless one of the enumerated exceptions applied, US courts did not have jurisdiction over disputes against a foreign state. The plaintiffs had not demonstrated that their claims fell within any of the exceptions set out in the statute. For the EU, the court stayed the proceedings. The plaintiffs appealed the judgment and on 28 November 2022, the United States Court of Appeal affirmed the District Court's judgment and confirmed that Germany, Switzerland and Belgium were immune under the FSIA.[4] The Court of Appeal concluded that while the EU was not a foreign state within the meaning of the FSIA, Title 28 of the United States Code did not provide a basis for the court's jurisdiction.

24. The representative of Canada presented a recent case before the Ontario Superior Court of Justice, *Zarei v. Iran.*[5] The court had agreed with the Government's position that decisions about the diplomatic status of a foreign state's property in Canada rest with the Minister of Foreign Affairs. This authority is pursuant to Canada's Foreign Missions and International Organizations Act (FMIOA), which incorporates the Vienna Convention on Diplomatic Relations (VCDR) and the Vienna Convention on Consular Relations (VCCR) into domestic law. While acknowledging that there may be situations where it is uncertain whether Canada has accorded diplomatic status, the court held that "any such uncertainty will be conclusively resolved where Canada issues a s.11 certificate under the FMIOA certifying that at the relevant time, identifiable property of a foreign state in Canada enjoys diplomatic immunity. What matters is the intention of the Executive, of which the s.11 certificate is the authoritative source, and which must therefore be treated as conclusive." This finding was confirmed by the Court of Appeal and the plaintiffs' application for leave to appeal to the Supreme Court was dismissed. The representative noted that the Canadian courts had cited recent case law from the United Kingdom (the so-called "Venezuela Gold Saga") as authority for the proposition that the executive had full ability to make certifications in the field of diplomatic law and diplomatic relations.

25. The representative of Austria reported on negotiations at Interpol concerning a general agreement on privileges and immunities. The negotiation process had been rather cumbersome, as the participants were not necessarily international lawyers familiar with privileges and immunities. The process had now been halted to some extent. A decision by the General Assembly of Interpol was due to be taken in December, after which a drafting group would be set up to work on the agreement. The representative stressed that all legal services of Interpol member states should keep a close eye on this process so that it can be

[3] *Leffer & Prince v. Fed. Rep. of Germany*, No. 19-CV-3529 (D.D.C. filed Dec. 9, 2019) ("Prince I").
[4] U.S. Court of Appeals, D.C. Circuit, *Karin Leffer v. Federal Republic of Germany*, et al, No. 22-7076.
[5] Ontario Supreme Court of Justice, *Zarei v. Iran*, 2021 ONSC 3377, COURT FILE NO.: CV-20-635078, 20 May 2021 and Ontario Supreme Court of Justice, *Zarei v. Iran,* 2023 ONSC 221, COURT FILE NOS.: CV-20-00635078-0000 and CV-22-0674774-0000, 10 January 2023.

completed as efficiently as possible. Whether Interpol possessed international legal personality had been one of the most debated issues during the negotiations.

26. The representative of the Republic of Korea informed the CAHDI of her country's position and practice regarding this agenda item. She noted that the Republic of Korea adhered to the doctrine of restrictive state immunity, as it is recognised under customary international law, without the need for specific domestic legislation. The Korean Constitution, under Article 6, stipulated that "treaties duly concluded and promulgated under the Constitution and the generally recognised rules of international law shall have the same effect as domestic law." This framework had allowed Korea to integrate the principles of international law, including state immunity, into its legal system without additional statutory enactments. In practice, Korean national courts had addressed cases involving state immunity, most commonly in relation to claims for compensation stemming from employment or service contracts with foreign state entities, such as US Forces Korea. The representative shared one example regarding a state-owned airline. The Korean Supreme Court had held that, despite the airline being state-owned, private actions relating to air transportation contracts could not be deemed sovereign acts. Importantly, the court found that the exercise of jurisdiction by Korean courts in this matter did not amount to undue interference with the sovereign activities of the state involved.

27. The representative of the United States of America reported on two cases of interest. The long-running case of *Hungary v. Simon*[6] had already been mentioned at previous CAHDI meetings. The plaintiffs, Holocaust survivors who were Hungarian nationals in residence during World War II, alleged that their property was confiscated by officials of the Hungarian government and employees of the railroad, MAV, and that they had never received compensation for the confiscated property or restitution of the property. They invoked the expropriation exception to sovereign immunity under the FSIA. On 24 June 2024, the United States Supreme Court had granted *certiorari* on three questions concerning the interpretation of the expropriation exception. The questions focused on whether the historical commingling of assets following the expropriation and liquidation of property by a foreign state is sufficient to establish that a general treasury fund of that state constitutes the proceeds of seized property for purposes of the sovereign immunity exception. In an *amicus curiae* brief filed with the Supreme Court on September 3, 2024, the United States had reiterated previous positions on the issues presented, including that historical commingling of assets is insufficient to satisfy the FSIA's expropriation exception. A decision in this case was pending.

28. In the second case, *Estate of Tamar Kedem Simon Tov v. United Nations Relief & Works Agency (UNRWA),*[7] family members of victims of the 7 October 2023 attacks by Hamas in Israel brought suit against UNRWA and against current and former UNWRA officials in the Southern District of New York. The plaintiffs alleged that the defendants had aided and abetted Hamas in the commission of international torts on 7 October 2023. The United Nations (UN) asserted to the Department of State the immunity of all named defendants and requested that the United States intervene in the suit to ensure respect for the privileges and immunities of the UN in accordance with its international obligations. On 30 July 2024, the US government had filed a letter with the District Court addressing the immunity of the defendants. The US Government informed the court that pursuant to the UN Convention on Privileges and Immunities, UNRWA is an integral part of the UN and accordingly enjoys the absolute immunity of the UN from US jurisdiction. In the view of the US's government, the two current senior-level UN officials named in the suit with the rank of Under-Secretary-General enjoyed diplomatic agent-level immunity under the convention and were thus likewise immune from the US jurisdiction. Finally, the US government letter informed the court that the lower-level and former UNRWA officials named in the suit were afforded immunity from US jurisdiction for their official acts, but did not, at this early stage of the proceedings, make a determination as to whether the alleged conduct fell within the scope of their official capacities. The plaintiffs had filed their

[6] *Republic of Hungary, et al., Petitioners v. Rosalie Simon, et al.*, US Supreme Court, No. 23-867.
[7] *Estate of Kedem et al v United Nations Relief and Works Agency et al*, U.S. District Court, Southern District of New York, No. 24-04765.

response only on 13 September 2024 and the representative had not been able to review that document yet.

29. The representative of Norway briefed the CAHDI about the circumstances surrounding the closure of the Norwegian representative office in Al Ram in the West Bank, in the so-called Area C which is fully controlled by Israel. On 8 August 2024, the Israeli Ministry of Foreign Affairs had informed the Norwegian Embassy in Tel Aviv that "Israel will no longer facilitate Norway's representation to the Palestinian Authority". Furthermore, the note had stated that "[t]he diplomatic status in Israel of Norwegian officials posted to serve in Norway's representative office in the Palestinian Authority shall be revoked 7 days after the date of this note" and that "Israel will not accredit Norwegian diplomats in the State of Israel, if they are sent to be posted to serve in Norway's representative office in the Palestinian Authority". The representative of Norway explained that his country had been somewhat perplexed by the choice of the wording "their diplomatic status shall be revoked 7 days after the date of this note", but when asked for clarification, Israel had stated that the Note Verbale did not make the diplomats *persona non grata*. After some internal deliberations on possible alternatives, Norway had replied in a note two days later and notified Israel that the diplomatic functions of the diplomats in question would come to an end on 15 August 2024 using thus a standard notification on completion of tenure according to Article 43 (a) of the VCDR. The note had further stated that Norway expected the said notification to have the legal effects described in Article 39 (2) of the VCDR, in other words that the diplomats concerned would retain their privileges and immunities until they left the country. The note had further stated that Norway would assume that the premises of the representative office would remain inviolable. Israel responded in a note, on 14 August 2024, that Article 39(2) of the VCDR would apply, but at the same time stated that the representative office was not a diplomatic mission, and its premises did not, according to Israel, enjoy any diplomatic status, privileges or immunities. As a result of the Israeli actions, Norway had to close its representative office until further notice, and to quickly re-organise the way it works in the Occupied Palestinian Territories, including how it provides consular services there. He further noted that the Israeli note of 8 August 2024 only spoke of Norway's representation to the Palestinian Authorities, and not of the provision of consular services. However, with the restrictions imposed on Norway by Israel, it would not be possible for the time being to provide consular services from the representative office either. The representative of Norway noted that several CAHDI delegations had expressed support for Norway urging Israel to reconsider its decision for which his country was extremely grateful for. He stated that this was not only a practical issue, but also a legal one and a matter of principle. In Norway's view, the Israeli decisions leading *de facto* to the closure of the representative office were unlawful. The office was not located on the Israeli territory and Israel was not the host state of the office. In its Advisory Opinion of 19 July 2024[8], the International Court of Justice (ICJ) had clearly concluded that Israel's continued presence in the Occupied Palestinian Territories was illegal and had to be brought to an end. At the same time, the ICJ had emphasised that Israel continued to be bound by the obligations incumbent on it as an occupying power. The representative recalled that a central element of those obligations was to administer the occupied area for the benefit of the local population. The aim and purpose of the Norwegian representative office had since its opening 30 years ago been exactly that: to improve the situation for the local population. Therefore, when the Israeli Government ordered the closure of the office, it did so, in view of Norway, in violation of Israel's obligations as an occupying power.

30. After having first expressed his support for Norway, the representative of Ireland brought to the attention of the CAHDI a recent decision in an employment law dispute against a resident diplomatic mission in Dublin by the Workplace Relations Commission, a domestic body in Ireland that provides mediation and adjudication services in respect of workplace complaints and disputes. The case was brought against an embassy in Dublin by a chauffeur who remains employed by the embassy. The embassy did not attend the hearing of the complaint but had sent a letter to the Workplace Relations Commission stating that it wished to invoke state

[8] ICJ, *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion, 19 July 2024.

immunity. The letter further stated that, without prejudice to its claim of state immunity, the embassy considered that the complainant had not provided any details, statements or evidence to support his claim and that his conditions of service were governed by his employment contract and that he had received the entitlements under that contract. The Workplace Relations Committee found with regard to the claim of state immunity that the complainant's duties as a chauffeur did not involve the exercise of public authority and that state immunity did therefore not apply.

31. The representative of Mexico informed the CAHDI of judicial developments in her country concerning the immunity of international organisations. In Mexico, the Mexican federal courts considered that there is no immunity from jurisdiction when international organisations act in a private capacity, as in the case of labour disputes. Thus, jurisdiction can be exercised over such matters. However, the entities of the UN system had so far not recognised the jurisdiction exercised by the Mexican labor courts, arguing that the Convention on the Privileges and Immunities of the UN establishes absolute immunity. In this context, and with a view to facilitating the settlement of the disputes in question, attention had recently been drawn to the existence of alternative mechanisms for settling disputes within the framework of the aforementioned international organisations. Mexico was of the view that, in such disputes, alternative mechanisms for the settlement of disputes should be sought. The Chair noted that this issue would be of particular interest to the ILC's Special Rapporteur on the Settlement of Disputes Involving International Organisations, Mr August REINISCH, who also attended this 67th meeting of the CAHDI.

32. Before closing the discussion, the CAHDI decided that, as a general rule, CAHDI members who have provided information under this agenda item will be invited to provide their interventions in writing soon after the meeting for an early distribution by the Secretariat given that to receive this information quickly can be useful for delegations and the preparation of the draft meeting report always takes some time after the meeting.

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

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

34. The representative of Slovenia drew the attention of the CAHDI to the case of *Chelleri and Others v. Croatia*.[9] The applicants, three Slovenian fishermen, complained that their convictions by the Croatian courts for minor offences with respect to their activities in the maritime waters, awarded to Slovenia by the Arbitration Award but still claimed by Croatia, violated Article 7 of the European Convention on Human Rights (ECHR, Convention). The ECtHR declared the applications inadmissible. According to the Court, they were manifestly ill-founded because the fishermen should have foreseen that their conduct in these waters would be lawfully penalised by the Croatian authorities (i.e. "the predictability test"). In this regard, the representative of Slovenia recalled that Croatia was rejecting the Arbitration Award of 29 June 2017 in the maritime boundary dispute that had declared the respective maritime waters to belong to Slovenia. However, the Court was not asked to decide on the validity of the award or to delimit the maritime border. The fishermen had only asked the Court to decide whether the other state had the right to penalise fishermen for fishing in the area defined by the Arbitration Award and implemented by Slovenia in the light of the principle of legality and the prohibition of punishment without law enshrined in Article 7 of the Convention.

35. The representative of Slovenia specifically raised a question regarding the application of international law in the context of ECtHR rulings. In the view of his country, the ECtHR regrettably relied entirely on the domestic legislation of the other state delimiting the fishing

[9] ECtHR, *Chelleri and Others v. Croatia* (decision), nos. 49358/22, 49562/22 and 54489/22, 16 April 2024.

zones. Moreover, the ECtHR considered the outer edge of the other state's fishing zone to be a maritime state boundary, which in fact was "only" a fishing zone boundary and not a validly established international state boundary between two countries. In reality, the maritime boundary was only established by the Arbitration Award. Therefore, according to the ECtHR, the fishermen should not have relied on the internationally established boundary between the two states but should have foreseen that they would be penalised for crossing a boundary that was not even defined as a state boundary in the legislation of the other state. At the same time, the ECtHR did not take into account the fact that the Arbitration Award had been incorporated into Slovenian legislation, as provided for in the Arbitration Agreement, and that Slovenia therefore expected its citizens to comply with its national law and with international law. In conclusion, in Slovenia's view, the ECtHR should have taken into account international law when applying the predictability test and not national legislation, in particular when it is not based on international law. The representative of Slovenia advised CAHDI delegations to advocate for international law to be more strictly observed by the ECtHR when deciding on individual applications, as this can have very important consequences for the lives of the individuals concerned.

36. The representative of Croatia reacted to the above-mentioned decision of the Court, by stating that the Republic of Croatia welcomed the Court's decision that Croatian courts did not violate Slovenian fishermen's rights when fining them for illegal border crossing and fishing. She expressed satisfaction that when the Republic of Croatia was forced to take reciprocal measures to fine Slovenian fishermen in response to the mass fining of Croatian fishermen since early 2018, it did so lawfully and without violating the rights of Slovenian fishermen as established by the ECtHR. In its decision, the Court also determined that it did not have jurisdiction to rule on the validity and legal effects of the 2017 Arbitration Award, confirming that the Arbitration Award had not been implemented, as previously determined by the Court of Justice of the EU (CJEU) in 2020 in the case of the *Republic of Slovenia v. the Republic of Croatia*,[10] where no infringement of the *acquis* was established. The Court emphasised that its decision was without prejudice to the efforts of both states to resolve the border dispute through peaceful dispute resolution means.

37. The representative of the Netherlands reported on the pending case of *Ziada v. the Netherlands*[11] lodged in front of the ECtHR by a Dutch applicant who is originally from the Palestinian territories. Six of the applicant's close family members were killed when their home in Gaza was destroyed during Israel's "Operation Protective Edge" in 2014. Before the Dutch civil courts, the applicant had requested a declaratory decision that two Israeli officials, who were commanding officers at the time, had acted unlawfully towards him and that they were (jointly) liable for damages. By judgment of 27 January 2020, the Regional Court of The Hague declared that it had no jurisdiction to examine the applicant's civil claim, stating that the Israeli public officials enjoyed functional immunity from jurisdiction. This judgment was confirmed by the Court of Appeal of The Hague on 7 December 2021. The Supreme Court, with its judgment of 25 August 2023, dismissed the applicant's appeal, holding that in line with customary international law public officials were entitled to invoke immunity from civil jurisdiction in foreign courts for acts committed in the exercise of their public functions, irrespective of the nature and seriousness of the conduct complained of, and irrespective of the availability of an alternative forum to pursue the claim. The Supreme Court referred, *inter alia*, to the case of *Jones and Others v. the United Kingdom*[12] and noted that there were no indications that state practice and a corresponding legal opinion had developed that would suggest otherwise. The ECtHR put forward the question of whether the grant of immunity from civil suit to the two Israeli public officials in question amounts to a violation of the applicant's right of access to court under Article 6 (1) of the ECHR. The representative of the Netherlands stated that this case and the question of whether public officials could invoke (functional) immunity from civil jurisdiction in

[10] Judgment of the European Court of Justice (Grand Chamber), *Republic of Slovenia v. Republic of Croatia*, Case C-457/18, 31 January 2020.
[11] ECtHR, *Ziada v. the Netherlands* (Communicated Case), no. 613/24, lodged on 23 December 2023 communicated on 18 June 2024.
[12] ECtHR, *Jones and Others v. the United Kingdom*, nos. 34356/06 and 40528/06, 14 January 2014.

foreign courts for acts committed in the exercise of their public functions concerned the development of international law. In view of the possible impact of the judgment in this case, the representative wished to inform CAHDI delegations of the option to intervene in this case. The deadline for submitting a request to intervene was 27 September 2024.

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

38. 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*

39. 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 informed the delegations that no new responses had been received since the last CAHDI meeting. The Chair then referred to the draft concept note for the second workshop contained in document CAHDI (2024) 21 *Confidential* Bilingual. The Chair reminded delegations that the workshop on non-legally binding instruments in international law (NLBIs) had taken place the previous day, featuring notable contributions from Professor Helmut AUST (University of Potsdam), who gave the keynote address, and Professor Mathias FORTEAU (Paris Nanterre University), who presented the ongoing work of the ILC on this topic. The workshop also included three panels, during which various aspects of the topic were explored.

40. Reflecting on the outcomes of the workshop, the Chair outlined a proposal for further action. He noted the ILC's request for input on non-legally binding agreements and pointed out that the CAHDI has already gathered relevant materials, including the analytical report prepared by Professor ZIMMERMANN in December 2022 and as revised by the CAHDI Secretariat in June 2023 and March 2024.

41. The Chair proposed that these documents be transmitted to the ILC as a contribution to their work. However, before proceeding, the Chair suggested that delegations be given an opportunity to review and, if necessary, update their responses. The Chair further proposed that, following the transmission, both the updated Zimmermann report and the state responses be made publicly available on the CAHDI website.

42. The Chair then invited delegations to express their opinion regarding these proposals, the transmission of the Zimmermann report and the updated state responses to the ILC as well as on the publication of these documents on the CAHDI website. Furthermore, the Chair invited those who had attended the workshop to share any comments or reflections. The aim, he noted, was to conclude the discussions on the potential follow-up actions of the CAHDI on this topic.

43. The representative of Canada expressed gratitude for the workshop and noted that, while grappling with non-legally binding instruments remained challenging, it was reassuring to see other colleagues dealing with similar issues. The representative emphasised the importance of developing a more consistent practice in handling NLBIs, as these agreements were increasingly used among states. He suggested that initiating more predictable practices around NLBIs would be a valuable contribution. As he had not attended the concluding session of the workshop, he wondered whether there had been any final conclusions about operationalising a potential compendium of best practices or model clauses.

44. The Chair thanked the Canadian representative and confirmed that the workshop had ended with the suggestion of further work by the CAHDI on this topic. But that delegations could also comment more in general on this topic.

45. The representative of Finland thanked the Austrian Federal Ministry for European and International Affairs and the CAHDI Secretariat for organising the workshop. Her delegation had appreciated the combination of academic perspectives with practical insights from different

countries. Reflecting on the discussions, the representative noted that practices related to NLBIs across countries appeared to be quite similar, including the terminology, decision-making processes, and standard clauses. She suggested that the CAHDI, in collaboration with the ILC, should continue this work and gather the shared knowledge. She expressed support for the development of common models, a shared glossary and guidelines, emphasising that such resources would serve as helpful tools, not prescriptive rules. Collecting this information would also improve mutual understanding during negotiations, making it easier to produce common documents by being aware of other countries' practices.

46. The representative of Australia expressed his strong support for the previous statements made by Canada and Finland. He extended his appreciation to the Chair, Austria, and all participants for the valuable workshop, which highlighted a commonality of approach among many states regarding NLBIs. Australia would see value in developing a compendium of state practices, not as a prescriptive tool but as a descriptive one. He noted that Australia has publicly available guidance on the Foreign Ministry's website, which includes a glossary of terms and a model instrument. The representative expressed his delegation's willingness to contribute to the collective effort.

47. The representative of France joined the delegations in expressing her gratitude for the workshop and underlined that she considered this work to be overall very useful to continue. She estimated a compilation of national documents to be of particular value although France would not have such internal guidance yet. She furthermore expressed interest in model clauses or a glossary but found that guidelines at this stage would be premature and should wait for the work of the ILC to be concluded.

48. The representative of the United Kingdom expressed her delegation's strong support for the idea of collating best practices for NLBIs but emphasised the need to maintain flexibility, favouring a non-prescriptive compendium over fixed guidelines. The representative noted the importance of terminology, expressing scepticism about the term "non-binding agreements" and acknowledged this might be a topic for long-term debate. Her delegation would be keen to participate in any follow-up work and offered to provide an expert for such efforts. Additionally, she agreed with the suggestion to share documents with the ILC and to coordinate future work in this area.

49. The representative of Norway appreciated the balance between academic contributions and state practice presented during the workshop and emphasised the value of CAHDI contributing to the dissemination of state practices and glossaries related to NLBIs, which would benefit states in their own work. He underscored the importance of flexibility in using non-legally binding instruments and expressed a preference for using the term of "instruments instead of "agreements". While acknowledging the diversity of purposes these instruments served, the representative suggested that creating a model agreement should not be a priority at the moment. He also agreed with France that developing guidelines might be premature at this stage.

50. The representative of Switzerland also supported the idea of compiling national practices and glossaries and joined Norway and France in holding that the development of guidelines would not be opportune at this point of time. He also questioned the utility of guidelines in general arguing that this would mean losing the flexibility of NLBIs.

51. The representative of Greece echoed previous speakers, noting that the work done by Professor Zimmermann already served as a useful compilation. In light of the previous day's workshop, Greece would update its replies to the questionnaire. The representative agreed that sharing this information with the ILC would be highly beneficial. However, she expressed hesitation about developing a model agreement or guidelines at this stage.

52. The representative of Luxembourg praised the idea of creating a glossary of non-binding terms related to non-binding legal instruments. He suggested that, given his country's use of multiple official languages, it would be beneficial to have versions in English, French and German. Regarding the drafting of model instruments, he expressed hesitation, noting that, based on personal experience, models often do not fit specific situations.

53. The representative of the US stated that while they appreciated the Chair's overall proposal, they had concerns about the inclusion of guidelines. He emphasised that sharing practices among states was beneficial, but terms like "best practices," "glossary," or "guidelines" could compromise the desired flexibility. Nonetheless, the representative commended the effort and expressed intent to use this initiative to enhance transparency within their own treaty office, acknowledging it as a valuable exercise.

54. The Chair summarised the discussion and concluded that various options were available moving forward. He proposed that, while excellent material was available, further work was still necessary. This included compiling glossaries from various states and preparing a paper for the next meeting of the CAHDI. The Chair noted a general reluctance in the room regarding the development of guidelines. It was suggested that the focus should first be on gathering existing materials and then assessing whether guidelines could be created, particularly in areas such as terminology. The possibility of a multilingual approach was also highlighted.

55. The Chair emphasised the need for flexibility and caution concerning any prescriptive models while encouraging the collection of existing resources. The intention was to evaluate the potential for developing guidelines in certain areas by the next meeting of the CAHDI in March 2025.

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

56. 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 out that, since the previous CAHDI meeting, Ireland had submitted its response to the questionnaire and that altogether 24 replies by delegations had been received so far. The Chair further introduced the preliminary analysis of the main trends arising from the replies to the questionnaire as contained in document CAHDI (2024) 11 *prov Confidential*.

57. The Slovenian representative expressed gratitude to all delegations that had responded to the questionnaire and encouraged those who had not yet participated to do so, emphasising the importance of gathering comprehensive input for the benefit of all delegations. He also proposed considering the creation of a compendium on the subject and praised the excellent seminar held the previous day. The representative noted the discussion on the topic to bring an added value for treaty offices of Ministries of Foreign Affairs by way of sharing expertise and best practices.

58. The Chair thanked the Slovenian representative and encouraged further contributions, indicating that CAHDI would subsequently decide on future actions regarding the topic based on the responses gathered.

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

59. The Chair then introduced the questionnaire on “Soft law instruments”, explaining that the issue had been included on 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, 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 noted that, to date, six delegations had responded, and these replies could be found in document CAHDI (2024) 7 *prov Confidential*.

60. The Italian representative took the floor and thanked the Chair for highlighting issues that have become central to their discussions. He expressed appreciation for those who have already submitted their replies to the questionnaire and commended the organisation of the previous day's seminar and its in-depth presentations. The representative emphasised that discussions around soft law instruments illustrate how international relations benefit from diverse tools that enhance cooperation among states and promote development, trade, and cultural exchanges. The representative further noted the growing recognition of soft law within domestic

administrations and national courts. Additionally, they mentioned the upcoming UNIDROIT event that would focus on international soft law instruments and national courts, which would take place after the UN General Assembly in December 2024. The representative concluded by encouraging further responses to the questionnaire to help CAHDI advance the project.

61. The Chair thanked the Italian delegate and encouraged further contributions, indicating that CAHDI would subsequently decide on future actions regarding the topic based on the gathered responses.

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*

62. In the framework of its activity as the European Observatory of Reservations to International Treaties, the CAHDI examined a list of outstanding reservations and declarations to international treaties. The Chair presented the documents containing these reservations and declarations which are subject to objection (document CAHDI (2024) 22 *Confidential*). He furthermore drew the attention of delegations to document CAHDI (2024) Inf 3 containing reactions to reservations and declarations to international treaties previously examined by the CAHDI and for which the deadline for objecting had already expired.

63. The Chair underlined that the reservations and declarations to international treaties still subject to objection were contained in document CAHDI (2024) 22 *Confidential*, which included 12 reservations and declarations made with regard to treaties concluded outside (seven in total) and within the Council of Europe (the remaining five). Out of the twelve items, five had been newly added since the last CAHDI meeting.

64. 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 was similar to a declaration made by the Republic of Indonesia stating that documents issued by the prosecutor office as the prosecuting body in the Republic of Indonesia were not considered to be included in public documents as understood in Article 1. At the time, this declaration had been considered a reservation by the Netherlands and Germany that had objected to it. Similarly, the Chair explained, the declaration by Rwanda might be considered problematic as substantively restricting the material field of application of the Convention and for this reason being incompatible with its object and purpose. No delegation wished to make a comment with regard to this item.

65. 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 present Convention, the Chair explained that this reservation reminded him of other similar reservations made for instance by China to the same provision of the Convention which was objected to by, e.g., the United Kingdom. The representative of the United Kingdom took the floor and explained that, as a matter of general treaty policy, her country considered reservations of the kind as made in the case at hand, i.e., where a treaty provided for compulsory jurisdiction without an opt-out, inadmissible as incompatible with the object and purpose of the treaty.

66. 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 Convention, the Chair noted that these reservations concerned *inter alia*, the right to acquire and change one's 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 the 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, Germany, the Netherlands, Norway, Poland, Sweden, Switzerland and the United Kingdom took the floor and indicated that they were currently assessing the above-mentioned reservation to examine whether it was contrary to the object and purpose of the Convention.

67. 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 broader than foreseen by Article 8 of the Convention. The representative of Austria took the floor and noted that his country shared the concern and that it was therefore currently examining this declaration. No delegation wished to make a comment with regard to this item.

68. With regard to the **declarations** to the *Convention on the international recovery of child support and other forms of family maintenance (2007)* and *Protocol on the Law applicable to maintenance obligations (2007)* by which **Georgia** declared "that the application of this Convention" and respectively "the application of the Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations" "in relation to Georgia's regions of Abkhazia and the 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 reminded that Georgia had made similar declarations in the past, e.g., in 2019, to the International Agreement on Olive Oil and Table Olives (2015) and in 2023 to the Minamata Convention on Mercury (2013). No delegation wished to make a comment with regard to this item.

69. With regard to the **declaration** of **Honduras** to the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984)* by which Honduras declared that "[…] pursuant to Article 22 of the Convention, […] it recognizes the competence of the Committee against Torture to receive and consider communications from individuals subject to its jurisdiction, once domestic remedies have been exhausted, who claim to be victims of a violation of the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in 1984." The Chair explained that the wording of this declaration limits the possibility to receive and consider communications to a larger extent than foreseen by Article 22 of the Convention: "A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention." Furthermore, Article 22 in its paragraph 5 continued by stating that "The Committee shall not consider any communications from an individual under this article unless it has ascertained that: […] (b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention." No delegation wished to make a comment with regard to this item.

70. Concerning the **declarations** made by **Estonia and Spain** 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 (EPPO) as a judicial authority for the purposes of mutual legal assistance under the Convention and its Protocols, no delegation wished to make a comment with regard to this item.

71. With regard to the **declarations** made by **Azerbaijan** concerning the *Convention against trafficking in human organs (2015 – ETS No. 216)* and the *Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (2015 - CETS No. 217)* 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 declarations resembled the three declarations made by Azerbaijan that had been examined by the CAHDI in 2021 and 2022 as declarations implying the exclusion of any treaty-based relationship between the declaring state and another state party to a treaty. No delegation wished to make a comment with regard to this item.

72. 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 was objected to by a number of CAHDI delegations (Austria, Finland, Germany, Netherlands, Norway, Sweden and Switzerland). The representatives of Austria, Finland, Norway and Switzerland took the floor and explained that they would currently assess the declaration.

7 CURRENT ISSUES OF PUBLIC INTERNATIONAL LAW

7.1 Topical issues of public international law

- ***Exchange of views with Prof. Chiara Giorgetti, University of Richmond: Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine and a future Claims Commission***

73. The Chair welcomed and introduced Professor Chiara GIORGETTI, Professor of Law at Richmond Law School, Senior Fellow at the International Claims and Reparations Project at Columbia Law School, and Vice-Chair of the Board of the Register of Damage for Ukraine. Professor Giorgetti provided the CAHDI with an update on the Register of Damage, outlining its background, progress to date, lessons learned during its first year of operation, and anticipated future work. The speaking notes from Professor Giorgetti's presentation are set out in **Appendix V** to this report.

Discussion

74. Delegations thanked Professor GIORGETTI for her comprehensive overview and expressed appreciation for the work of the Register of Damage, its Board and Secretariat.

75. The representative of the Netherlands commended the Board and the staff of the Register for the work already completed in a short period of time. The representative noted the importance of the three-step approach outlined by Professor GIORGETTI and emphasised that it was important to follow through because registration of claims alone provides little satisfaction to the many victims. He highlighted that millions of claims were expected. The representative confirmed that the 3rd preparatory meeting would take place in The Hague from 13-15 November 2024, and stated that he looked forward to welcoming delegations to the meeting and discussing concrete steps for possible treaty negotiations.

76. The representative of Iceland stated that her country was pleased that the Register was now operationalised. She noted the statement made by the representative of the Netherlands regarding a claims commission and expressed interest in participating in this future work. The representative of Iceland asked Professor GIORGETTI whether there was a timeframe for the remaining work related to claims categories that were still being worked on.

77. The representative of Italy stressed that the establishment of a solid and legally sound framework for a future compensation mechanism to provide reparations to Ukrainians was a priority for her country. Italy expressed the hope that this process would soon create the necessary conditions for the establishment of both a claims commission and a fund. The

representative asked Professor GIORGETTI how she envisioned the implementation of the Register of Damage in a new environment and how new technologies could facilitate the work of a future claims commission, noting that this was the first instance where a fully digitalised mechanism had been used to collect complaints.

78. The representative of Czechia also thanked the Secretariat of the Register for its involvement and contribution to the preparatory meetings of the future claims commission. In his capacity as the Vice-Chair of the Conference of Participants, the representative extended the invitation to the 3rd preparatory meeting to all participants of the CAHDI who had not yet joined the Register of Damage and encouraged those delegations to extend their political and possibly financial support to its work. He noted the two categories of membership of the Register, including the possibility of joining as associate members which entailed political support but not necessarily financial contributions.

79. The representative of Ukraine stated that, since the outset of the full-scale invasion on 24 February 2022, the Russian Federation had consistently breached international humanitarian and human rights law, targeting civilians, infrastructure, and cultural heritage. The deliberate attacks on civilian populations and the unlawful deportation of individuals, including children, underlined the urgent need for accountability and justice. 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 marked, in his view, a significant step in the collective response to this aggression. The representative noted that the Register served as a crucial tool to document the extensive damage, loss, and injury caused by the Russian Federation's internationally wrongful acts against Ukraine, ensuring that the suffering of the Ukrainian people does not go unnoticed and unaddressed. The representative stressed that while the establishment of the Register of Damage marked an essential first step toward securing reparations for the victims of Russia's aggression, it must be followed by the creation of a comprehensive international compensation mechanism. He expressed Ukraine's deep gratitude for the continued support and solidarity from the Council of Europe and the international community and called on all member states, observer states, and international organisations to join in supporting the Register and contributing to the development of a future compensation mechanism. The representative stated that, together, the principles of justice, accountability, and the rule of law could be upheld, ensuring that those responsible for these grave violations are held to account. He concluded by thanking delegations for their attention and unwavering support for Ukraine in these challenging times.

80. The representative of Switzerland posed two questions to Professor GIORGETTI. First, while acknowledging the impressive progress made by the Register, which he saw as a positive signal, he expressed concern that the rapid pace could raise expectations that may be difficult to meet. He asked how Professor GIORGETTI saw this challenge and whether certain elements of quantification and assessment could be incorporated during the registration phase, or if they should be deferred to the claims commission stage. Second, he inquired about Professor GIORGETTI's views on addressing damages caused by Russian citizens on Ukrainian territory and whether including such cases would enhance the legitimacy and effectiveness of the overall mechanism.

81. The representative of Germany also expressed caution about the level of expectation which was being created by the fast progress of the Register. The representative noted that funding of the claims being registered was one of the major problems and that the fund question would be crucial to meeting these expectations. She asked how Professor GIORGETTI saw the involvement of the Russian Federation in this mechanism once it is set up and what possibilities could be foreseen, and whether this question was already part of the Register's discussions.

82. The representative of Poland asked about the form of a future claims commission and whether it could also be created through an enlarged partial agreement, as was the case for the Register, or whether it should be established by a treaty.

83. The representative of Finland noted that her country views the Register of Damage as an important step toward achieving accountability for Russia's war of aggression. Finland was

pleased that the Register had commenced its work in an efficient manner, that new claims categories were advancing well, and that the Register had taken a victim-centred approach starting with claims from individuals and concerning critical infrastructure. The representative asked two questions concerning the claims commission: first, in Professor GIORGETTI's view, what would give legitimacy to the future claims commission; and second, what considerations should be taken into account when deciding upon its governance structure, including how to find the right balance between political guidance from participating states and the independence and impartiality of its commissioners.

84. The representative of the United States of America noted that his country was very supportive of the Register that had made a lot of progress in a relatively short period of time. He agreed with the representative of Czechia that expanding the scope of countries joining the Register was very important and that collective messaging on the importance of joining the register was also essential. The representative welcomed other participating states amplifying this message and also welcomed those delegations in the room who were not part of the Register as yet to consider doing so. The representative also noted that his country was strongly in favour of moving forward on the establishment of a claims commission, which the United States viewed as the next critical step in the process. The claims commission would consider issues such as who is the right claimant to bring a claim, and questions of causation such as, for example, whether the damage was caused by Russia's aggression after February 2022. These questions would give a clearer sense of the total value of the claims, which, based on the work of prior claims processes, would likely be a fraction of the amount reported to the Register. This would therefore help for planning and expectation setting. Further, having an adjudicated or assessed value of claims would help to consider avenues for payment, or any future agreement with Russia. The representative noted that claims commissions take time to create, and adjudication of mass claims will likely take years. He noted that it was good to start this process as soon as possible and have it moving while other difficult issues and questions were addressed, noting that the next step would not involve setting up a compensation fund or paying out claims. These steps would come later and would be discussed separately. He thanked the Netherlands for chairing the preparatory meetings and asked Professor GIORGETTI what challenges, if any, the Register and Board were facing that the Conference of Participants (COP) could assist with.

85. The representative of Slovenia reiterated his country's strong support for the process of establishing a claims commission. He made a logistical proposal to align several processes within the comprehensive response to Russia's aggression against Ukraine, which would help smaller delegations follow the discussions more easily. He suggested that this approach be considered in the context of the ongoing discussions on a special tribunal and noted that scheduling meetings closer together could simplify logistics for delegations.

86. The representative of France reiterated his country's strong commitment to the principle of reparation, stressing that the Russian Federation must compensate for the damage caused by its aggression against Ukraine. The Register of Damage was the first concrete step towards fulfilling this obligation. He noted France's support for a step-by-step approach, which had started with the establishment of the Register and was now continuing with the ongoing discussions on the conditions for the establishment of a claims commission and would be concluded with the discussion on the question of the compensation fund. The representative joined the remarks made by the representatives of Germany and Switzerland that time must be taken to work on the creation of a claims commission and that care should be taken to not precipitate things too much as there were many questions to address, including its legal foundation as well as guarantees of impartiality. The representative noted that a legally robust commission would also have greater political legitimacy and could therefore be supported by a number of key states. There would then remain the last step, the fund, which as discussed under Item 2.1 of the agenda, raised a number of legal questions, including the use of frozen assets. The representative of France noted that CAHDI delegations could count on the support of France in all this work and expressed support for the previous intervention by the representative of Slovenia regarding the organisation of meetings and facilitating participation, in an inclusive manner especially for smaller states.

87. The representative of the United Kingdom stated that her country was fully behind the idea that Russia has an obligation to compensate Ukraine for the internationally wrongful acts that it has committed and continues to commit. She noted that the United Kingdom was supportive of a claims commission in principle and that the first preparatory meetings had been very constructive. The representative shared the prior comments made by the representative of France regarding the timetable and questioned whether early 2025 was ambitious given the complexity and importance of the issues that needed to be addressed and that work was required on the key principles as well as the model. She asked whether a treaty was required or whether there were other possible models; and whether the Council of Europe was the right place to anchor a claims commission or whether it should be a stand-alone organisation. The representative of the United Kingdom also echoed comments made regarding the need for broad political buy-in and noted that a clear view on the costs of this endeavour was needed as well as a plan for the funds which will be used to satisfy the claims that are adjudicated. She noted that the question of Russia's involvement in this endeavour was interesting and may raise political obstacles and difficulties, but from a legal perspective may help with some of the difficult legal issues and principles in the long run that are needed to bring the exercise to a successful conclusion.

88. The representative of Canada joined the remarks of others underlining the importance of creating a compensation mechanism and noted that his country had been a co-facilitator at the United Nations General Assembly (UNGA) on the reconnaissance of the necessity of the creation of such a mechanism. He noted that Canada was very happy to be an associate member of the Register of Damage, and pointed out that Canada was supporting steps for the establishment of a claims commission. The representative stated that delegations could count on the long-term support of Canada.

89. Professor GIORGETTI thanked delegations for their questions and statements of support. In relation to the timeframe, she stated that the Board was hoping that it would have all the claim forms approved by the first quarter of 2025 and then possibly by the COP. After the approval of the claims forms, the collection of claims would commence necessitating the development of a digital claim process, meaning that claims will only be submitted on a digital form either via a Ukrainian application or website. Professor GIORGETTI underlined, in this context, of the importance of collecting and maintaining confidentiality of the data that is submitted. She furthermore noted that a satellite office in Ukraine had recently opened, and the Register would start publicising the fact that the claim forms are open and that the claimants can then submit claims. As a second phase, the claims would be registered and reviewed. According to Professor GIORGETTI, it was hoped this would begin before the end of the year for the claim categories that had already been approved and for which claims had already been submitted. There were about 10,000 claims which the Board hoped to start reviewing, and she noted that collecting data in an all-digital form made it easier to process and group claims. Following the examples of previous claims commissions, the Register would also group claims, which may be done in regional or other ways.

90. In response to the question of whether the Register can begin quantifying claims, Professor GIORGETTI explained that the Register did request certain types of claims, called pecuniary claims, and that it was possible to ask for quantification. However, she clarified that it was not the Register's role to quantify claims. Instead, the Register collects evidence in a manner that ensures the claims commission will have all the necessary information to quantify damages for pecuniary claims. She emphasised that this was one reason why the second step was so important, and that the number of claims would already be important for determining the overall value of the claims. While the quantification and decisions would be taken by the claims commission, having the data would be important for any negotiations and also in terms of understanding the situation. Professor GIORGETTI stated that the work of the Register and claims commission went hand-in-hand. She did not want claimants to submit their claim without any hope of compensation later, and noted that some claimants may be reticent to submit claims if the second step does not exist.

91. On the form of the claims commission, Professor GIORGETTI noted that various models were possible, as outlined in the zero draft. She highlighted that examples like the United Nations

Compensation Commission (UNCC) could offer valuable insights into the process. Professor GIORGETTI explained that both "thin" and "thick" claims commissions were options — meaning it could be a costly structure, similar to the UNCC with numerous commissioners, or a more streamlined approach, like the Eritrea-Ethiopia Claims Commission, which had only five commissioners. In the case at hand, the idea would be that a claims commission could be established initially, with commissioners added as needed. She emphasised that the creation of a claims commission was crucial to supporting the Register's work and ensuring claimants have confidence in its existence. Professor GIORGETTI noted the concerns of some delegations regarding raising expectations that might not be fulfilled, and responded that this was an important consideration but that there was also a clear syllogism and responsibility of the Russian Federation that is recognised by the UNGA and by the work of the Council of Europe. In her view, the collection of data and the idea of a compensation commission were important to provide a certain confidence in the process without raising too many expectations that cannot be fulfilled.

92. Regarding the issue of the fund, Professor GIORGETTI agreed that the Russian Federation must ultimately bear responsibility for payment. Indeed, the zero draft envisioned Russia's participation. However, she noted that this would need to be addressed through negotiations. From a theoretical perspective, she highlighted that there were several possible approaches to structuring the fund, drawing on precedents from past examples. For instance, in the Iran-US Claims Tribunal, some sovereign funds had been frozen, and Iran had agreed to keep some of the funds that were frozen to pay for the compensation while others were returned to Iran. There would be many ways in which this can go, both in terms of compensation and the fund, and there were several ways in which the negotiations could look to past examples and apply them to this unique and specific situation.

93. Regarding the question from the representative of the United States regarding what the Council of Europe can do for the Board, Professor GIORGETTI noted that the Board was already very grateful for the enormous support that had already been given. She noted that enlarging the membership was always very important, and that broad support was desirable in order to provide the necessary support to the work of the Board.

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

94. No delegations took the floor on this sub-item.

Discussion

95. The representative of Poland informed the CAHDI that Poland had filed an application for permission to intervene in the proceedings *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)* on 24 July 2024. Simultaneously, Poland had filed a declaration of intervention under Article 63 of the ICJ Statute. With respect to the latter, Poland had not only concentrated on interpretation of the Genocide Convention, but also the Statute of the ICJ as a treaty, which was important to the case. With respect to the intervention under Article 62, Poland made two main arguments: the first concerning the *erga omnes partes* nature of the obligations under the Genocide Convention, and the second concerning the implications of the possible judgment for assessing Polish support for Ukraine; and the second argument referred to the potential impact of the judgment for the assessment of the assistance which Poland undertook vis-à-vis Ukraine since 2014.

7.2 Peaceful settlement of disputes

96. The Chair opened the floor for discussion on the peaceful settlement of disputes.

97. The representative of the Permanent Court of Arbitration (PCA) took the floor for the first time since the PCA had been granted observer status to the CAHDI. He made a statement which included information about the PCA, recent developments in inter-state cases administered by the PCA, and the impact of arbitration and other means of inter-state dispute resolution. The statement of the PCA is set out in **Appendix VI** to this report.

98. The Legal Adviser of the Council of Europe thanked the PCA for the interesting overview and commented on the PCA representative's observation that the arbitration between Armenia and Azerbaijan regarding the *Convention on the Conservation of European Wildlife and Natural Habitats (ETS No. 104, Bern Convention)* represented the first such arbitration under that treaty. The Legal Adviser noted that, as far as the Secretariat was aware, this was indeed the first use of an arbitration clause under a Council of Europe treaty altogether. The Legal Adviser noted that this arbitration raised interesting issues and that he looked forward to the final decision.

7.3 The work of the International Law Commission

- *Exchange of views with Mr Marcelo Vázquez-Bermúdez, Chair of the ILC*

99. Ambassador VÁZQUEZ-BERMÚDEZ, Chair of the ILC, presented the progress made by the ILC during the 75th session of the Commission with respect to each of the topics on its agenda. CAHDI delegations thanked Ambassador VÁZQUEZ-BERMÚDEZ for the helpful overview.

100. The Chair made four points in response to Ambassador VÁZQUEZ-BERMÚDEZ's presentation. First, he noted that the CAHDI was happy to see its current member, Alina OROSAN, also become a member of the ILC. Second, regarding Chapter 3 of the Report inviting contributions and observations, the Chair noted that two of these items were of special importance to the CAHDI: immunity of state officials from foreign criminal jurisdiction; and non-legally binding international agreements, which the CAHDI prefers to call instruments. The Chair encouraged CAHDI delegations to send contributions on the topic of immunity of state officials from foreign criminal jurisdiction to the ILC by 15 November 2024. On the topic of non-legally binding international agreements, he noted that the CAHDI had decided during its current meeting to send the CAHDI material on that topic, as well as the comments received from CAHDI states, to the ILC through the CAHDI Secretariat. Third, the Chair reiterated that it was unfortunate that the personal exchange between the CAHDI and ILC chairs could not take place this year, but that he believed that this exchange of views was extremely useful and hoped that it would resume next year. Fourth, the Chair noted that delegations had read the ILC report very carefully but that this was made more complicated by the fact that not all the texts were included in the report. There had been a previous practice that the results of the work of the Drafting Committee were included in footnotes in the document. Without this, in order to obtain a full picture, it was necessary to collect material and find special reports of the Drafting Committee on the internet. He noted that legal advisers would be happy to have everything in one document and asked that this be considered by the ILC.

101. The representative of Poland made two points. First, he noted that, for more than a decade, there had been a constant practice of the ILC preparing guidelines and conclusions and less concentration on preparing draft treaties. This trend was also seen in the current agenda and new topics for the long-term programme. He asked whether, against this background, there was discussion within the ILC or consideration given to whether there are areas of international law in which the ILC could assist states in drafting treaties. The representative's second question was whether there was any discussion within the ILC regarding how the ILC could help states to interpret and understand the application of new technologies to international law, and in particular cyberspace and artificial intelligence.

102. The representative of Finland noted that the ILC had had a productive session under Ambassador VÁZQUEZ-BERMÚDEZ's leadership. The representative noted that the summary of the work of the ILC in this report was a bit more elaborate than usual, which Finland found very useful. Finland considered it very important that the ILC can deliver according to its mandate and that its members from all corners of the world can contribute on equal footing. This is why Finland has contributed to the Trust Fund for Assistance to Special Rapporteurs of the ILC that was established in 2022. Finland was currently preparing its second contribution to the Trust Fund, and invited others also to consider contributing to that fund.

103. The representative of Australia noted that, with respect to the ongoing topic of sea-level rise in relation to international law, the Australia-Tuvalu Falepili Union Treaty had entered into force on 28 August 2024. This was the first time that a treaty had recognised Tuvalu's continuing statehood and sovereignty, notwithstanding the impact of climate change related to sea-level

rise. It also included Australia's commitment to assist Tuvalu in response to any major natural disaster, health, pandemic, or other matters, and will create special pathways to support mobility with dignity for Tuvalu citizens.

104. The representative of the United States noted that his country would be providing comments in writing to the Sixth Committee, including some concerns as well as some matters which his country believed were going very well. Regarding the immunity of state officials from foreign criminal jurisdiction, in comments submitted last December, the United States had detailed concerns about the project and urged the commission not to rush to the second reading of the draft articles. The United States were very pleased to see that the Special Rapporteur and Drafting Committee took the views of member states into account and that the ILC has invited member states to submit any additional views on Article 7 – 18 by mid-November. In light of controversy regarding the support for certain proposed provisions in the draft articles, the United States continued to believe that a refocus on the codification of existing customary international law would be most useful to states. With respect to piracy and armed robbery at sea, the United States very much appreciated the work of the ILC on this topic and agreed that it is critical to ensure consistency with the UNCLOS which, although the United States is not a party, the United States recognises as representing customary international law in almost all respects in relation to the maritime space. In particular, his country appreciates the useful work done to shed light on the various ways states have addressed these issues in their domestic frameworks, especially with respect to armed robbery at sea. The representative furthermore noted his country's appreciation for the importance of distinguishing between piracy, which occurs beyond the limits of the territorial sea and was well defined under long-standing international law and subject to universal jurisdiction, and armed robbery at sea, where underlying acts may resemble piracy but do not meet all the elements of that crime, and which is a matter more for domestic law and cooperation between states. Regarding the way forward on this topic, the United States believed the most useful product would be conclusions or draft guidelines developed from the recent practice of states and the International Maritime Organization, which have co-operated in addressing armed robbery at sea. States could benefit from using such a product to enhance their co-operation and domestic practices, whether by adjusting their national legislation or by benefiting from broader awareness of good practices that states have taken. On the topic of sea level rise in relation to international law, the United States recognised that sea level rise poses substantial threats to coastal communities and island states around the world. In this regard, the United States considered that sea level rise, driven by human-induced climate change, should not cause any country to lose its statehood or its membership in the UN, its specialised agencies, or other international organisations. The United States remained committed to working with Pacific Island states and others on issues relating to human-induced sea level rise and statehood to advance those objectives. The representative also noted that the United States had been co-sponsoring a draft resolution deciding to convene a UN conference to elaborate and conclude a legally binding instrument on prevention and punishment of crimes against humanity, which was a project undertaken by then ILC member Professor Sean Murphy. The United States encouraged co-sponsorship of the draft resolution and requested those that had co-sponsored to urge other UN member states to do the same. It was hoped that wide co-sponsorship will increase the likelihood that the resolution will be adopted by consensus in the Sixth Committee.

105. Ambassador VÁZQUEZ-BERMÚDEZ welcomed the good news that CAHDI would provide materials and information on non-legally binding instruments to the ILC, noting that this would be extremely useful for the ILC's work. Responding to the question from the representative of Poland, he recalled that, as mentioned by the representative of the United States, the ILC had prepared draft articles in 2018 intended to serve as the basis for a convention on crimes against humanity. He stressed that the form of the ILC's final product depended greatly on the nature of the subject matter. For example, it was innovative when the ILC adopted conclusions on the topic of fragmentation of international law. In that case, drafting articles or other hard law instruments was not feasible, as the work primarily involved clarifying the law and the relationships within the international legal system. Similarly, topics like the identification of customary international law focused more on clarification, offering valuable elements and guidance. On the topic of subsequent agreements and practice related to treaty interpretation,

the ILC chose to adopt draft conclusions rather than draft articles, recognising the need to clarify the law rather than codify it. Other topics under consideration, such as general principles of law and subsidiary means for determining rules of international law, were also areas where the ILC's role was to provide clarification due to the nature of the subjects. He noted that within the working group on the long-term program of work, there might be room for a proposal on a topic that could serve as the basis for a convention, but this would depend on suggestions from states.

106. In relation to the comment by the representative of Finland about the introductory part of the report, Ambassador Marcelo VÁZQUEZ-BERMÚDEZ noted that the general Rapporteur of the ILC, Ms Penelope RIDINGS, took this initiative which was supported by the ILC. The ILC had always discussed that a more elaborate introductory part might stop the readers going to the more substantive chapters, but also on the contrary that a good summary also provides the flavour for what comes afterward in different chapters on different topics. He noted that the challenge would be to continue doing this, and thanked Finland and others for contributions made to the Trust Fund to assist special rapporteurs. He also noted the information provided by the representative of Australia and stated that this was a very important development which will be taken due notice of in the discussions next year when the final report will be considered on civil rights in relation to international law, particularly regarding the inclusion and express reference to the continuity of statehood in a treaty. Finally, he welcomed the information provided by the representative of the United States regarding efforts toward negotiating a resolution to allow for the convening of a conference to negotiate a convention on crimes against humanity. He thanked delegations for their support to the ILC and stated that all observations and comments were always welcome and valued.

- ***Presentation and discussion on "Compensation for the damage caused by internationally wrongful acts" with Mr Mārtiņš Paparinskis, member of the ILC***

107. The Chair welcomed Professor Mārtiņš PAPARINSKIS, member of the ILC, for a presentation and discussion on "Compensation for the damage caused by internationally wrongful acts". The presentation of Professor PAPARINSKIS is set out in **Appendix V** to this report.

108. The Chair then welcomed Professor August REINISCH, member of the ILC, for a surprise intervention on the topic of settlement of disputes to which international organisations are parties. Professor REINISCH noted that Ambassador VÁZQUEZ-BERMÚDEZ had already provided an overview of the work, so he would focus on a few key points from his second report. The first and most significant point was the decision to rename the topic by dropping the word "international" from "settlement of international disputes." This change was made to avoid potential issues arising from the terminology. While the focus in 2024 remained on international disputes, particularly those between international organisations and states, the ILC would shift its attention next year to disputes involving private parties. Many of these disputes arose from private law matters, such as employment contracts, procurement, or tort claims. He emphasised that the topic concerned disputes where international organisations are one party, while the opposing party could be anyone else.

109. The second point of Professor REINISCH was to highlight the importance of the guidelines provisionally adopted this year regarding free choice of means of dispute settlement. As alluded to by Ambassador VÁZQUEZ-BERMÚDEZ, there should not be any hierarchy regarding the means of dispute settlement. Nevertheless, in spite of this absence of a hierarchy, draft guideline 5 was hoped to emphasise that arbitration and judicial settlement should be accessible. He expressed interest in the experience of delegations as legal advisers dealing with international organisations, and presumed based on the questionnaire received that there was a preference for informally settling disputes, but that nevertheless the ability to have resort to adjudicatory forms of dispute settlement may often be helpful. Further, Professor REINISCH noted that the 6th recommendation adopted deals with rule of law requirements, yet the expression 'rule of law' no longer appeared in the provisionally adopted text. He stated that he thought all of the important rule of law requirements, such as independent and impartial adjudicators and due process, were included. He wanted to highlight this point because it might be more difficult to find legal reasoning at the international level on why those rule of law requirements were necessary. He noted that, for next year's work, there might be additional

legal justifications which related directly to the work of the CAHDI, such as human rights considerations. For example, in disputes between private parties and international organisations within a regional context, Article 6 of the ECHR applied. The ILC also considered it important to identify parallel human rights obligations, such as Article 14 of the International Covenant on Civil and Political Rights (ICCPR). Access to justice and due process guarantees for individuals and private parties may vary depending on regional human rights entitlements, which is a key consideration for the types of legal disputes the ILC will address.

110. Professor REINISCH concluded by outlining some ideas that link this topic to the valuable work of the CAHDI. He expressed gratitude for the work done, and particularly the responses by delegations to the questionnaire which was accessible through the CAHDI website. Although the topic necessarily touched upon questions of immunity of international organisations, he made clear that this was not the core topic of the ILC's work, which was instead on ways and means or modes of settling such disputes. Settlement by domestic courts was just one of the many options, and as had been seen in developments like *Waite and Kennedy*, the alternative to not respect immunity was the better way. This was clearly not a call for reducing the immunity, but finding ways of settling such disputes that might otherwise not find an independent third-party. He highlighted linking this rationale from the European regional context and the ECHR with a broader global notion that he thought could be found in the general Convention on the Privileges and Immunities of the United Nations, as well as the parallel provision in the convention concerning the specialised agencies. He noted the similarities in the treaties which provide that, in cases of immunity of those organisations, other appropriate modes of settling disputes should be provided, in particular for disputes of a private law character. This may be a practical way out. He noted that he would be grateful to receive ideas and alerts of judicial developments in this regard, and hoped that the first part of the reading of this topic would be concluded next year.

111. The representative of Finland thanked both ILC members for their presentations. Regarding Professor PAPARINSKIS' presentation, the representative expressed Finland's support for the proposal, noting that it appeared to be a logical continuation of the work on state responsibility. Additionally, the proposal seemed feasible and concrete enough for codification and progressive development. The representative noted Professor PAPARINSKIS' proposal to address compensation owed in the inter-state setting as well as in situations where the right to compensation accrues directly to a person or entity other than a state. Finland supported this level of ambition and looked forward to engaging with the commission on both this topic and the topic of Professor REINISCH.

112. The representative of Poland also thanked Professor PAPARINSKIS for his presentation and asked how he saw the topic from the perspective of compensation in inter-state relations as well as compensation in human rights and investor cases. The representative asked whether Professor PAPARINSKIS considered there would be a general framework for inter-state cases and then some special regime or special rules for the others, or whether he would take a single uniform approach to the topic.

113. Professor PAPARINSKIS replied that, at this point, it was a syllabus indicating the general direction of research. Tentatively, he suggested that one would probably take Article 33(2) of the 2001 Articles on Responsibility of States for Internationally Wrongful Acts as a starting point, which sets out, on a without prejudice level, rules on content of responsibility that would also include rules on compensation in non-inter-state legal relations. The same approach was taken in the analogous provision of the 2011 Articles on Responsibility of International Organisations. This would be an important issue to consider, and it seemed that different judicial bodies have taken different approaches to the issue. It may be that some bodies take as a starting point the very classic proposition of the Permanent Court of International Justice (PCIJ) – that breach is a starting point – and therefore all the panoply of forms of reparation would apply because there is a breach of international law. It would not be directly legally relevant who the entity invoking responsibility was, because the obligation does not change depending on who is claiming it. Professor PAPARINSKIS observed that there were other elements in practice which seemed to accord a certain weight to the character of the actor that is invoking responsibility. He also noted that perhaps there was an element of an argument by

analogy, considering whether the rules formulated with an eye to the inter-state setting are equally or perhaps only *mutatis mutandis* applicable in other settings. This would be one of the issues set out in the section on identification of rules, and the character of particular actors, particularly non-state actors, invoking responsibility, is a relevant consideration. Professor PAPARINSKIS noted that a second edition of a helpful guidebook on UN materials on responsibility had been prepared last year by the Office of Legal Affairs showing that a great part of judicial practice in this context comes precisely from that setting, i.e. where claimants are not states.

114. Professor REINISCH echoed the statement of Professor PAPARINSKIS that a number of topics currently being debated were interrelated. Regarding an earlier question concerning whether the ILC had turned away from producing treaty text, he stated that it certainly had not. He noted it was comforting to hear, in particular, that there was a plan to have the draft articles on crimes against humanity eventually become a treaty. In his view, it was less about the actions of the ILC but rather a reaction to what had been called 'treaty fatigue', which was more to do with states. He noted that working in tandem was necessary if there was a desire to return to having more successful treaties in the future.

7.4 Consideration of current issues of international humanitarian law

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

116. The representative of the International Committee of the Red Cross (ICRC) began by recalling the renewal of the application of UN Security Council Resolution 2664 to the 1267 sanctions regime in the coming months. According to the representative, this is the regime that has the widest impact on humanitarian operations and applies in 27 contexts in which the ICRC operates, like the Sahel, Syria, Iraq, Afghanistan and Yemen. Much progress had been made in transposing 2664 domestically, and if it is not renewed in the 1267 regime the introduction of exemptions across regimes would be reversed generating enormous complexity. Non-renewal would significantly affect the ICRC's capacity to deliver the humanitarian mandate assigned to it under international humanitarian law (IHL) in areas where the humanitarian needs were among the most acute. The representative hoped to count on the support of delegations as this process moved forward.

117. The ICRC representative noted that the 34th International Conference of the Red Cross and Red Crescent was coming up on 28 – 31 October 2024 in Geneva. Draft resolutions had been circulated to all members of the International Conference on 12 September 2024. Regarding the first General IHL resolution, the ICRC proposed this resolution because it felt that what was most needed at this moment in time was a resounding affirmation of not only IHL as a body of law, but also the underlying principles and assumptions that enable it to fulfil its purpose. The ICRC also felt it was important to reflect the collective concern about the human cost of ongoing armed conflicts today; the fact that better respect for IHL would have an immense impact on reducing that cost; and the need to intensify implementation and enforcement of the law. The resolution had been strengthened by comments and feedback, and while appearing as a simple resolution it nevertheless addressed complex issues. The ICRC hoped to have a strong resolution adopted by consensus that shows a serious commitment to earnest implementation of IHL. She also provided the example of the next regional meeting of European National IHL Committees, to be held in May 2025 in Warsaw, Poland, as an example of the kind of efforts which the resolution aims to bolster. The representative expressed gratitude to the Polish authorities for hosting this meeting and mentioned that European states without an IHL Committee were also invited to this meeting.

118. The ICRC representative also mentioned the second proposed resolution on protecting civilians and other protected persons and objects against the potential human cost of ICT activities during armed conflict. This resolution aimed to pass a strong, collective message which the ICRC believes all delegations support: a collective commitment to protect civilian populations against the dangers arising from ICT activities during armed conflict. The representative explained how constructive and helpful proposals had led to the zero draft becoming the current draft resolution. The representative noted that the use of ICT activities

in armed conflict raised several sensitive questions and that, to find consensus with the aim to protect civilian populations against the potential human cost of ICT activities, the resolution built on agreed language on IHL. Importantly, it called on parties to armed conflict to respect and protect medical facilities as well as humanitarian personnel and objects, including with regard to ICT activities. These were rules which originated at an international conference 160 years ago and must be upheld.

119. The ICRC representative noted that there were also three other resolutions – two led by the IFRC, and one led by the German RC/IFRC – meaning that there would be a lot to get through in two and a half days of negotiations. She noted that it was a humanitarian conference that is wider than just IHL, and that many other issues would be addressed at the Conference as well. One day would be focused on IHL in the IHL Commission with discussions and workshops on war in cities, persons with disabilities, the protection of the natural environment in armed conflict, and autonomous weapons systems. There would also be many side events and pledges. The representative recalled that the Conference was governed by the fundamental principles of the Movement and, in practice, this meant that participants would not engage in controversies of a political, racial, religious or ideological nature at any time. Participants were requested not to attribute the cause of a humanitarian situation to a specific party, nor focus the discussions on a specific context. This was done in order to preserve this unique humanitarian forum, and to ensure that the work of the Conference can focus on constructive responses to the challenges faced together.

120. The representative of the ICRC also discussed the Report on International Humanitarian Law and the Challenges of Contemporary Armed Conflicts, which is a feature of the Conference and has been produced by the ICRC since 2003. This report is not a negotiation document and is informed by the ICRC's observations in its operations and sets out the ICRC's views. The 2024 Challenges Report expresses the ICRC's concern about some of the corrosive tendencies in the interpretation and application of IHL that risk diminishing its ability to make a meaningful difference for people in war. The representative noted that the ICRC was witnessing expansive interpretations of the rules on the conduct of hostilities; resort to exceptions in IHL until they become legal loopholes that circumvent protection; and, in some respects, a questioning of the fundamental principles that are the bedrock on which IHL sits, such as non-reciprocity. There was an urgent need for good faith in the interpretation and application of IHL and to uphold of the universality of IHL, including by holding everyone to the same standard without favour. While it may be difficult, seeing the human being in the face of the enemy is also vital. She noted that, if the worth of civilian lives were diminished or not given equal weight, the delicate balance between military necessity and humanity would be skewed and there would not be genuine protection for people in armed conflicts under IHL. The report addressed a range of topics, including the definition of armed conflict; the protection of people, including those in the hands of enemies; ensuring a contemporary interpretation of IHL taking into account gendered impacts of armed conflicts and how armed conflicts affect persons with disabilities; through to new technologies and humanitarian action. The representative of the ICRC noted that this report underscored the need to reinforce the stigma associated with anti-personnel mines and cluster munitions. She noted that, since the adoption of the Anti-Personnel Mine Ban Convention in 1997 and the Convention on Cluster Munitions in 2008, remarkable progress had been made in protecting lives and livelihoods from the devastating effects of anti-personnel mines and cluster munitions. These weapons were not an abstract or theoretical threat; they were a quantifiable, heartbreaking calamity. The latest Cluster Munition Monitor reported that as many as 93% of casualties are civilians, and children account for almost half of the victims. The representative emphasised that upholding the protective framework in armed conflicts is a challenge to be faced collectively, and that IHL was a uniquely powerful tool for mitigating the human cost of armed conflict. Even in the most severe crises, when a reference was made to IHL by states, humanitarian actors, courtroom litigants, or the media, it put pressure on parties to conflict to spare civilians and preserve a degree of humanity during military operations.

121. Regarding Gaza, the ICRC representative recalled that, at the previous CAHDI meeting in April 2024, the ICRC had stated that the civilian death toll and ongoing captivity of hostages was unacceptable – yet no change was noticeable since then. Without a change in the way the war

was fought, we were heading towards an even deeper humanitarian catastrophe which was barely imaginable. Despite all the challenges, short of a ceasefire, the ICRC remained profoundly convinced that protecting civilians starts with full and good-faith compliance with IHL. The ICRC was making continuous efforts through its own action and public calls to increase aid in Gaza. Humanitarians had suffered enormous losses, and the ICRC itself had several serious security incidents, as had other organisations and their personnel. She noted that, every day, roughly 250 ICRC staff risked their lives inside the Gaza strip to deliver humanitarian services to people in need. Finally, the ICRC continued to be very concerned about the situation in many places – the international armed conflict between the Russian Federation and Ukraine, where just last week a strike had killed and injured ICRC personnel, as well as the Democratic Republic of the Congo, Mozambique, Myanmar, the Sahel, Sudan, and Yemen, where the ICRC continued to carry out vital humanitarian activities. Ultimately, the representative underlined it was for all these people that the ICRC continued to ask for the support of delegations in upholding IHL.

122. Many delegations thanked the ICRC for their informative presentation and their important and courageous work throughout the world.

123. The representative of Poland echoed the invitation to the 2nd European Regional Conference of National IHL Committees in Warsaw in May 2025, which will be organised by the Ministry of Foreign Affairs of Poland and the Polish Red Cross in cooperation with the ICRC. The save the date would follow shortly.

124. The representative of Cyprus informed the CAHDI about recent efforts undertaken by Cyprus in the context of IHL concerning potential operations for the evacuation of civilians from conflict areas in the Middle East. Cyprus had recently concluded agreements with a number of EU and non-EU states in connection with emergency evacuation operations to be conducted by them via the territory of the Republic of Cyprus. Acting as a transit state, Cyprus will facilitate, in accordance with IHL, any need for the evacuation of civilians from the Middle East area when the need arises as a consequence of the deteriorating crisis situation caused by the ongoing conflict in Gaza and Israel. The aim of Cyprus is to provide a safe evacuation hub, and to assist in the repatriation of civilians from conflict-affected areas. The representative recalled that this had also been Cyprus' role during past evacuation operations from Sudan in April 2023 as well as from Lebanon in 2006. To implement these agreements, Cyprus had activated its national plan "ESTIA" and allocated specific infrastructure and personnel, which was ready to accommodate and assist evacuees while in transit on Cyprus' territory.

125. The representative of Switzerland also welcomed delegations to Geneva for the upcoming ICRC conference which will be a very important moment. He also reinforced the point made by the ICRC about the importance of the non-reciprocity of respecting IHL, which in Switzerland's view was absolutely critical. He emphasised the need to develop the understanding that, ultimately, respect for IHL is in the self-interest of those who respect it, because there is always a future after conflict. If IHL is respected, then that future is better prepared. Regarding the recent UNGA Resolution on the ICJ Advisory Opinion,[13] the representative noted that an invitation or request had been made to Switzerland, as depository of the Geneva Conventions, to organise or convene within six months a conference of the High Contracting Parties. He noted that the UN Human Rights Council had also adopted a similar resolution this year.[14] The representative stated that Switzerland was starting to plan and prepare for this. He also stated that it would be helpful to understand what partners hoped from the conference in terms of outcomes, and noted that it was important for Switzerland to keep a healthy distance between the conference and the upcoming ICRC conference.

126. The representative of Denmark informed the CAHDI about a national initiative in Denmark, against the backdrop of the war in Ukraine and an increased Danish focus on sending clear

[13] UNGA Resolution A/RES/ES-10/24 of 19 September 2024, "Advisory Opinion of the International Court of Justice on the legal consequences arising from Israel's policies and practices in the Occupied Palestinian Territory, including East Jerusalem, and from the illegality of Israel's continued presence in the Occupied Palestinian Territory".

[14] UN Human Rights Council Resolution A/HRC/RES/55/28 of 5 April 2024, para. 42.

messages of support for the international legal order in general. The Danish Government had set up a war crimes or atrocities committee last year, which recently presented its report to the Danish Government and to the Danish public with some suggestions for draft amendments of the Danish Criminal Code. The Government had quickly decided to move forward with the committee's suggestion and will present a bill to the Danish Parliament still this autumn. Pending approval by the Parliament, the representative stated that the bill is expected to explicitly criminalise war crimes, crimes against humanity and torture, which currently can only be prosecuted under the general old provisions in the Danish Criminal Code but will now be included within a new chapter. This will be one of the biggest changes of the Danish Criminal Code, if not the biggest, since it was implemented almost 100 years ago. The Danish Government also decided, on the basis of the recommendation from the expert committee and the public, to ratify the Kampala Amendments to the Rome Statute on the crime of aggression and also implement that crime in the Danish Criminal Code. The representative concluded by stressing that Denmark stood ready to discuss this initiative and provide more details to those interested.

127. The representative of the United States stated that his country strongly supported the important and courageous work of the ICRC and greatly valued the opportunities which they had had over the years to discuss issues directly with them. The representative encouraged all states to engage with and provide access to the ICRC and looked forward to a successful 75th anniversary conference.

128. The representative of Slovenia thanked the ICRC for their presentation and indispensable work and made three points on the topic. First, the representative noted that, unfortunately, extremely dire situations were being observed in several armed conflicts to name only Ukraine, Gaza and Sudan. He noted that Slovenia looked forward to the 34th International Conference of the Red Cross and Red Crescent with the aim to focus particularly on the draft resolutions on IHL and on protection of civilians against ICT threats. At a side event, Slovenia would also present a proposal concerning the protection of children in armed conflicts focusing on the needs of children affected by armed conflicts and their rehabilitation. He noted that it would be beneficial to establish an international centre to provide such assistance. Second, the representative of Slovenia informed the CAHDI that on 11 and 12 June 2024, the Ministry of Foreign and European Affairs of Slovenia had organised the international IHL conference "Strengthening the Protection of Civilians: Challenges of Contemporary Armed Conflict". He thanked the Secretariat for having circulated the conclusions of discussions on 20 August 2024. Third, recognising a need for a mobilisation of countries and other relevant international actors to protect water and the environment from armed conflicts through implementation of IHL, Slovenia had launched a Global Alliance to Spare Water from Armed Conflicts last May in New York. The cross-regional core group composed of Costa Rica, Indonesia, Panama, the Philippines, Senegal, Slovenia, Switzerland, UNICEF, Geneva Water Hub and PAX for Peace was now open for wider membership and expanding (Hungary had joined recently). The Global Alliance aimed to foster collective action and enhance the protection of water during armed conflicts through good practices, knowledge production, advocacy and partnerships. The Alliance aspired to promote better understanding of the impacts of attacks, reduce the gap between legal frameworks and compliance, reflect on new approaches and standards, and strengthen collaboration among humanitarian, development and peace actors in pre-conflict preparedness and resilience building. The representative of Slovenia encouraged all delegations to consider joining the Global Alliance.

129. The representative of Finland thanked the ICRC for the reminder of the importance of IHL and how much support the ICRC needed for its work. One way in which Finland was celebrating the 75th anniversary of the Geneva Conventions was by reviewing the translations of the Geneva Conventions and Additional Protocols, with the goal to add precision to the translations and make them more accessible to the general public.

130. The representative of Australia joined others in commending the ICRC. On the theme mentioned by the ICRC of the gendered impact of armed conflict, the representative of Australia mentioned that his country was supporting the development and introduction in the next few months of an international gender justice practitioners hub to promote, *inter alia*,

compliance with IHL in the context of gender, as well as in Australia's role as co-facilitator with Uganda of the complementarity work of the Assembly of States Parties (ASP) of the International Criminal Court (ICC). He noted that a meeting would be held on 4 October 2024 in relation to gender-based crime, which would involve the participation by state parties as well as organisations including the International Development Law Organization (IDLO) and the ICRC.

131. The representative of the United Kingdom noted that her Government was pleased to announce, under the auspices of their national IHL committee and with the support of the British Red Cross, that the second edition of the United Kingdom Voluntary Report on the Implementation of IHL would be published the following month. The voluntary report project reflected the United Kingdom Government's determination and commitment to the proper implementation of IHL.

132. The representative of Sweden noted that her country was looking forward to the upcoming conference and was currently finalising its military manual on IHL, which would be made public soon.

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

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

134. The representative of Canada stated that his country has been a strong supporter of the ICC, whose work is essential in our common pursuit of accountability for victims of serious international crimes. He noted that the workload of the ICC had increased significantly in recent years, which had resulted in increased budget requests. It was thus imperative that the ICC stresses efforts to ensure effective management and reprioritisation in exercising budget discipline, especially as the budget season was approaching. In a time of increasing fiscal constraints among its state parties and an increased need for its services, the ICC must focus on delivering on its core mandate. The representative reiterated that the ICC was not created to do what states were willing and able to do themselves, in considering whether to commence an investigation or pursue any particular case. The ICC should thus ensure that the core principle of complementarity remained at the forefront of its decision-making processes.

135. The representative of Slovenia reiterated support for the ICC and its role in the fight against impunity. In relation to non-permanent international criminal tribunals and investigative mechanisms, the representative of Slovenia expressed support for calls for the preservation of archives, expertise, and resources after the end of their mandates. The representative noted that this was essential for the preservation of their legacy, the historical value of the documents, the probative value of the evidence and information collected for the current or future proceedings to establish accountability for crimes, for educational and research purposes, and for reconciliation. The representative of Slovenia emphasised that the solution should be sustainable, centralised and useful for all these mechanisms, and that only in this way could the purpose of their establishment be truly achieved.

136. The representative of Germany noted that the Foreign Minister of Germany had, last year during the International Law Week in New York, initiated a Group of Friends to further develop the Rome Statute regarding the crime of aggression. A side event of this Group of Friends would be held during the UNGA meeting the following week, and all delegations were invited to participate as it was intended for this process to be as inclusive as possible. The representative of Germany noted outreach had also been undertaken with regard to civil society and academia and that, on 23 April 2024, a workshop had been organised in The Hague with 85 participants from member states, academia and civil society. The representative highlighted the importance of working toward the goal of reviewing the Kampala amendments scheduled for next year.

137. The representative of Finland welcomed the important advance by Ukraine towards ratification of the Rome Statute, and warmly welcomed Ukraine as the 125th state party to the Rome Statute. The representative also raised concerns regarding possible sanctions against the ICC

and its staff, which would undermine the ICC's independence and impartiality and would seriously hamper the crucial work which the ICC was conducting in all situations under its investigation. Finland believed that it was important to prepare for the possibility of sanctions being imposed on the ICC and sought the views of CAHDI delegations on how best to do so and ensure that the ICC can fulfil its mandate when under political pressure. The representative stated that attacks and threats against the ICC and its personnel were unacceptable.

138. The representative of France drew the attention of the CAHDI to a question concerning the Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD). As the mandate of UNITAD had come to an end, France was particularly preoccupied about the utilisation of UNITAD's archives. It was considered important that the UN put in place a mechanism that will allow courts to access – via mutual legal cooperation – the evidence collected by UNITAD. Otherwise, this would put in question the work done by UNITAD but, also more generally, the work of the UN in the field of fight against impunity. A lot of efforts had been deployed and financial resources invested for a result that is in the end not very usable. And, more generally, this also raised the question concerning the end of the mandate of mechanisms of inquiry such as the International, Impartial and Independent Mechanism for Syria (IIIM) and the Independent Investigative Mechanism for Myanmar (IIMM) because one day they will end their mandate and the question of the usability of evidence collected by these mechanisms will resurface.

139. The representative of the United States stated that the Biden administration had been clear that it opposed sanctions against the ICC, its staff, its judges, or those who support it, and that the administration had been working actively to avoid any such proposals moving forward to finalisation. The United States had legitimate concerns about how the prosecutor has proceeded in the Palestinian situation, and these had been set out in the US amicus filing before the Pre-Trial Chamber. The representative noted that the United States, particularly in this administration, had sought a constructive relationship with the organs of the ICC, although as a general matter the United States would not discuss the details of its cooperation, as those matters were treated in confidence by the ICC.

140. The representative of Ukraine thanked the Chair for the opportunity to address the CAHDI on developments concerning the ICC, with a particular focus on Ukraine's ongoing process of ratification of the Rome Statute. He noted that commitment to accountability, rule of law, and the promotion of international justice were core principles guiding Ukraine's approach to international criminal law and specifically their relationship with the ICC. Ukraine signed the Rome Statute in 2000, however the ratification process had encountered constitutional challenges that necessitated legislative and judicial scrutiny. Despite the absence of full ratification, Ukraine had demonstrated commitment to the ICC by accepting its jurisdiction twice through Article 12(3) declarations in 2014 and 2015 over crimes committed on Ukrainian territory since 2013. The representative stated that this demonstrated Ukraine's proactive stance on seeking justice for international crimes, especially in light of the ongoing armed aggression and violations of international law. Ukraine had cooperated extensively with the Office of the Prosecutor, providing evidence, facilitating investigations, and engaging with international partners to ensure accountability for serious crimes, including war crimes and crimes against humanity. Ukraine's ratification of the Rome Statute would further enhance this cooperation and solidify Ukraine's commitment to the principles of the ICC. He stated that ratification of the Rome Statute was not only a legal obligation, but a crucial affirmation of Ukraine's commitment to international justice and the rule of law. By fully integrating into the ICC framework, Ukraine would bolster its legal and moral standing in the international community and reaffirm its dedication to ending impunity for the most serious crimes. The representative of Ukraine further noted that ratification will enable Ukraine to participate fully in the ASP, contributing to the development of the ICC's policies and practices. This was particularly important as ICC countries continue to evolve in addressing challenges to international criminal justice, including issues of state cooperation, enforcement of arrest warrants, and the protection of victims and witnesses. While Ukraine remained steadfast in this commitment to ratify the Rome Statute, several challenges persist, including ongoing political and security considerations stemming from armed conflict and external aggression. However, these obstacles only underscored the importance of solidifying Ukraine's

commitment to the ICC as a pillar of international justice. The Ukrainian government continued to work closely with its parliament and relevant stakeholders to expedite the ratification process. Ukraine was also engaged in raising public awareness about the implications of ratification, emphasising that it strengthens the Ukrainian national legal system and enhances Ukraine's ability to prosecute international crimes domestically. He concluded by stating that Ukraine reaffirmed its commitment to the ICC and the values enshrined in the Rome Statute. While the path to ratification was not without challenges, Ukraine's resolve remained unshaken. Ukraine was looking forward to the day when it is a full state party to the Rome Statute and able to contribute to a stronger, more effective system of international criminal justice. The representative noted that Ukraine was deeply disappointed by the refusal of Mongolia's leadership to fulfil its obligation under the Rome Statute to arrest Vladimir Putin, which not only undermines the system of international criminal justice, but also opens the window to further precedence and impunity. The representative stated that without a stable international order based on respect for and compliance with international law, no future was possible. The world was witnessing the terrible atrocities committed by the Russian Federation in Ukraine, and the criminals must be punished because war crimes have no borders and no statute of limitations.

8 OTHER

8.1 Election of the Chair and the Vice-Chair

141. In accordance with *Resolution CM/Res(2021)3 on intergovernmental committees and subordinate bodies, their terms of reference and working methods*, the CAHDI elected Ms Kerli VESKI (Estonia) and Mr Declan SMYTH (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 Place, date and agenda of the 68th meeting of the CAHDI

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

8.3 Any other business

143. No item was handled under this agenda point.

8.4 Adoption of the Abridged Report and closing of the 67th meeting

144. The CAHDI adopted the Abridged Report of its 67th meeting, as contained in document CAHDI (2024) 27, and instructed the Secretariat to submit it to the CM for information.

145. 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 members of the Secretariat and the interpreters for their invaluable assistance in the preparation and the smooth running of the meeting. In particular, the Chair extended his thanks to his colleagues in the Austrian Federal Ministry for European and International Affairs for their relentless work for realising this last CAHDI meeting under his chairmanship. The Chair also expressed his gratitude to the CAHDI Secretariat for the years of excellent cooperation.

146. The Vice-Chair took the floor to express, on behalf of the CAHDI and the Secretariat, deepest gratitude to Mr TICHY for his remarkable 24 years with the Committee of which he had spent the two last as the Chair of the Committee. Delegations were especially grateful for the efficient way and ability of Mr TICHY to manage difficult issues, his efforts to strengthen the CAHDI's role in monitoring reservations and declarations and his pivotal role in establishing the CAHDI Declaration on the jurisdictional immunity of state-owned cultural property and dedication to addressing non-legally binding instruments. In addition to his impressive achievements as Ambassador and Director General for Legal Affairs at the Austrian Federal Ministry of European and International Affairs, the CAHDI had been fortunate to benefit from Mr TICHY's strong commitment to international law and human rights.

APPENDICES

APPENDIX I – LIST OF PARTICIPANTS

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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 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

APPENDIX III – SPEAKING POINTS OF MR JÖRG POLAKIEWICZ

Dear Helmut,
Dear colleagues and friends,

- First of all, allow me to thank our hosts here, in this charming city of Vienna, a city which for centuries has embodied a unique harmony between cultures, ideas, and influences.
- As Stefan Zweig beautifully described in 'The World of Yesterday,' the richness of this city lies in its ability to unite seemingly divergent elements and merge them into an incomparable harmony. Vienna has always been a meeting place where the reconciliation of differences creates a new intellectual and cultural harmony.
- This is also our tradition at CAHDI, a tradition that exemplifies, in an exemplary manner, our President Helmut Tichy.
- As has been the practice, I will present to you the most important developments within the Council of Europe ("CoE") since the last meeting of the CAHDI.

I. Special Tribunal for the Crime of Aggression against Ukraine

- On the topic of the special tribunal for the crime of aggression against Ukraine, I draw your attention to the decision taken by the Committee of Ministers on 30 April 2024 authorising the Secretary General to prepare any necessary documents to contribute to consultations within the Core Group. The Core Group is an informal group of approximately 40 states, the European Union ("EU") and the Council of Europe called together by Ukraine in January 2023 to discuss the legal and technical feasibility and features of establishing a Special Tribunal for the crime of aggression against Ukraine.
- This mandate included the preparation of a possible draft agreement between the Council of Europe and the Government of Ukraine on the establishment of such a special tribunal, including its statute, and on a possible draft enlarged partial agreement governing its modalities of support.
- The Committee of Ministers further requested the Secretary General to report regularly to the Deputies and agreed to consider any possible next steps in this process, as and when appropriate, taking account of any proposals that may be made by the Secretary General.
- The Core Group held its 11th meeting this Tuesday, equally here in Vienna. The Group is making considerable progress, despite the difficult issues before it. The negotiations are ongoing and remain confidential. I therefore cannot go into details.

II. Informal Conference of Ministers of Justice on "Towards Accountability for International Crimes Committed in Ukraine"

- On 5 September 2024, the Ministers of Justice of the Member States of the Council of Europe convened in Vilnius, Lithuania, under the auspices of the Lithuanian Presidency of the Committee of Ministers of the Council of Europe for an informal conference addressing critical justice and accountability issues related to Russia's aggression against Ukraine.
- This informal conference resulted in the adoption of the Vilnius Declaration, supported by 42 member and observer states of the Council of Europe. The declaration was agreed in the presence of the Vice-President of the European Commission.

III. Opening for signature of the Council of Europe Framework Convention on artificial intelligence and human rights, democracy, and the rule of law

- The informal conference of Ministers of Justice in Vilnius on 5 September 2024 also marked the opening for signature of the Council of Europe Framework Convention on artificial intelligence and human rights, democracy, and the rule of law (CETS No. 225). The Framework Convention had been adopted by the Committee of Ministers on 17 May 2024, after being negotiated by the 46 Council of Europe member states, the EU and 11 non-member states (Argentina, Australia, Canada, Costa Rica, the Holy See, Israel, Japan, Mexico, Peru, the United States of America and Uruguay). Representatives of the private sector, civil society and academia actively contributed to the process as observers.

- On 5 September last, the Framework Convention was signed by Andorra, Georgia, Iceland, Israel, Norway, the Republic of Moldova, San Marino, the United Kingdom, the United States of America and the EU. The treaty will enter into force on the first day of the month following the expiration of a period of three months after the date on which five signatories, including at least three Council of Europe member states, have ratified it.

IV. Register of Damage for Ukraine and the Claims Commission

- Since its opening for submission of claims on 2 April 2024, significant developments have taken place in relation to the Register of Damage ("RD4U"). First some notable achievements of a technical nature have been made such as: the launch of several new categories of claims[15] and the adoption of rules and claims forms for them ; the launch of an awareness campaign aimed at involving representatives of Ukrainian cities and regions in promoting RD4U's mandate and the process of submitting claims to the Register ; or the decision by the European Council to change the EU's status in the Register from Associate Member to fully-fledged Participant. The next meeting of the Conference of Participants is due to take place next month in Strasbourg.
- New developments also occurred regarding the establishment of a Claims Commission for Ukraine ("CCU"). Indeed, a first preparatory meeting was organised in The Hague on 9-10 July 2024 by the RD4U. A second meeting was held last week, equally in The Hague. DLAPIL accompanies this work which is being implemented by the Secretariat of the Register of Damage. The purpose of the two meetings was to exchange views on further implementation of the United Nations General Assembly Resolution A/RES/ES-11/5 "Furtherance of remedy and reparation for aggression against Ukraine" of 14 November 2022. Participants discussed various modalities of establishment of the claims commission for Ukraine, including on the possible forms of the international instrument required, models of organisation and governance of the commission and the requirements for its independence and impartiality.
- During the second meeting, several concrete preparatory documents presenting different possible institutional and technical options for the establishment of a CCU were discussed, including on a potential role of the Council of Europe in the setting up of the mechanism. A third preparatory meeting will take place in mid-November 2024.

V. The change of the SG

- I would like to draw your attention on a major institutional development. On 25 June 2024, the Parliamentary Assembly of the Council of Europe (PACE) elected Mr Alain Berset (Switzerland) as Secretary General of the CoE for a five-year term which actually began yesterday. Mr. Alain Berset was a member of the Swiss Government from 2012 to 2023. During this time, he held, in particular, the office of President of the Confederation twice, in 2018 and 2023.
- Yesterday, the Secretary General spoke about a range of specific challenges and priorities, and singled out one in particular, saying: "First among these is of course our need to support our member state, Ukraine. Ukraine is fighting for its democratic future in the face of the Russian Federation's war of aggression. Supporting that country will remain our number one priority."

VI. European Court of Human Rights ('ECtHR'): Georgia v. Russia (IV), Ukraine v. Russia (re Crimea) and EU accession to the European Convention on Human Rights ('ECHR, the Convention')

- I will now report on two major ECtHR's judgments in two inter-State cases where the respondent State is the Russian Federation.
- The first of these judgments is the Court's chamber judgment (on the merits) in the case of ***Georgia v. Russia (IV)***. It concerned the armed conflict between Georgia and Russia in August 2008 that led to a process, which started in 2009 and is known as "borderisation", blocking people from crossing the administrative boundary lines freely between Georgian-controlled

[15] The adopted claim forms and rules will apply to the submission of claims related to the death and disappearance of immediate family members, involuntary internal displacement, the destruction of Ukraine's infrastructure, and a number of additional categories related to the damage and destruction of property. In addition to claims from individuals, some of these categories will be open to the submission of claims from legal persons and the State of Ukraine, including its regional and local authorities. Furthermore, at its fourth meeting in The Hague on 2-6 September 2024, and in addition to the thirteen claim forms already adopted and in the process of being launched, the Board focused at this meeting on the claim forms and rules for sixteen further categories of claims.

territory and the Russian-backed breakaway Georgian regions of Abkhazia and South Ossetia. The Court found that it had sufficient evidence, in particular lists of victims, testimonies, media reports and international material, to conclude beyond reasonable doubt that the incidents alleged were not isolated and were sufficiently numerous and interconnected to amount to a pattern or system of violations. Moreover, the apparent lack of an effective investigation into the incidents and the general application of the measures to all people concerned proved that such practices had been officially tolerated by the Russian authorities.

- The second relates to the Grand Chamber judgment (on the merits) in the case of ***Ukraine v. Russia (re Crimea)***. It concerned Ukraine's allegations of a pattern ("administrative practice") of violations of the ECHR by the Russian Federation in Crimea beginning in February 2014. It also concerned allegations of a pattern of persecution of Ukrainians for their political stance and/or pro-Ukrainian activity ("Ukrainian political prisoners") which had occurred predominantly in Crimea but also in other parts of Ukraine or in the Russian Federation since early 2014. The Court held, unanimously, under Article 46 (binding force and implementation of judgments), that Russia had to take measures as soon as possible for the safe return of the relevant prisoners transferred from Crimea to penal facilities located on the territory of the Russian Federation. The Court considered that it had sufficient evidence – in particular intergovernmental and nongovernmental organisation reports, corroborated by witness testimony and other material – to conclude beyond reasonable doubt that the incidents had been sufficiently numerous and interconnected to amount to a pattern or system of violations. Moreover, the apparent lack of an effective investigation into the incidents and/or the general application of the measures to all people concerned, among other things, proved that such practices had been officially tolerated by the Russian authorities.
- The Court considered, in both cases, that the question of the application of Article 41 of the Convention was not ready and that, therefore, judgments on just satisfaction issues would be rendered at a later stage.
- Regarding **the EU's accession to the ECHR**, I would like to draw your attention to two recent judgments of the Court of Justice of the European Union ('ECJ'), ***Joined Cases C-29/22 P - KS and KD v Conseil e. a.*** and ***Case C-351/22 - Neves 77 Solutions SRL*** of 10 September 2024.
- The ECJ clarified the scope of the jurisdiction of the Courts of the EU in relation to acts or omissions falling within the scope of the Common foreign and security policy ('CFSP'). The ECJ explained that EU courts in fact have jurisdiction to assess the legality of acts or omissions coming under the CFSP which are not directly related to political or strategic choices or to interpret them. In the case of Eulex Kosovo, this applied to the choice of personnel or the establishment of review measures or remedies, which only constituted acts of day-to-day and administrative management of the mission's mandate.
- While we are still analysing these judgments, we sincerely hope that they will pave the way to finalise the negotiations on EU accession to the ECHR.

VII. Closing remarks

- Thank you again for your participation and I look forward to hearing some insightful discussions during the 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[16]

- Since the last CAHDI meeting, 5 non-member states have asked to be invited to become party to a Council of Europe treaty:

  - **Kenya, Kiribati, Malawi and Papua New Guinea** – Convention on Cybercrime (ETS No. 185);
  - **Tanzania** – Convention on Mutual Administrative Assistance in Tax Matters as amended by the 2010 Protocol (ETS No. 127).

- In addition, 5 signatures were affixed by non-member states:

  - **Chad** – Council of Europe Convention on counterfeiting of medical products and similar crimes involving threats to public health (CETS No. 211);
  - **European Union, Israel, and the United States of America** – Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law (CETS No. 225);
  - **Sierra Leone** – Second Additional Protocol to the Convention on Cybercrime on enhanced co-operation and disclosure of electronic evidence (CETS No. 224).

- Lastly, there were 8 accessions by non-member states:

  - **Benin, Côte d'Ivoire, Fiji, Grenada, Kiribati, and Sierra Leone** – Convention on Cybercrime (ETS No. 185);
  - **Benin** – Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS No. 189);
  - **Kyrgyzstan** – Convention on the Transfer of Sentenced Persons (ETS No. 112).

[16] 171 of the total number of 225 conventions are open to non-member States.

APPENDIX IV – SPEAKING POINTS OF MS KERLI VESKI

Dear friends,

I think we have all, at some point, come in touch with the Council of Europe Guidelines on eradicating impunity for serious human rights violations, adopted by the Committee of Ministers in 2011 on the basis of a draft prepared by the Council of Europe Steering Committee for Human Rights (CDDH). I have at least found this non-binding legal instrument to be a useful reference tool at times and also our Committee has referred to them e.g. in our latest opinion on a PACE recommendation adopted last April on "*A democratic future for Belarus*". The guidelines incorporate general standards for the prevention of impunity and specific standards concerning, among others, the State's duty to investigate serious human rights violations and bring perpetrators to justice, as well as safeguards to protect persons deprived of their liberty in these circumstances.

Since 2011, however, the world has changed. International law has evolved and the international context, marked, in particular, by Russia's war of aggression against Ukraine, has brought up the potential need to revisit the Guidelines more than a decade after their adoption. To do exactly this, to conduct preparatory work on a study on the need for and feasibility of (an) additional non-binding instrument(s) to complement the 2011 Committee of Ministers' Guidelines, the CDDH recently established a Drafting Group on Eradication of Impunity for Serious Human Rights Violations (CDDH-ELI). Given the contextual closeness of the Drafting Group's work to questions of public international law, the Secretariat of the CDDH-ELI approached the CAHDI Secretariat with a wish to have a CAHDI representative present his or her views on the need to update the 2011 Guidelines and, if so, to which direction such amendments and additions could go. As you were informed at the last CAHDI meeting in April, Helmut was kind enough to let me do this presentation which took place on May 15 at the first meeting of the CDDH-ELI. The other speakers in my panel included representatives of the European Court of Human Rights, the OSCE as well as Amnesty International.

My presentation had a particular focus on the international law aspects of the Group's challenge, namely the issues of 1 – whether the revised guidelines should broaden their scope from their 2011 form to explicitly include international crimes and 2 – the state of immunities under international law.

My answer to the first issue was unequivocally yes. This was for a number of reasons. First, it is simply because of the gravity of these crimes that a powerful prosecuting mechanism for these serious violations of human rights is necessitated. Without reference to these international crimes the scope of the revised guidelines is in danger of relegating itself to the margins of international law, which is contrary to its purpose. Second, I gave reference to an emerging trend in public international law of dealing with these issues of systemic and widespread human rights violations. To address these issues and reach the shared goal of justice and accountability, there must be robust connections between the measures of criminal justice, reparation, truth-seeking and measures against recurrence. Together, these measures are infinitely more powerful and effective than if treated individually. Thirdly, I suggested that considering these violations in separate fora would constitute an artificial separation and, through the lens of the Orentlicher principles, I highlighted that there is a duty of states to ensure "that those responsible for serious crimes under international law are prosecuted, tried and duly punished." An aim which can most effectively be achieved through a holistic approach towards these issues.

The second tranche of my presentation concerned the current state of immunities in international law, and how these can be addressed in the challenge of ending impunity. Regarding immunities, the state of international law is under constant evolution, as evidenced by the case law of the International Criminal Court, the Special Court for Sierra Leone, and the work of the International Law Commission. The debate on immunities before international tribunals remains open-ended. I gave reference to the ILC's draft articles on immunities, and their essentially foetal constitution: despite hard work and development by the ILC there is no consensus between states on *the*

exceptions to immunity and the codification of exceptions to immunity – as attempted by Draft Article 7 – feels tragically far out of reach.

To caveat this observation, however, I did provide some suggestion as to how it can be addressed. Indeed, the question of immunities does not necessarily need be an imminent concern for the revision of the guidelines. This is because international courts and tribunals can and do deal with these specific issues on an ad hoc basis: meaning that the question of immunities can be addressed from a strictly domestic angle, notwithstanding future cooperation and encouragement of cooperation when it comes to the execution of investigations and prosecutions of international crimes.

The CCDH has a deadline of December 2025 to adopt the study on the need for and feasibility of (an) additional non-binding instrument(s) to complement the 2011 Committee of Ministers' Guideline. It was my impression that the current state of discussions remains rather broad and procedural. There were a number of ideas pitched by state participants on which issues needed addressing including those of victimhood, immunities, issues of universal criminal and civil jurisdiction, and clarification of definitions.

A point I would like to draw attention to in this respect, is the potential for future cooperation with the CAHDI. Indeed, the CCDH-ELI showed significant interest in future positive collaboration with the CAHDI, with the purpose of the CAHDI providing advice on issues of public international law. From my point of view and based on my first positive experience of collaboration, I think we should look forward to this cooperation, and hope to send representatives to the further meetings of the CCDH-ELI to help drive this important and critical development of the 2011 Guidelines forwards, hopefully into a strong conceptualisation of guidelines on the eradication of impunity for serious violations of human rights.

Thank you.

APPENDIX V – PRESENTATIONS OF SPECIALS GUESTS

- **Ms Chiara GIORGETTI, University of Richmond**

Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine and a future Claims Commission

The presentation of Ms Chiara GIORGETTI is available under this link.

- **Mr Marcelo Vázquez-Bermúdez, Chair of the ILC**

ILC Report on the work of the seventy-fifth session (2024)

- **Mr Mārtiņš Paparinskis, member of the ILC**

Compensation for the damage caused by internationally wrongful acts

The presentation of Mr Mārtiņš Paparinskis is available under this link.

APPENDIX VI – PRESENTATION OF THE PERMANENT COURT OF ARBITRATION

- **H.E. Dr. hab. Marcin Czepelak, PCA Secretary-General**

Statement of the Permanent Court of Arbitration to the Council of Europe Committee of Legal Advisers on Public International Law (CAHDI) at its Sixty-Seventh Meeting

The statement is available under this link.

Article by PCA Secretary-General: The Contribution of the PCA to the Development of International Law: Claims Commissions, Mixed Arbitrations and Conciliation

The article is available under this link.