



Strasbourg, 25 September 2025

CAHDI (2025) 11
Confidential

COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW

(CAHDI)

Meeting report

68th meeting
17-18 March 2025

Strasbourg, France (hybrid meeting)

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

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1 INTRODUCTION

1.1 Opening of the meeting by the Chair, Ms Kerli VESKI

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 68th meeting in Strasbourg (France) on 17-18 March 2025, with Ms Kerli VESKI (Estonia) as the Chair. The meeting was held in hybrid format. The list of participants is set out in **Appendix I** to this report.

1.2 Adoption of the agenda

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

1.3 Adoption of the report of the 67th meeting

3. The CAHDI adopted the report of its 67th meeting (document CAHDI (2024) 28), held on 19-20 September 2024 in Vienna (Austria), 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.

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

4. 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.

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

2.1 CAHDI 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 – Committee of Ministers' Follow-up

Information provided by the Secretariat

5. The Chair recalled that the Committee of Ministers (CM) had requested¹ the CAHDI to prepare, under a "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. The working group established for this purpose presented its findings at the 67th CAHDI meeting (19-20 September 2024 in Vienna, Austria). A shorter summary of these findings, set out in document CAHDI (2024) 29 *Confidential* was adopted by written procedure on 23 December 2024 and subsequently transmitted to the CM via the Rapporteur Group on Legal Cooperation (GR-J).

6. In this regard, the Secretariat informed the Committee that discussions within the GR-J focused on whether the CM should simply take note of the overview or also transmit it to the Human Rights meetings of the CM (CMDH), and in what capacity. As no consensus was reached, the draft decision will be further considered at the GR-J meeting on 17 April 2025.

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*".

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

7. The Chair informed the Committee that, on 23 October 2024, the Ministers' Deputies, at their 1510th meeting, had agreed to communicate Parliamentary Assembly of the Council of Europe (PACE) Recommendation [2285 \(2024\)](#) on "Missing persons, prisoners of war and civilians in captivity as a result of the war of aggression of the Russian Federation against Ukraine" to the CAHDI, for information and possible comments. On 23 December 2024, the CAHDI had adopted an opinion (document CAHDI (2024) 30), prepared with the Secretariat's assistance, by written procedure. The opinion had subsequently been transmitted to the CM and published on the website of the CAHDI.
8. The Chair also recalled that, at their 1519th meeting on 12 February 2025, the Ministers' Deputies had agreed to communicate to the CAHDI, for information and possible comments, PACE Recommendations [2288 \(2025\)](#) on "The need for a renewed rules-based international order" and [2289 \(2025\)](#) on "Addressing risks to human rights and the rule of law posed by mercenaries and private military and security companies: a call for comprehensive action". The Chair, with the assistance of the Secretariat, had prepared two draft opinions (CAHDI (2025) 8 prov *Restricted* and CAHDI (2025) 9 prov *Restricted*) that had been circulated to delegations in advance of the meeting. Before opening the floor for comments, the Chair noted that the CM was expecting CAHDI's opinions by 28 March 2025.
9. 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 CAHDI Terms of Reference 2024-2027 – Consultation on the main deliverables and their level of priority 2026-2027

10. The Chair introduced the sub-item by recalling that when terms of reference of intergovernmental committees were established for a four-year period at a time, they were definitely approved for the two first years and only provisionally for the following two years. She explained that, as part of the preparation of the revised Council of Europe Programme and draft Budget 2026-2027, the CAHDI should be consulted on any potential adjustments and their priority levels and was hence to review its current Terms of Reference (document CAHDI (2025) 1 prov).
11. The Chair invited the CAHDI to hold an exchange of views on the current CAHDI activities and, if relevant, to make any proposal in this regard. No delegation took the floor under this sub-item. The CAHDI concluded that there would be no changes to its Terms of Reference.

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

12. The Chair presented a compilation of CM decisions of relevance to the CAHDI's activities (document CAHDI (2025) 2 *Restricted*) prepared by the Secretariat containing, among others, decisions by which the CM requested the CAHDI's opinions on the above-mentioned PACE Recommendations
13. No delegation took the floor under this sub-item.

3 CAHDI DATABASES AND QUESTIONNAIRES

14. The Chair introduced the item by recalling that the CAHDI entertained a variety of questionnaires and databases especially in the field of issues related to immunities of states and international organisations but also in other areas of particular interest for the CAHDI. She recalled that all CAHDI questionnaires under this item were now publicly available on the CAHDI website. Apart from this website, information on the exact number of replies and the names of the states having submitted their replies so far could further be found in the annotated agenda. The Chair encouraged all delegations to continue sending new or updated contributions to all questionnaires and databases under this item as these represented an important outreach activity of the work of the CAHDI that should not be underestimated. The Chair underlined the need to keep the information in the database updated for it to remain

relevant - not only for the CAHDI's own use, but also for the outside world, including researchers, students and journalists.

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

15. 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, she invited delegations to share information on recent developments concerning state practice and relevant case-law in their countries regarding the topic of immunities.
16. The representative of Slovenia presented a case concerning a civil action brought by a Slovenian national against the resident embassy of a non-EU member state. The plaintiff sought monetary compensation on the grounds of wrongful termination of his employment by the embassy. The embassy did not claim immunity and participated in the proceedings. Before the court could give its decision, the two parties reached a settlement. This settlement was never contested; the embassy obtained the approval of the relevant ministry of the sending state and the settlement became fully enforceable (*res judicata*). After the plaintiff's attorney filed for enforcement of the settlement, the embassy claimed immunity under the Vienna Convention on Diplomatic Relations (VCDR). At the same time, the court requested the consent of the Minister of Foreign Affairs for enforcement. Under Slovenian law, enforcement of a judgment against the assets of a diplomatic mission requires prior consent of the Minister. The position of the Republic of Slovenia was that: (1) the embassy could not claim immunity as it had already entered into proceedings and reached a settlement which it had never contested, thus the embassy had already accepted the jurisdiction of the court before changing its position; (2) in the case of legal proceedings against foreign diplomatic missions or foreign states, the existence of immunity depended largely on the nature of the act in question: - whether it was carried out in the exercise of public authority (*acta iure imperii*) or whether the state and the mission were acting on its behalf as the bearer of civil rights and obligations (*acta iure gestionis*). The deliberations considered two distinct judicial rulings: one from the Constitutional Court of the Republic of Slovenia and another from the Supreme Court of the Republic of Slovenia. Ultimately, the issue has been resolved amicably with the full settlement of all obligations.
17. The representative of France informed delegations about a judgment delivered by the Court of Appeal of Paris on 26 June 2024,² which validated the arrest warrant issued by French authorities against Bashar al-Assad. The court found that the prohibition of the use of chemical weapons was part of customary international law as a peremptory norm and that the international crimes with which the investigating judges were dealing could not be considered as part of the official functions of a Head of State. Consequently, they were detachable from the sovereignty naturally attached to these functions and that insofar as it seemed clear that Syria would never prosecute Bashar al-Assad for these crimes nor waive the personal immunity of its President on its own initiative, and that no international court had jurisdiction as Syria was not party to the Rome Statute, the Court of Appeal concluded that the arrest warrant issued for Bashar al-Assad could not be deemed null and void. The French representative noted that this decision raised questions with regard to the case law of the Court of Cassation, which had repeatedly held that there was no exception in international law to the immunities enjoyed by the members of the troika (Head of State, Head of Government and Minister of Foreign Affairs). The Paris Court of Appeal's Public Prosecutor's Office has appealed this decision, and the Court of Cassation's ruling is expected for March 2025. The representative pointed out to the possibility that the new context, resulting from the overthrow of Bashar al-Assad on 8 December 2024, would be taken into account by the Court of Cassation. He further noted that the Court of Cassation would examine, on 4 July 2025 in plenary assembly, the validity of the arrest warrant against Bashar al-Assad for complicity in crimes against humanity.

² [Press release from the Paris Court of Appeal](#), Public Prosecutor's Office, concerning the decision of the investigating chamber regarding the legality of the arrest warrant issued for Syrian President Bashar Al-Assad, 26 June 2024 (in French only).

18. The representative of the United States of America first mentioned the case of [*Devas v. Antrix*](#)³ before the US Supreme Court which concerns the recognition and enforcement of an Indian arbitral award in the United States under the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). The case presents a fundamental question of jurisdiction over an agency or instrumentality of a foreign state: whether a plaintiff must establish “minimum jurisdictional contacts” to establish personal jurisdiction over a foreign state under the Foreign Sovereign Immunities Act (FSIA). The concept of “minimum contacts” is a core constitutional doctrine under US law, famously articulated in 1945 by the US Supreme Court in the case of *International Shoe v. State of Washington*.⁴ The Ninth Circuit Court of Appeals ruled that the FSIA incorporates a freestanding statutory minimum contacts requirement. The Supreme Court granted *certiorari* to review the case on 4 October 2024. The question presented is whether, as a statutory matter, the FSIA requires that a plaintiff that has sued a foreign state under an FSIA exception to foreign sovereign immunity and that has served the foreign state under 28 U.S.C. 1608 must also establish that the foreign state has had minimum contacts with the forum before the district court may exercise personal jurisdiction over the foreign state. The United States filed an *amicus* brief in the case on 11 December 2024. The US Government argues that the FSIA does not require a separate “minimum contacts” analysis to establish personal jurisdiction over a foreign state. Personal jurisdiction exists under the FSIA where an exception to immunity applies, and proper service is made. Oral arguments in the case were held on 3 March 2025.
19. The US representative then presented a case that was already presented during previous CAHDI meetings, namely the case of [*Hungary v. Simon*](#),⁵ also before the US Supreme Court. It is a long-running case brought by Holocaust survivors who were Hungarian nationals and residents during World War II. The plaintiffs allege that their property was confiscated by officials of the Hungarian government and employees of the Hungarian State Railways (MAV), and that they never received compensation for the seized property or the return of the property. They invoke the “expropriation exception” to sovereign immunity under the Foreign Sovereign Immunities Act, 28 USC 1605(a)(3). On 24 June 2024, the US Supreme Court granted *certiorari* on three questions concerning the interpretation of the “expropriation exception.” The questions at issue focus on whether the historic comingling of assets following expropriation and liquidation of property by a foreign state is sufficient to establish that any general treasury funds of that state constitute the proceeds of seized property for purposes of the exception to sovereign immunity. In an *amicus* brief filed with the Supreme Court on 3 September 2024, the United States restated previous positions taken on the questions presented, including that historic commingling of assets was insufficient to satisfy the FSIA’s expropriation exception. On 21 February 2025, the Supreme Court ruled unanimously for Hungary, adopting the position of the United States that historic commingling is insufficient to satisfy the FSIA’s expropriation exception.
20. The representative of Norway drew the attention of CAHDI delegations to four cases concerning immunity which had been dealt with by the Norwegian court system, including the Supreme Court, in the last two and a half years. Three of these cases concerned the dismissal of employees of embassies in Oslo, and one a monetary claim against the state. In three of the dismissal cases, all four states sought to have their cases dismissed on grounds of state immunity. The courts started from the premise that the rules of state immunity are rooted in customary international law. The courts further noted that the 2004 United Nations Convention on Jurisdictional Immunities of States and their Property (the State Immunity Convention), although not yet in force, largely reflects customary international law on state immunity. He added that Norway was among the 24 states that had ratified this Convention and that his country considered it useful and would encourage states that had not yet done so to consider ratifying it, as six ratifications were still needed before the Convention would actually enter into force. Regarding the cases concerning dismissals, in two of the cases the court had made a concrete assessment of the scope of the employee’s work and the Norwegian Supreme Court

³ US Supreme Court, *Devas (Mauritius) Limited, et al., Petitioners v. Antrix Corp. Ltd., et al.*, No. 23-1201, Vide 24-17.

⁴ US Supreme Court, *International Shoe v. State of Washington*, 326 U.S. 310 (1945).

⁵ US Supreme Court, *Republic of Hungary, et al., Petitioners v. Rosalie Simon, et al.*, No. 23-867.

had concluded that in those two cases the employee had been recruited to perform a function in the exercise of governmental authority and that therefore the exception to immunity in Article 11 did not apply. The state could then invoke immunity, and these two cases were dismissed on this ground.

21. The representative also stated that in one of these cases, the particular task of the employee was to deal with social media activities on behalf of that particular embassy, and this was considered by the court to be an exercise of governmental functions. One of the official functions of the embassy was to be present on social media and to edit its social media profiles. In one of the other dismissal cases, the court had noted that the state, in its response to the District Court, had argued that the dismissal was lawful and had claimed acquittal without at the same time invoking immunity, despite an express request to do so. The Norwegian Supreme Court then assumed that at least the main features of the rules in the State Immunity Convention, Article 8(1), must be considered to be an expression of customary international law. The Supreme Court thus concluded that the state could not invoke immunity. As a result, the decisions of the District Court and the Court of Appeal were overturned and the case was sent back to the court of first instance. In the end, the state lost its claim to immunity because it had not invoked it in the first instance. The representative concluded that the Norwegian courts now appeared to follow the restrictive theory on state immunity. He recalled that his country considered that the 2004 the State Immunity Convention was an important step towards a global framework within which national courts could decide on state immunity.
22. The representative of Austria reported on a recent judgment of the Austrian Constitutional Court concerning the immunities of the Organisation of the Petroleum Exporting Countries (OPEC). As reported by the Austrian delegation at earlier occasions, already in 2022, the Austrian Constitutional Court had declared certain provisions of the OPEC Headquarters Agreement unconstitutional due to the violation of Article 6(1) of the European Convention on Human Rights (ECHR, the Convention, ETS No. 005).⁶ The concerned provisions were subsequently amended through a Protocol, which entered into force on 1 June 2024. The new Article 9 in principle confirms the immunity of OPEC with regard to Austrian jurisdiction and stipulates that labour law disputes with current and former staff members shall be settled in accordance with the internal regulations of the organisation, as is customary in other comparable international organisations. However, OPEC is expressly obliged to ensure that the dispute resolution mechanism, which protects the rights of current and former staff members, is independent and impartial and must meet the criteria of the right to a fair trial as contained in Article 6(1) of the ECHR. The amended version of the OPEC Headquarters Agreement was again challenged by the same applicant before the Constitutional Court. In his opinion, the Headquarters Agreement as amended by the Protocol of 1 June 2024 still did not provide the right to fair trial as the “Appeals Committee” which was established by the OPEC Board of Governors in October 2022 for the settlement of labour disputes with present and former OPEC staff members, did not fulfil the criteria of Article 6(1) of the ECHR. The representative stated that in its decision,⁷ the Constitutional Court had held, referring inter alia to the cases of *Waite and Kennedy v. Germany* and *Klausecker v. Germany*,⁸ that states may refuse to deal with an application if it has no reasonable prospect of success. The Constitutional Court concluded that in light of the fact that the criteria contained in these judgments were fulfilled through the adoption of the Amendment Protocol and the creation of the Appeals Committee, the alleged unconstitutionality was so unlikely that the submission had no reasonable prospect of success and was hence not dealt with in substance.
23. The representative of the United Kingdom provided information on a case before the UK Court of Appeal, known as the [Kingdom of Spain v. Lydia Lorenzo](#)⁹ case. This case concerned an employee at the Spanish embassy in London who, in 2015, brought race discrimination proceedings in the Employment Tribunal. Spain defended the claim on grounds of *inter alia*

⁶ Constitutional Court of Austria, [SV 1/2021-23](#) of 29 September 2022.

⁷ Constitutional Court of Austria, [SV 1/2024-16](#) of 27 November 2024.

⁸ ECtHR, [Waite and Kennedy v. Germany](#) [GC], no. 26083/94, 18 February 1999; ECtHR, [Klausecker v. Germany](#) (dec.), no. 415/97, 29 January 2015.

⁹ [The Kingdom of Spain v. Lydia Lorenzo](#) [2024] EWCA Civ 1602.

state immunity, by reference to ss.4(2)(a) and 16(1)(a) of the State Immunity Act 1978 (SIA). The case was stayed behind the proceedings that led to the judgment of the Supreme Court in *Benkharbouche v. Embassy of the Republic of Sudan and Janah v. Libya*.¹⁰ The case of *Benkharbouche* concerned the issue of state immunity in claims by two employees, each of Moroccan nationality, carrying out domestic duties of a private law character for diplomatic agents at the London embassies of Sudan and Libya respectively. One was permanently resident in the United Kingdom, the other was not. The Supreme Court held that there was no basis in customary international law for the application of state immunity in an employment context of that type. The wider immunity which had been conferred in such cases by ss.4(2)(b) and 16(1)(a) of the SIA was therefore inconsistent with Article 6 of the ECHR and with Article 47 of the Charter of Fundamental Rights of the European Union. Following the judgment in the case of *Benkharbouche*, the Secretary of State made the State Immunity Act 1978 (Remedial) Order, which amended ss.4(2)(b) and 16 (1) of the SIA to remedy the incompatibility identified in that case. In light of the rationale in *Benkharbouche*, the Court of Appeal dismissed Spain's appeal and in supplementary judgment dated 29 January 2025 made a declaration that section 4(2)(a) is incompatible with Article 6 of the ECHR. The Secretary of State had not taken part in the appeal but made submissions to the court about the scope of the declaration. The representative of the United Kingdom noted that Spain had not appealed this judgment. She hoped that this case might be of particular interest to states which, like the United Kingdom, are parties to the 1972 European Convention on State Immunity (ETS No. 074),¹¹ as the SIA reflected the requirements of Article 5 of this convention. Her Government was considering the implications of this judgment and was looking into making a remedial order in due course to ensure the relevant provisions of the SIA are compatible with the ECHR.

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

24. The Chair invited delegations to report on judgments, decisions and resolutions by the ECtHR involving issues of public international law.
25. The representative of the Netherlands drew the attention of CAHDI delegations to the so-called "[*Crimean Gold*](#)"¹² case brought before the ECtHR. This case concerns four museums located in Crimea which loaned museum artefacts reflecting the history of Crimea to the Allard Pierson Museum in Amsterdam for exhibition based on a contract governed by Ukrainian law. In March 2014, following the Russian Federation's illegal annexation of Crimea, both Ukraine and the four museums in Crimea made a claim to the artefacts. It was unclear to the Allard Pierson Museum to whom the artifacts should be returned. The Crimean museums then brought proceedings against the Allard Pierson Museum before the Amsterdam Regional Court, demanding the restitution of the artefacts. Ukraine intervened in these proceedings. On 14 December 2016 and 26 October 2021 respectively, the Amsterdam Regional Court and the Amsterdam Court of Appeal ruled that the Allard Pierson Museum had to return the artefacts to Ukraine. On 9 June 2023, the Supreme Court dismissed the applicant institutions' appeal on points of law, as regards their complaint under Article 1 of Protocol No. 1 to the Convention. Following this decision, the artefacts were returned to Ukraine. Before the ECtHR, the applicant museums allege that both the Netherlands and Ukraine violated Article 1 of Protocol No. 1 to

¹⁰ [*Benkharbouche \(Respondent\) v. Secretary of State for Foreign and Commonwealth Affairs \(Appellant\) and Secretary of State for Foreign and Commonwealth Affairs and Libya \(Appellants\) v. Janah \(Respondent\)*](#) [2017] UKSC 62

¹¹ Austria, Belgium, Cyprus, Germany, Luxembourg, Netherlands, Portugal (signed but not ratified) and Switzerland.

¹² ECtHR, *Bakhchysarai historical, cultural and archaeological museum-preserve and Others v. the Netherlands and Ukraine*, no. 36432/23, communicated case, 3 December 2024.

the ECHR. They further allege that Ukraine violated Articles 13 and 18 of the ECHR in conjunction with Article 1 of Protocol No. 1 to the ECHR.

26. The representative of Türkiye took the floor to inquire why two specific cases involving Türkiye had been included in the Compilation of the case law of the ECHR related to public international law, prepared by the Secretariat. In his view, these two judgments concerned issues related to the domestic law of Türkiye and were not related to public international law. The Secretariat replied that it considered that both judgments contained a cross-border element which made them relevant for inclusion in the Compilation, but accepted to remove them from the document.

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

27. 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 with Professor Mathias Forteau, Professor of Public International Law at Paris Nanterre University and member of the International Law Commission (ILC), on the ongoing work of the ILC on “Non-legally binding international agreements”*

28. Under agenda item 6.1, the CAHDI resumed its deliberations on topical issues related to treaty law. The focus of the session was on non-legally binding instruments in international law, beginning with a presentation by Professor Matthias FORTEAU, Special Rapporteur of the International Law Commission (ILC). The speaking notes of Professor FORTEAU are set out in **Appendix IV** to this report.

Discussion

29. Following the presentation, the Chair thanked Professor FORTEAU for his clear and detailed presentation and opened the floor to delegations for comments and questions.
30. The representative of Poland thanked Professor FORTEAU and raised the issue of scope of the ILC topic, specifically whether inter-institutional or administrative arrangements would be included. Recalling his country's position expressed during the Sixth Committee, the representative argued that such inclusion would make the topic overly broad and reiterated preference for focusing on instruments between states or between states and international organisations. In response, Professor FORTEAU stated that while he had initially shared such scepticism, he had come to see the inclusion of inter-institutional agreements adopted at the international level as necessary, due to the overlapping practices among states. He noted, for instance, that some agreements signed by postal authorities or ministries were considered treaties by some states and as administrative arrangements by others. He confirmed that if diverging rules emerged between types of agreements during the analysis of state practice, the scope could be re-evaluated.
31. The representative of Switzerland inquired whether the list of indicators being developed would be legally binding and how conflicting indicators within the same agreement would be handled - particularly in situations where some parties viewed an instrument as binding while others did not. Professor FORTEAU responded that the list of indicators would be purely descriptive, not prescriptive, and based on what is found in jurisprudence and state practice. He stressed that no single indicator should prevail over others and that the assessment must always be holistic and contextual.
32. The representative of Czechia expressed concern regarding the use of the term “agreement”, citing its specific connotations under Czech domestic law and suggesting “consensual instrument” as an alternative. Czechia questioned whether a lack of consensus on legal character would not, in itself, prevent the conclusion of an agreement. In response, Professor FORTEAU explained that international tribunals often assess such questions objectively, based on intention as evidenced in the agreement or subsequent conduct, and that divergent interpretations can be resolved through subsequent clarification or additional agreements. On

terminology, he reiterated that while he remained open to alternatives, “agreement” was widely used in practice and jurisprudence, and a “without prejudice” clause was included in the draft conclusions to address divergent national usages.

33. The representative of the United Kingdom emphasised the need to keep the work non-prescriptive, highlighting the value of flexibility in using non-legally binding instruments. Her country welcomed the idea of a compilation of state practice, a glossary, and possibly good practice examples, but expressed caution around developing model texts or guidelines. The Parliament of the United Kingdom was particularly attentive to terminology, insisting that “instrument” was the more appropriate term in the domestic context.
34. The representative of the United States voiced strong objections to the use of the term “agreement” to describe non-binding instruments. He stressed that “agreement” implied legal obligation in U.S. practice and its use for non-binding instruments could undermine legal clarity. The representative welcomed the descriptive nature of the project but warned against introducing criteria or elements that could suggest prescriptive standards. He expressed a preference for “practice tips” or informal guidance and reiterated the widespread opposition to the term “agreement” expressed during the Sixth Committee debates. In reply, Professor FORTEAU acknowledged the concern and clarified that he used the term “criteria” inadvertently in his oral presentation. He confirmed that his written report explicitly recommended avoiding such terms in favour of more neutral language like “indicators” or “implications.” He pointed to evidence from various jurisdictions, including U.S. internal legal memoranda and ASEAN documents, where the phrase “non-binding agreements” had been used. He emphasised that the practice was not uniform and that many states and international bodies did, in fact, use the term “agreement” for non-legally binding instruments.
35. The representative of Australia noted that Australia had maintained a clear practice over the past three decades of using “agreement” exclusively for legally binding instruments, with a publicly available guide for less-than-treaty-status documents. They welcomed the non-prescriptive, descriptive approach but noted that divergent understandings of language could create confusion in bilateral or multilateral contexts.
36. The representative of the Republic of Korea stressed the importance of clarity and caution, warning that non-legally binding instruments can sometimes produce indirect legal consequences, which may not reflect the true intention of the parties. Korea supported the Rapporteur’s balanced and inclusive approach, while emphasising the need to protect legal certainty.
37. The representative of Slovenia acknowledged previous concerns about terminology. Despite not being in favour of the use of the term “agreements”, Slovenia is aware of the difficulty of finding a suitable alternative and could support the use of the term “agreement”, provided that it is clearly defined it refers exclusively to the substantive matching of the wills or participants. Her country welcomed the ILC’s continued work and appreciated the opportunity to share their national legal framework, including legislation currently being revised to address international acts.
38. The representative of Israel reiterated concerns about the term “agreement,” which she said to be traditionally reserved for binding instruments. She suggested alternatives such as “arrangement” or “instrument”, which were used in Israeli domestic law and administrative guidelines.
39. The representative of Romania reflected on the increasing use of non-binding instruments and the importance of educating domestic authorities on their implications. Romania stressed the importance of clear intent and procedural differentiation at the national level, noting that Romania internal procedures for treaties and non-binding instruments differed significantly. The representative expressed concern that the ILC’s work should not give the impression of creating a special legal regime for non-binding instruments.
40. The representative of AALCO recalled the views of its 49 member states, many of whom had emphasised the need to protect legal certainty and ensure that the normative force of treaties was not diluted by the proliferation of non-binding instruments. Concerns were also raised

about the inappropriate use of non-binding instruments as evidence of customary law, and the use of such texts in asymmetric relationships. Professor FORTEAU acknowledged the importance of these concerns and confirmed that his draft conclusions included a provision clarifying that the work on non-binding agreements does not in any way undermine the force of treaty law.

- ***Discussion on non-legally binding instruments in international law***

Exchange on CAHDI document CAHDI (2025) 3 Confidential

41. The Chair recalled that at its 67th meeting, the CAHDI had tasked the Secretariat with preparing a structured, non-prescriptive compilation of national legislation, guidelines, glossaries, and related documentation. Delegations had been invited to submit materials, and the Secretariat had also conducted its own research based on publicly available information and sources referenced in the replies to the questionnaire. The resulting compilation, document CAHDI (2025) 3 *Confidential*, now comprised material from 14 countries.
42. The CAHDI Secretariat provided a summary of the content and methodology of the compilation beginning by thanking delegations for their submissions and indicating that member states should review the entries related to their practice - particularly the translations - to ensure accuracy and consistency. The Secretariat encouraged delegations to provide corrections or updated documentation and stressed that materials not in English or French were also welcome, as translation tools would continue to be used.
43. The Secretariat explained that the compilation included a comparative table summarising responses to both the questionnaire and the document request. This table indicated the types of documents submitted, their status, and the languages in which they were provided. The Secretariat had identified similarities and key differences across states' approaches and organised the data accordingly. It would be useful if delegations verified this information.
44. The CAHDI Secretariat then outlined several options for follow-up action, which could help synthesise and make accessible the compiled material:
 - Multilingual glossary: This could consolidate national terminology across different languages, including both Council of Europe languages (English and French) and potentially other official languages of member states. Annex I of the compilation offered a preliminary draft of such a glossary.
 - Compendium of good practices: This would highlight successful or innovative national practices in a non-prescriptive format.
 - Guidelines: These could draw from the analytical report prepared originally by Professor Andreas ZIMMERMANN (University of Potsdam, Germany) in December 2022 and which had subsequently been updated by the Secretariat (document CAHDI (2025) 5 *prov Confidential*) and the compilation to offer drafting guidance, including checklists, model clauses, or glossaries.
 - Model texts or clauses: The compilation had already identified six examples of national model texts. These could be further analysed, and their similarities and differences presented in a structured format. The Secretariat demonstrated how the compilation grouped model texts into sections (e.g., introduction, final clauses) and noted that many common elements could already be observed, particularly in the preambular and concluding sections.
45. It was emphasised that the intent of any further work would be to provide practical, non-binding tools for states, maintaining respect for divergent national practices. The Secretariat concluded by proposing a step-by-step approach, beginning with further development of the comparative glossary and compilation of national models, with future decisions to be taken by the CAHDI.

Discussion on follow-up actions and way forward

46. The Chair invited delegations to react to the Secretariat's proposals and to express their views on possible next steps, particularly concerning the development of tools and the structure of follow-up work.

47. The representative of Germany, as the promoter of the initiative, thanked the Secretariat for its work and emphasised that CAHDI's efforts had made a significant contribution to the ILC's deliberations. Germany welcomed the comprehensive compilation and suggested that the time had come to harvest the fruits of this work by moving forward with the creation of a glossary and/or guidelines. Germany emphasised the usefulness of a concise and practical tool for practitioners, which would allow for flexibility and not impose common standards.
48. The representative of Finland expressed support for the Secretariat's proposals and acknowledged the quality of both the analytical report and the compilation. She agreed on the value of compiling best practices and model clauses, especially in areas like titles, introductions, and final provisions of MoUs. She echoed the need for flexibility and cautioned against overly prescriptive guidelines. The representative also noted that they had not yet reviewed the Finnish translations but would do so shortly.
49. The representative of Switzerland also supported the continuation of CAHDI's work but emphasised the need to maintain non-prescriptiveness and flexibility. The representative expressed concern about any perception that a common legal regime was being created. While supporting compiling examples, he was hesitant about developing model texts or guidelines, as this could be seen as creating soft law. His country supported the idea of organising a follow-up workshop, particularly to explore indirect legal effects of non-binding instruments and concerns about their use to circumvent domestic treaty procedures.
50. The representative of Romania reaffirmed Romania's commitment to the exercise and thanked the Secretariat for its work. She stressed that the flexibility associated with non-binding instruments must be preserved and that CAHDI's work should not imply the creation of a new legal regime. She then elaborated on Romania's domestic procedures, noting that intent was the determining factor for choosing between the treaty-making procedure and the more informal approval process used for non-binding instruments. Romania underlined that clarity of intent at the outset was key and that the title of a document alone was not determinative. In practice, older instruments titled "agreements" were not always binding, but the actual content was decisive.
51. The representative of the United Kingdom expressed general support for the Secretariat's compilation and reiterated its preference for non-prescriptive outputs. She welcomed a compilation of good practices and indicators but was cautious about model texts or harmonised glossaries. The representative also suggested that a working group could be created to consider the next steps.
52. The representative of the United States agreed with the remarks made by the representative of the United Kingdom. He supported the compilation of practice tips and examples but remained concerned that development of criteria or elements could limit the flexibility that was a core benefit of non-binding instruments. He further reiterated concerns regarding terminology and stated that any follow-up work should reflect the range of state views.
53. The representative of Australia welcomed the compilation and thanked the Secretariat. He referred to Australia's publicly available guidelines on non-binding instruments, including examples of terminology that denote non-binding intent (e.g., use of "will" rather than "shall"). The representative also offered examples of situations where different legal characterisations of the same instrument may arise due to differing domestic procedures or legislative requirements.
54. The representative of AALCO expressed appreciation for being included in the discussion and recalled that AALCO's 49 member states had examined this topic at their September 2024 session. AALCO members had highlighted the need for a clear distinction between binding and non-binding instruments, and had cautioned against the overuse of non-binding instruments, which could weaken treaty law. They also warned that non-binding instruments could be inappropriately cited as evidence of customary practice and underlined the importance of ensuring sovereign equality and sensitivity to the views of developing countries.
55. Following the discussion, the Chair summarised the key takeaways and proposed a way forward: Delegations were asked to review the compilation, including translations, and provide

written feedback. The Secretariat would continue adding national documentation to the compilation and revising the current document on the basis of written comments and change the glossary overview from language to a glossary overview in a comparative format, organised by country, without merging it into a unified or common glossary.

56. The Chair also stated that differences in terminology would be noted, but no common definitions would be proposed at this stage. The Secretariat would prepare a proposal for a methodology to identify best practices, which would be discussed at the next meeting of the CAHDI. The glossary would remain part of the comparative compilation, and no “best practice” label would be attached to any glossary unless explicitly so decided later. The Chair confirmed that the topic would remain on the agenda for future meetings and thanked all delegations for their valuable input.

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

57. The Chair recalled that the questionnaire had been prepared by Slovenia and approved by CAHDI via written procedure on 15 June 2022, as reflected in document CAHDI (2022) 3 rev *Confidential*. The main trends arising from the replies received were summarised in document CAHDI (2024) 11 prov *Confidential*, dated 31 March 2024, while the complete replies were compiled in document CAHDI (2024) 6 prov *Confidential Bilingual*, dated 28 August 2024. To date, 24 delegations had submitted replies. The Chair noted that no new replies had been received since the previous CAHDI meeting and encouraged additional delegations to participate in order to broaden the basis for the analysis. Delegations were also invited to discuss possible next steps for the project.

58. The floor was then given to the representative of Slovenia, as the promoter of the initiative. The representative of Slovenia began by thanking all delegations who had submitted completed questionnaires and reiterated the call for additional contributions, stressing that a higher number of replies would significantly enhance the understanding of divergent national practices on treaties that do not require parliamentary approval. The representative suggested that CAHDI postpone any decisions on next steps until more responses were received and a more comprehensive analysis could be undertaken.

59. The Chair thanked Slovenia and opened the floor for comments and suggestions from other delegations. As no delegations requested the floor, the Chair proposed to adopt Slovenia’s suggestion as the working approach: to encourage further replies to the questionnaire and revisit the question of follow-up actions once more comprehensive data had been compiled. No objections were raised.

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

60. The CAHDI then proceeded to sub-item 3, focusing on international soft law instruments and their implications for the legal departments of Ministries of Foreign Affairs. This topic was placed on CAHDI’s agenda at its 63rd meeting in Bucharest (Romania) following a proposal from the Italian delegation. At the 65th meeting (22–23 September 2023 in Strasbourg, France), a questionnaire on the issue was formally adopted, as prepared and subsequently amended in consultation with delegations. The final version is reflected in document CAHDI (2023) 19 *Restricted*, dated 23 September 2023. The Chair announced that to date, eight delegations had submitted replies to the questionnaire, compiled in document CAHDI (2025) 6 prov *Confidential Bilingual*, dated 7 March 2025.

61. The floor was given to the representative of Italy as the promoter of the initiative. The representative explained that the project was linked to Italy’s chairmanship of the International Institute for the Unification of Private Law (UNIDROIT). Italy extended an invitation to all CAHDI participants to attend UNIDROIT’s annual conference in December 2025, noting that the event would be an opportunity to explore the implications of soft law in greater depth even though the exact topic of the conference was yet to be decided. His country welcomed further replies to the questionnaire and invited the representative of UNIDROIT to provide additional information to delegations.

62. The representative of UNIDROIT thanked the CAHDI and the Chair, expressing appreciation for the opportunity to participate in CAHDI for the first time as an observer. She stated that while soft law instruments are clearly non-binding, they were increasingly relevant in the practice of international governance. UNIDROIT, as an intergovernmental organisation focused on the unification of private law, frequently uses soft law instruments, especially in light of the increasing difficulty in finalising international conventions.
63. She explained that the organisation had observed a growing reliance on soft law instruments by international financial institutions as conditions for financing, as well as their increased use by domestic and international courts, including arbitral tribunals. Some of these instruments, or principles contained therein, had even been cited as general principles of law under Article 38(1)(c) of the Statute of the International Court of Justice (ICJ).
64. The purpose of the questionnaire was thus to better understand how legal departments of Ministries of Foreign Affairs use, implement, and assess soft law instruments, and whether states see the need for clearer indexes or indicators to assess their role in international legal processes. She emphasised that while UNIDROIT had no intention of claiming that soft law constitutes binding international law, it was clear that such instruments are increasingly shaping domestic and international legal interpretation.
65. The representative of UNIDROIT concluded by reiterating her organisation's intention to continue working on this issue, particularly through the upcoming conference, and expressed hope for further collaboration with the CAHDI. She emphasised the value of engaging a broader constituency, including states from Latin America, Africa, and Asia, whose perspectives were essential for a globally representative understanding of soft law.
66. The Chair thanked UNIDROIT and welcomed its engagement with the CAHDI. No further delegations requested the floor on this item. The Chair echoed earlier encouragement for states that had not yet replied to the questionnaire to do so, emphasising that further contributions would be extremely valuable for the continuation of the work on this subject.

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*

67. 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 (CAHDI (2025) 7 *Confidential*). The Chair also drew the attention of delegations to document CAHDI (2025) Inf 1 containing reactions to reservations and declarations to international treaties previously examined by the CAHDI and for which the deadline for objecting had already expired.
68. The Chair explained that document CAHDI (2025) 7 included nine items identified by the Secretariat for possible examination. Of these, seven related to treaties concluded outside the Council of Europe (Part I), and two concerned Council of Europe treaties (Part II). Three new items had been added since the previous meeting. Where relevant, the Chair grouped similar declarations for joint discussion and briefly outlined each issue before opening the floor for comments or statements of intention to object.
69. With regard to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, the Chair noted a **declaration** by which **El Salvador**, upon accession on 23 March 2024, had excluded the application of Article 8(1) of the Convention, citing domestic legislation governing such proceedings. The Chair pointed out that this wording exceeded the permissible scope for declarations under Article 8, particularly failing to respect the limitation expressed in the second sentence. The Chair recalled that this item had already been examined at the previous CAHDI meeting. No delegation wished to make a comment with regard to this item.
70. With regard to the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, and the Protocol on the Law Applicable to Maintenance Obligations,

the Chair introduced two similar **declarations** made by **Georgia** upon ratification on 14 May 2024. Both declarations stated that the application of the Convention and Protocol will commence with respect to Abkhazia and the South Ossetia region only once Georgia's de facto jurisdiction over these territories was restored. The Chair noted that similar declarations had been made by Georgia in past instances, including in 2019 regarding the International Agreement on Olive Oil and Table Olives, and in 2023 to the Minamata Convention on Mercury. No delegation, including Georgia, took the floor.

71. With regard to the **declaration** by **Honduras** made upon accession on 22 July 2024 to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, stating that Honduras recognises the competence of the Committee against Torture to receive communications from individuals once domestic remedies had been exhausted, the Chair explained that although this was broadly in line with Article 22(5) of the Convention, the declaration omitted the qualifying exception which allows the Committee to consider communications where remedies are unreasonably prolonged or unlikely to bring effective relief. As such, the declaration, while only deviating slightly, narrowed the scope of the accepted conditions and might thus merit further scrutiny.
72. The representative of Austria stated that his country deemed the declaration problematic and was contemplating an objection. No other delegation took the floor.
73. The next item examined was a **communication** by **Belarus** concerning the Protocol against the Smuggling of Migrants, supplementing the Convention Against Transnational Organized Crime. This item was included as a follow-up to CAHDI's earlier discussion on Belarus' 2023 interpretative declaration, which questioned the binding nature of the provisions of Article 20 of the Protocol concerning dispute settlement, particularly in cases where a state party had withdrawn its reservation regarding the jurisdiction of the ICJ. The 2023 declaration had been objected to by Lithuania, Poland and the European Union. Belarus' new communication, dated 10 September 2024, reiterated its position and extended the scope of its response to include the objections made in 2024. The communication challenged the legal validity of those objections.
74. The representative of Austria responded, stating that Austria had never made a reservation and thus found its inclusion in the Belarusian communication inexplicable. The representative described the communication as particular, not warranting any response.
75. The representative of Poland noted that Belarus' communication explicitly referenced Poland's objection. He found the document unclear but that it appeared to extend Belarus' earlier position to the new objections. His country would consider whether to continue this sequence of exchanges.
76. The representative of Italy concurred with the previous speakers stating that his country considered the communication to be an attempt to substantially subtract Belarus from its treaty obligations. No further delegations took the floor.
77. With regard to a **declaration** by **Kazakhstan** made upon accession on 3 September 2024 to the 1923 Convention for the Suppression of the Circulation of, and Traffic in, Obscene Publications, amended in 1947, in which **Kazakhstan** declared that it would undertake to fulfil the obligations under Article 5 of the Convention only within the framework of its existing national legislation, the Chair noted that such a national law exemption could be seen undermine uniform application of the treaty provision and to introduce potential legal uncertainty, an issue raised repeatedly in CAHDI discussions. No delegation wished to make a comment with regard to this item.
78. With regard to a **reservation** by **Argentina** made upon ratification of the Convention for the Pacific Settlement of International Disputes excluding Argentina from the obligations under Articles 53, 54, and 58, relating to the role of the Permanent Court of Arbitration (PCA) and dispute resolution procedures, the Chair explained that the Convention did not contain a clause on reservations and that prior reservations made to Article 53 and 54 had not been objected to. No prior reservation had been made, however, to Article 58. The Chair noted that declaring

all three provisions as non-applicable could be viewed as contrary to the object and purpose of the treaty. No delegation wished to make a comment with regard to this item.

79. With regard to a **declaration** by **Spain** to the European Convention on Mutual Legal Assistance in Criminal Matters (ETS No. 030) and its Additional Protocols (ETS No. 099 and ETS No. 182) designating the European Public Prosecutor's Office as a competent judicial authority, the Chair noted that similar declarations had been discussed in previous meetings. No delegation wished to make a comment with regard to this item.
80. With regard to a **declaration** by **Azerbaijan** made upon ratification of the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196) on 19 April 2024 by which Azerbaijan declared that it would not apply the relevant provisions of the treaty in relation to Armenia until relations between the two countries would have normalised, the Chair recalled previous CAHDI discussions from 2021–2022 on such declarations that excluded treaty-based relationships between specific states. The representative of Azerbaijan took the floor explaining that Azerbaijan's declaration did not constitute a reservation and had been made in accordance with established international practice. It was meant to inform other Parties to the Convention that Azerbaijan would not apply the treaty provisions to a country with which it lacks diplomatic relations. The representative added that the declarations did not limit the scope of the treaty but reflected the impossibility of fulfilling treaty obligations under current circumstances. He expressed hope that normalisation of relations with Armenia would render these declarations null and void in the future. No delegation wished to make a comment with regard to this item.

7 CURRENT ISSUES OF PUBLIC INTERNATIONAL LAW

7.1 Topical issues of public international law

- ***Exchange of views with Dr Danae Azaria, Associate Professor, UCL Faculty of Laws, on "The Law of the Sea and the Protection of Critical Submarine Infrastructure"***
81. The Chair welcomed and introduced Dr Danae AZARIA, Associate Professor at the University College London Faculty of Laws, Chair of the International Law Association Committee on Submarine Cables and Pipelines under International Law (ILA Committee), Director of the State Silence Project, and future Director of Studies at the Hague Academy of International Law. Dr AZARIA provided the CAHDI with an insight on the work of the ILA Committee and her own research on the topic. She explained that no State has a right of self-defence in response to attacks against commercial cables and pipelines crossing maritime zones beyond its territorial sea. She also examined whether states may lawfully take enforcement measures against foreign vessels suspected of attacking cables or pipelines. The speaking notes of Dr AZARIA are set out in **Appendix IV** to this report.

Discussion

82. Many delegations thanked Dr AZARIA for her comprehensive overview.
83. The representative of Ireland noted the absence of state practice in this area. He explained that Ireland had tried to look at these issues through the prism of the law of piracy but had found that this could not be a sound legal basis, as piracy requires the act to be committed for private ends. The representative expressed an interest in the possibility of using the freedom of the high seas to lay cables and pipelines, for example to create a register of cables, which could enable States to take prescriptive or enforcement action. The representative asked Dr AZARIA whether she had considered the latter idea or had any initial thoughts on it.
84. Dr AZARIA agreed with the representative's comments regarding the limitations of the law of piracy as a legal basis. She noted that some states were already resorting to the freedom to lay cables, and she considered that it was possible for states to take enforcement measures on that basis. She underlined, however, that there was currently insufficient state practice to support this as an established norm.
85. The representative of Greece recalled that international law does not generally preclude states from taking action to prevent damage to critical underwater infrastructure and activities (e.g.

patrolling). However, she expressed doubts as to whether it would be the same for measures involving a certain degree of constraint and invited Dr AZARIA to provide further analysis on this point. In addition, the representative asked Dr AZARIA whether there would be any ground for an extensive interpretation of Article 113 of the United Nations Convention on the Law of the Sea (UNCLOS) in this respect. Dr AZARIA explained this Article not to provide for enforcement jurisdiction, which meant that an extensive interpretation would imply an amendment.

86. The representative of Poland asked Dr AZARIA whether a regional perspective or the specific factual situation such as the existence of a semi-enclosed sea or, for example, the existence of sensitive protected areas, could influence the consideration of this issue. In regard to regional particularities, such as archipelagic states or straits, Dr AZARIA noted that specific rules could apply in those scenarios.
87. The representative of Germany noted that Dr AZARIA had emphasised that the insufficient state practice and the absence of customary international law on the subject offered limited options to states. However, she stressed that states themselves had the capacity to develop customary international law by initiating consistent practice. She therefore encouraged states not to refrain from acting in a manner they consider legal to address the dangers they currently face. Dr AZARIA shared the view of the representative confirming that the establishment of a new practice depended on states' actions. She warned, however, about the potential interference with the freedom of navigation and noted that states should then be ready for the principle of reciprocity to apply and reflect on how to legally design any new interpretation or ground. She reiterated that piracy was ill-suited for that purpose since it created some issues with the requirement of commitment for "private ends". In contrast, she suggested that the freedom to lay cables and pipes and the freedom to operate them could potentially give more leeway although this pathway was equally not free from legal challenges.
88. The representative of Norway disagreed with Dr AZARIA's argument that the 1884 Convention for the Protection of Submarine Telegraph Cables (1884 Convention)¹³ would create customary international law and its scope to be limited to telegraph cables only. He echoed the position of the representative of Ireland regarding the limitations of piracy as a legal basis, particularly the requirement that piracy needed to be committed for private ends. The Norwegian representative then asked Dr AZARIA whether the right of a coastal state to take measures to prevent passage which is not innocent in its territorial waters could be transferred to another coastal state; in other words, whether it was necessary to assess if a passage is innocent in particular territorial waters or if a violation of the right of innocent passage could follow the vessel further on its journey. Dr AZARIA agreed with the representative on the fact that the 1884 Convention did not reflect customary international law. She did not see any problem with the representative's suggestion of a broad interpretation of the scope of the 1884 Convention beyond telegraph cables, but noted that it would be necessary to prove, firstly, that the scope of application was wider, and, secondly, that a customary rule now exists. For this reason, she suggested focusing directly on trying to prove that a new custom had been established.
89. The representative of Denmark expressed his country to be aware of its responsibilities as a key entry point to the Baltic Sea. The representative recalled that rules must be interpreted in the context of current challenges and that there could be a delicate balance between the freedom of navigation and the protection of critical underwater infrastructure. The representative stressed the importance of preventive measures, noting that, in Denmark's view, hailing a suspicious vessel does not contradict the principle of flag state jurisdiction, the only complex aspect in this regard would be to decipher what constituted suspicious behaviour. The representative explained that Denmark had already discussed with like-minded states and encouraged further discussion on this topic. The representative pointed out that there was no explicit right to establish protection zones around cables and pipelines in the Exclusive Economic Zone (EEZ), but that it could be argued that the environmental jurisdiction of the coastal state provided a legal basis for establishing such zones when this is necessary for the

¹³ [1884 Convention for the Protection of Submarine Telegraph Cables](#), Adopted in Paris, France on 14 March 1884.

protection of the marine environment. The representative also stressed the importance of states to have reliable domestic legislation to improve the enforcement of existing rules. Finally, the representative considered that a damage or a concrete risk of imminent damage constituted an argument based on necessity or self-defence that could be used to intervene, but only if the action amounted to an armed attack. Concerning necessity, Dr AZARIA stated her view that it would be difficult to think of a scenario that would meet such a high threshold. She explained that, following Article 25 of the ILC's Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA), it could be argued that the protection of the marine environment could qualify as an essential security interest to be safeguarded. It would, however, be necessary to prove that such a security interest, e.g. telecommunications, was essential for states, and that there was a grave and imminent peril. She explained that the second requirement would mean the proof that preventive action would not seriously impair an essential interest of another state.

90. The representative of Finland explained that the incident around the tanker Eagle S on Christmas Day last year had generated public discussion and thus the need to find answers on how to tackle such incidents when they occurred in the EEZ, although in that case the vessel had been moved to the territorial sea, which made it easier to deal with. The representative explained that piracy and necessity had also been mentioned in the ongoing discussion at the national level. She was pleased to see that Dr AZARIA had come to the same conclusion that the law of piracy could not be applicable in this context. With regards to the principle of necessity, the representative expressed an interest in hearing about situations in which this principle could be invoked, noting the high threshold required and the need for a case-by-case analysis. The representative asked Dr AZARIA whether countermeasures could play a role in this discussion. Dr AZARIA noted that in order for countermeasures to be taken, there must be a violation by a state of an international obligation. She considered that, although there is no express rule preventing the bombing of pipelines and cables, it could be envisaged that the violation of the protection of the marine environment or of the principle of reserving the high seas for peaceful purposes could allow for countermeasures to be available. Moreover, a violation of those two principles should be understood as a violation of an obligation *erga omnes partes* under UNCLOS and as a violation of an obligation *erga omnes* under customary international law.
91. The representative of Sweden inquired on how to ensure that flag states fulfilled their obligations in situations of suspected damages, and whether there was a case for improved cooperation with flag states in such situations. Dr AZARIA noted that even if flag states had obligations, it might not be possible to enforce them, particularly in cases where the flag state could not be relied upon (e.g. due to an unwillingness to act or remoteness).
92. The representative of Australia explained that the challenges arising from the protection of critical underwater infrastructure recalled an analogue situation Australia had had in relation to fisheries and even in areas where a clear jurisdictional basis for enforcement action existed. The question then arose how to respond in the case of a non-compliant vessel, particularly in remote areas. In the fisheries context, Australia had done quite a lot of work and this not least with respect to the law relating to hot pursuit. In this context, Article 111 of the UNCLOS is clear but not necessarily extremely comprehensive. Since 2007, Australia has an agreement with France which provides for co-operative surveillance and enforcement and also allows for hot pursuit to be commenced by so-called technical means, i.e. via high resolution satellite imagery and related technologies as well as pilotless aerial vehicles to commence and maintain hot pursuit rather than having to rely on vessels on the water or aircraft with line of sight.¹⁴ The representative explained that the concept had been expanded with respect to commencement and maintenance of hot pursuit in the so-called subsidiary agreement of 2012.¹⁵

¹⁴ [Agreement on Cooperative Enforcement of Fisheries Laws between the Government of Australia and the Government of the French Republic in the Maritime Areas adjacent to the French Southern and Antarctic Territories, Heard Island and the McDonald Islands](#) signed in Paris on 8 January 2007.

¹⁵ [Joint Statement of enhanced strategic partnership between Australia and France](#), 19 January 2012.

93. The representative of France asked about the right of self-defence and a possible accumulation of justifications, in order to understand whether the justifications of multiple states, albeit insufficient on their one, would become sufficient to justify an action if taken as a whole. Dr AZARIA argued that it was a matter of bringing together the arguments of different states, rather than self-defence allegations being “accumulable”. She cautioned states to refrain from using force based on borderline or legally questionable grounds.
94. The representative of Estonia called on states to seek better ways to strengthen their national legislation and enforcement mechanisms to protect critical underwater infrastructure. The representative also noted the legal value of UNCLOS, while acknowledging the existence of some gaps that could be filled by interpretation. The representative added that, as a practical solution and to counter the potential inaction of flag states, the criminal jurisdiction of coastal states could be extended to the EEZ, while respecting the balance between the freedom of navigation and the protection of critical underwater infrastructure. Dr AZARIA agreed with the representative on the importance of criminal jurisdiction in the given context and noted the possibility to exercise such jurisdiction based on active nationality. She furthermore noted that some, albeit limited, support could potentially be found from the Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.
95. The representative of Italy asked whether the legal basis of sabotage could be used in the context at hand or whether it could only be used in the context of an armed conflict. If so, the representative stressed that this could provide a legal basis for the intervention of regional organisations such as the EU or NATO. Dr AZARIA explained that the ILA Committee had decided not to use the term “sabotage” but rather “intentional damage”, in order to avoid potential confusion as to whether international humanitarian law (IHL) would apply to the scenarios in question.
96. The representative of Iceland thanked Dr AZARIA for urging caution in developing this area of law, emphasising that Iceland valued a long-term vision and the preservation of the integrity of UNCLOS against overly creative interpretation. She noted that Dr AZARIA appeared to highlight the importance of preventive measures and the relevance of preserving the marine environment and the freedom to lay and preserve cables. She asked for further clarification on how to approach the question which state would be entitled to act on that basis. Dr AZARIA considered that the freedom to lay pipelines and cables as expressed in UNCLOS was intended to ensure both the uninterrupted communication between states and peace. Therefore, she believed that it could be easy to argue that the freedom to lay cables necessarily implied the freedom to be able to operate them undisturbedly. Insofar as the list of freedoms on the bed of the high seas was not exhaustive, she noted that this could be considered as an additional freedom.
97. The representative of the United States of America called for caution in interpreting the text of UNCLOS. The representative expressed the importance to take proactive action and reiterated the need to be wary of creativity. In this context, the representative asked whether Dr AZARIA had any concerns about spillover effects of creative and broad interpretations of UNCLOS. Dr AZARIA recognised the need to be cautious about potential spillovers, particularly in relation to customary international law. In her view, this was the reason why, she encouraged states, for example, to operate within the contours of existing self-defence rules rather than trying to expand them. She also advised caution in arguing that a custom already existed or that there was a willingness to change the law.

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

98. Mr Jörg POLAKIEWICZ, Director of DLAPIL, gave a brief update on the recent developments concerning the Special Tribunal for the Crime of Aggression against Ukraine. He reported that at its last meeting (3-4 February 2025 in Brussels, Belgium), the Core Group had reached a compromise on the four sensitive issues discussed since the beginning of its mandate, namely immunities, jurisdiction, trials *in absentia*, and the definition of the crime of aggression. He expressed the hope that work at the technical level could be completed at the forthcoming meeting in Strasbourg later that week. He stressed two points. First, that the Tribunal would be “international” in form, although its jurisdiction would be firmly rooted in Ukraine’s territorial

authority. Second, that there was a consensus that alleged perpetrators will not be able to hide behind functional immunity.

99. The Secretariat informed the CAHDI on the recent developments regarding the Claims Commission for Ukraine (CCU). The Secretariat explained that, since the last meeting of the CAHDI, two preparatory meetings had been held in The Hague, in November 2024 and in January 2025. At the last one, discussions had focused on options for the negotiation process and the institutional framework. The Secretariat confirmed that the Council of Europe stood ready to play a key role in the establishment of the CCU and that it had been tasked with developing a proposal for draft Terms of Reference to establish a Council of Europe Committee in charge of possible negotiations for a potential Council of Europe open convention. The Secretariat explained that these consultations were expected to be finalised on 25 March in The Hague (the Netherlands), with the final decision on whether to opt for an open convention of the Council of Europe remained yet to be taken by the CM at the Ministerial Session on 14 May 2025. Moreover, states were called upon to finalise their positions and support the option of an open convention of the CoE.

Discussion

100. The Chair opened the floor for discussion.
101. The representative of Ukraine reiterated that Ukraine was trying to ensure full and comprehensive accountability for all the violations of international law committed during the Russian Federation's aggression against Ukraine. The representative explained that Ukraine had resorted to every tool, instrument, and mechanism of international law for this purpose. The representative further explained that the current concern was to fill two accountability gaps: not leaving the crimes of aggression without appropriate legal response by establishing the Special Tribunal and ensuring compensation for the damages caused during the aggression by establishing a full-fledged international compensation mechanism. The representative expressed Ukraine's gratitude to DLAPIL and to the Core Group for their work, support and assistance. The representative echoed Mr POLAKIEWICZ's comment about the hope to finalise the technical work on the Special Tribunal in the next few days and welcomed the work of the International Centre for the Prosecution of the Crime of Aggression against Ukraine (ICPA). With regards to the compensation mechanism, the representative emphasised that the work of the Registry of Damage was progressing but called on further action for the CCU in order to obtain an agreement or a treaty promptly.
102. The representative of Ukraine updated the CAHDI regarding the cases before the ICJ, the ECtHR and other courts and tribunals. The representative made reference to the first inter-state case before the ICJ, in which the latter had found that the Russian Federation violated both the International Convention for the Suppression of the Financing of Terrorism and the Convention on the Elimination of All Forms of Racial Discrimination, by not conducting proper investigation on the financing of terrorist activities and by eliminating the education in Ukrainian language in the temporarily occupied Autonomous Republic of Crimea.¹⁶ The representative reported that the second case, concerning the Convention on the Prevention and Punishment of the Crime of Genocide¹⁷ remained at the merits stage, and expressed gratitude towards the 23 states which had intervened.
103. The representative of Ukraine informed the delegations that four inter-state applications were pending before the ECtHR, namely *Ukraine v. Russia regarding Crimea*,¹⁸ *Ukraine and the Netherlands v. Russia*,¹⁹ *Ukraine v. Russia XIII*,²⁰ and *Ukraine v. Russia IX*.²¹ The

¹⁶ ICJ, *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Judgment of 31 January 2024.

¹⁷ ICJ, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, application instituting proceedings on 27 February 2022.

¹⁸ ECtHR, *Ukraine v. Russia (re Crimea)*, Application nos. 20958/14 and 38334/18.

¹⁹ ECtHR, *Ukraine and the Netherlands v. Russia*, Application nos. 8019/16, 43800/14 and 28525/20.

²⁰ ECtHR, *Ukraine v. Russia (VIII)*, Application no. 55855/18.

²¹ ECtHR, *Ukraine v. Russia (IX)*, Application no. 10691/21.

representative welcomed the strong decision of the Court in the case *Ukraine v. Russia regarding Crimea*, which draws up an important catalogue of the Russian Federation's violations of the ECHR.

104. The representative of Ukraine also referred to two ongoing cases before the arbitral tribunals established under UNCLOS. The first case, currently at the merits stage with the tribunal's award expected in due course, concerns the rights of the coastal state in the Black Sea, Sea of Azov and the Kerch Strait.²² The second ongoing case relates to the Russian Federation's actions against Ukraine's navy ships and naval officers and soldiers near the Kerch Strait.²³ The representative of Ukraine also noted the efforts to return children who had been kidnapped by the Russian Federation.
105. The representative of Germany thanked the representative of Ukraine for this overview and expressed her country's support for Ukraine in this quest for accountability.
106. The representative of Ukraine concluded his overview by referring to the six arrest warrants issued by the International Criminal Court (ICC) and expressed the hope that the investigation into the situation in Ukraine would progress effectively and that this work will yield results.

7.2 Peaceful settlement of disputes

107. The Chair opened the floor for discussion on the peaceful settlement of disputes. The Chair referred to document CAHDI (2023) 23 *Restricted*, dated 14 September 2023, which contained an overview of the declarations of states represented in the CAHDI which recognise the ICJ jurisdiction as compulsory.
108. The representative of Poland informed the CAHDI that on 10 July 2024 Poland had notified the UN Secretary General of modifications of its declaration recognising the jurisdiction of ICJ as compulsory. These modifications that had entered into force on 10 January 2025, added the requirement to notify the Republic of Poland in writing of the intention to submit the claim or dispute to the ICJ failing an amicable settlement at least six months in advance of the submission of the claim or dispute to the ICJ.
109. The representative of the PCA provided an overview of the docket of cases that the PCA administered over the past year, as well as an update on recent developments in inter-state cases, and other cases administered by the PCA that may be of interest to the CAHDI. The Statement of the PCA is set out in **Appendix V** to this report.
110. The representative of Lithuania informed the CAHDI that, following a review of its ratifications of UN Conventions and noting several reservations made upon ratification stating that the jurisdiction of the ICJ was not recognised, Lithuania had notified the UN Secretary-General in December 2024 of its decision to withdraw these reservations with regard to seven UN conventions, thereby recognising the jurisdiction of the ICJ.

7.3 The work of the International Law Commission

111. The Chair opened the floor for discussion on the work of the International Law Commission (ILC). The Chair recalled that the 76th session of the ILC would begin in April 2025 and listed the topics to be considered, including, for example, immunity of state officials from foreign criminal jurisdiction, general principles of international law, and sea-level rise in relation to international law. She added that the CAHDI would be closely following the work of the ILC.
112. The representative of the Asian African Legal Consultative Organisation (AALCO) provided information on the work of AALCO in relation to the work of the ILC. He explained AALCO to share the ILC's objectives of codification and progressive development of international law. AALCO provided a regional forum for Asian and African states to discuss and convey their perspectives. The representative noted that during the 62nd annual session held the previous year in Bangkok, Thailand, the Organisation's member states had discussed issues that were on the agenda of the 75th session of the ILC. The *Verbatim Record of Discussions* had been

²² PCA, [Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait \(Ukraine v. the Russian Federation\)](#) (2017-06).

²³ ITLOS, [Case concerning the detention of three Ukrainian naval vessels \(Ukraine v. Russian Federation\)](#) (No. 26).

finalised and uploaded on the Organisation's website.²⁴ On the topic of state immunity, the representative announced that a webinar would be held in collaboration with the ILC on 2 April 2025 to which he invited CAHDI members to attend. Finally, the representative provided further technical information on AALCO's institutional structure. He explained that six Regional Arbitration Centres would operate under a Host Country Agreement, which provides immunities and privileges to the Centres as well as to the internal staff.

113. The representative of Ukraine expressed particular interest in the ILC's work on immunities of state officials from foreign criminal jurisdiction and draft Article 7. The representative stated that Ukraine had submitted comments and considered that the list in draft Article 7 should include the crime of aggression or be formulated in such a way that it would refer to serious crimes under international law in general, thus ensuring that no category of international crimes would fall outside the scope of the draft Article.
114. The representative of Australia reiterated Australia's support for the work of the ILC on sea-level rise in international law. The representative noted the work of the Pacific Island Forum in this regard and recalled the Pacific Island Forum Declaration of 2021 on preserving maritime zones in the face of climate change related sea-level rise, the 2023 Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-Related Sea-Level Rise, and the entry into force on 28 August 2024 of the Australia-Tuvalu Falepili Union Treaty.
115. The representative of the US reiterated his country's support for the work of the ILC on general principles of law within the international legal system to which it had also submitted written comments. The representative voiced concerns that the draft conclusions adopted by the Drafting Committee in 2022²⁵ might give too little weight to the role of states in the generation and recognition of general principles of law and urged states to submit comments and provide the ILC with the necessary information. In particular, the representative expressed concerns that, following the ILC's work, a principle formed within the international legal system could be considered a general principle of law. The representative also raised a concern on the soundness of the test developed by the ILC for determining whether a rule had emerged, and on the test for assessing whether principles of law for municipal systems had been transposed into the international system, which gave too little weight to states' practice and views. The representative expressed further concern that state consent being required to find a general principle of law would not be equivalent to that required for treaties and customary international law.
116. The representative of Poland informed the delegations that his country had submitted written comments on the topic of general principles of law and expressed concern about the text of draft Conclusion 7 concerning the identification of general principles of law formed within the international legal system.

7.4 Consideration of current issues of international humanitarian law

117. The Chair opened the floor for discussion of current issues of IHL and invited interested delegations to take the floor. The Chair recalled that there had been no documents sent under this agenda item but invited delegations to share information on any upcoming events or anything else they wished to share.
118. The representative of Switzerland brought delegations' attention to the UN Security Council Resolution 2761 (2024),²⁶ adopted in December 2024, whereby it had decided to maintain the exemption of humanitarian aid providers from asset freeze measures imposed by the Da'esh and Al-Qaida sanctions regime. He further referred to UN Security Council Resolution 2664

²⁴ [Verbatim Record of Discussions of the 62nd Annual Session](#) (Bangkok, Kingdom of Thailand, 09-13 September 2024).

²⁵ United Nations, *Report of the International Law Commission, 73rd Session* (18 April-3 June and 4 July-5 August 2022), [A/77/10](#), pp. 307-308.

²⁶ United Nations, Security Council resolution 2761 (2024) [on humanitarian exemptions to asset freeze measures imposed by ISIL (Da'esh) and Al-Qaida sanctions regime], [S/RES/2761\(2024\)](#).

(2022),²⁷ a joint initiative by Switzerland and the United States, which underlined that sanctions measures are not intended to have adverse humanitarian consequences for civilian populations nor adverse consequences for humanitarian activities or those carrying them out. The representative further emphasised that Switzerland strongly supported a worldwide initiative to revitalise public and political commitment for such an exemption. The representative then explained the process that had led to the cancellation of the Conference of High Contracting Parties to the 4th Geneva Conventions. On 18 September 2024, the UN General Assembly invited Switzerland, as the depositary state, to convene such a conference within six months. On 27 February, the draft final declaration was sent to the High Contracting Parties with an invitation to the conference scheduled for 7 March. The representative explained that, following extensive consultations, Switzerland, in its capacity as depositary State, had concluded that a significant number of High Contracting Parties did not support the holding of such a conference with the adoption of a declaration. It had therefore decided not to organise such a conference. Switzerland informed the High Contracting Parties and the Secretary-General of the United Nations of this decision on 6 March 2025. The Organisation of Islamic States (OIS) had indeed rejected the draft, arguing that it had not met their expectations of more robust measures, namely a reaffirmation of the illegality of the occupation of the Occupied Palestinian Territory by the state of Israel. The representative explained that Switzerland, as the depositary, had always argued that such a point pertained to a question of *ius ad bellum* and not to one on *ius in bello*, and that this issue is therefore not covered by the request of the United Nations General Assembly. Furthermore, the OIS argued that certain measures which it had proposed, such as trade bans or weapons delivery bans, were not taken up in the draft declaration. The representative explained that, according to consultations, these measures would not have received the necessary support. Finally, the representative clarified that the reason why the conference could have simply not been postponed was that the UN General Assembly's mandate was to organise it within six months and that deadline could not be met due to the reasons explained.

119. The representative of Sweden informed delegations of the joint Nordic pledge made after the International Conference of the Red Cross and Red Crescent the previous year to organise yearly Nordic symposiums on IHL. She stated that the first symposium would be organised jointly by the Swedish Defence University and the Swedish Red Cross, and that it would take place in May in Stockholm (Sweden).
120. The representative of Slovenia expressed her country's gratitude to Switzerland for having convened the conference, for having prepared the draft declaration and having put a lot of effort into the negotiation process. Further, the representative expressed regret regarding the cancellation of the conference, as it represented a missed opportunity for the High Contracting Parties to enforce the application of IHL in the Occupied Palestinian Territories, including East Jerusalem. The representative further reaffirmed Slovenia's commitment to IHL and strong belief that respect for IHL facilitates the path for comprehensive, just and lasting peace, and expressed Slovenia's gratitude to the ICRC for launching the Global Initiative to galvanise political commitment to IHL in collaboration with six states.²⁸ The representative further stated that Slovenia had already joined the initiative and expressed their readiness to participate in the work streams, particularly in relation to the protection of civilian infrastructure, national IHL committees, and information and communication technologies. Finally, the representative stated that Slovenia had accepted the ICRC's invitation to co-chair activities related to the work stream on protecting civilian infrastructure and expressed Slovenia's willingness to encourage other states to participate in the consultations and to share with them experiences, good practices, and lessons learned.
121. The representative of Finland stated how unfortunate the cancellation of the conference was, and thanked Switzerland for all the work. Finland was pleased to have joined the Global Initiative and expressed the need to foster wider cross regional support for IHL to promote

²⁷ United Nations, Security Council resolution 2664 (2022) [on humanitarian exemptions to asset freeze measures imposed by UN sanctions regimes], [S/RES/2664\(2022\)](#).

²⁸ ICRC, [Global initiative to galvanise political commitment to international humanitarian law: calling for humanity to be upheld in war](#).

better compliance with its rules and principles through concrete actions under the different work streams of the initiative. The representative further expressed Finland's interest in contributing at the expert level, specially to the discussion on IHL and information and communications technology (ICT) activities, as well as at the level of national committees. The representative noted that Finland had an active national IHL committee since 1993, and expressed the view that seeking to support national IHL committees had a lot of potential in terms of promoting and implementing IHL at the domestic level. Lastly, the representative stated Finland's keenness to discuss the application of IHL to cyber operations, building on the first ever resolution on ICT activities during armed conflict, adopted at the 34th International Conference of the Red Cross and Red Crescent Movement in October 2024.²⁹

122. The representative of the ICRC shared information on the work of the International Committee of the Red Cross (ICRC) in relation to IHL. The Statement of the ICRC is set out in **Appendix V** to this report.

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

123. The Chair opened the floor for discussion on developments concerning the ICC and other international criminal tribunals.
124. The representative of Finland drew delegations' attention to a judgment by the Helsinki District Court in which a Russian citizen, Voicelav Torden, also known as Jan Petrovsky, had been sentenced to life imprisonment for war crimes committed in Ukraine in 2014. The representative explained that this was the first time that charges related to alleged crimes in Ukraine had been brought and tried in Finland, where courts had previously only handled cases related to situations in Iraq, Liberia and Rwanda. The investigation focused on alleged war crimes committed against wounded or surrendered Ukrainian soldiers, and the suspect was convicted on four counts of war crimes, with one charge having been dismissed due to lack of evidence. The representative stated that the Helsinki District Court had found that the sentenced person had led a military unit that ambushed Ukrainian soldiers and executed at least one wounded prisoner of war, and that the latter had been considered equivalent to murder due to its brutality, which warranted life imprisonment in Finland. Finally, the representative stated that the defence lawyer had expressed their intention to appeal the judgment.
125. The representative of Slovenia welcomed Ukraine as a new state Party to the Rome Statute and stated that 125 members joining the ICC was a significant number and represented a majority in the international community. The representative further reiterated Slovenia's support for the independent and impartial functioning of all international judicial institutions, including the ICC.
126. The representative of Denmark stated his country to be a strong supporter of the ICC, and informed delegations that Denmark had ratified the Kampala amendment on the crime of aggression and all amendments to Article 8 of the Rome Statute on 1 January 2025. His country had furthermore criminalised the crime of aggression, war crimes, crimes against humanity and torture in an entirely new chapter of the Danish Criminal Code.
127. The representative of Lithuania explained Lithuania's referral of the situation in Belarus to the ICC to have been prompted by the Lukashenko's regime's forcible displacement of civilians into Lithuania. He called on other states that are also facing the consequences of such deportations by the Lukashenko regime, as well as those concerned about regional instability of the region, human rights and justice, to join and support Lithuania's referral to the ICC.

²⁹ [Resolution 2 of the 34th International Conference of the Red Cross and the Red Crescent](#), 28-31 October 2024.

8 OTHER

8.1 Place, date and agenda of the 69th meeting of the CAHDI

128. The CAHDI decided to hold its 69th meeting on 25-26 September 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.

8.2 Any other business

129. No item was handled under this agenda point.

8.3 Adoption of the Abridged Report and closing of the 68th meeting

130. The CAHDI adopted the Abridged Report of its 68th meeting, as contained in document CAHDI (2025) 10, and instructed the Secretariat to submit it to the CM for information.

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 67th meeting
- 1.4. Information provided by the Secretariat of the Council of Europe

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

- 2.1. CAHDI 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 - Committee of Ministers' Follow-up
- 2.2. Opinions of the CAHDI on Recommendations of the Parliamentary Assembly of the Council of Europe (PACE)
- 2.3. CAHDI Terms of Reference 2024-2027 – Consultation on the main deliverables and their level of priority 2026-2027
- 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. Place, date and agenda of the 69th meeting of the CAHDI: Strasbourg (France), 25-26 September 2025

8.2. Any other business

8.3. Adoption of the Abridged Report and closing of the 68th meeting

APPENDIX III – SPEAKING POINTS OF MR JÖRG POLAKIEWICZ

Dear Kerli,

Dear colleagues and friends,

- A very warm welcome to you all once again in Strasbourg. I would like to especially welcome our new Chair and Vice Chair of the CAHDI, **Kerli Veski and Declan Smith**. The Secretariat look forward to working closely with you during your tenure.
- In accordance with CAHDI tradition, allow me to present the most important developments within the Council of Europe ('CoE') since the last meeting of the CAHDI.
- I shall skip two major points, the **Special Tribunal for the Crime of Aggression against Ukraine** and the **Claims Commission for Ukraine**, because we shall discuss them under agenda item 7.1 Exchange of views on the aggression against Ukraine.
- Apart from Ukraine, the **situation in Georgia** is high on the agenda of the CoE.

I. Situation in Georgia

- Already in June 2024, the PACE had expressed serious concern about the backsliding of democracy in Georgia.³⁰ Following the 26 October 2024 elections, on 29 January 2025, **the PACE ratified the credentials of the Georgian delegation, however subject to a number of conditions and a possible reconsideration of the delegation's credentials at its April 2025 part-session**. The PACE notably decided to suspend some of the rights of the members of the Georgian delegation, e.g., the right to be member or alternate of five of the nine committees, the right to be a member of election observation committees or the right to be appointed rapporteur. Following this decision, the Georgian delegation announced its decision to withdraw from the PACE.
- At their 1522nd meeting on 11-12 March 2025, the CM held an exchange of views on the situation in Georgia.³¹ The CM noted the intensive engagement of Georgia with various CoE monitoring bodies, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ('CPT'), the Commissioner for Human Rights and the Venice Commission. The CM also welcomed the Secretary General's proposal to initiate a structured dialogue with the government of Georgia on cooperation between the CoE and Georgia. It requested the Rapporteur Group on Democracy to follow-up on future exchanges of views on this topic and to report regularly to the Deputies.

II. Latest developments in Council of Europe treaty-making

- There has recently been an important increase in treaty-making activities. While only two treaties were opened for signature 2022-2024, there are currently seven in the pipeline. I would first like to report on the **CoE Convention for the Protection of the Profession of Lawyer** which was adopted by the CM on 12 March 2025.³² This is the first-ever international treaty aiming to protect the profession of lawyer. It responds to increasing reports of attacks on the practice of the profession, whether in the form of harassment, threats or attacks, or interference with the exercise of professional duties (for example, obstacles to access to clients). Under the Convention, states must ensure that lawyers can carry out their professional duties without being the target of any form of physical attack, threat, harassment or intimidation or any improper hindrance or interference.
- **The Convention will be opened for signature on 13 May next, on the occasion of the CoE 134th Ministerial Session to be held in Luxembourg.** For the Convention to enter

³⁰ PACE [Resolution 2561 \(2024\)](#) "Challenges to democracy in Georgia" adopted on 27 June 2024.

³¹ Decision [CM/Del/Dec\(2025\)1522/2.4](#) adopted by the Ministers' Deputies at their 1522nd meeting on 12 March 2025.

³² Decision [CM/Del/Dec\(2025\)1522/10.1](#) adopted by the Ministers' Deputies at their 1522nd meeting on 12 March 2025.

into force, at least eight signatories, including six member states of the CoE, must ratify it for it to enter into force. Compliance will be monitored by an expert group and a committee of the parties.

- The **Draft Convention on the Protection of the Environment through Criminal Law** will be **the first international legally binding instrument to address environmental crime**, covering a broad range of criminal activities that aggravate the triple planetary crisis. It will help states to prevent, prosecute and sanction the most serious criminal offences, such as unlawful pollution, unlawful management of hazardous waste as well as unlawful logging and unlawful trade in timber, unlawful trading in wild fauna or flora, unlawful mining, and the unlawful deterioration of protected habitats. **On 26 February 2025³³, the CM transmitted the Draft Convention and its Explanatory report to the PACE for opinion .**
- In addition, the **Draft Third Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters and its draft Explanatory Report** are expected to be transmitted by the Committee of Ministers to PACE for opinion this week, on 19 March. Similarly, the **Draft Protocol amending the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196) and its draft Explanatory Report** will be transmitted to PACE for opinion on 1st April 2025. Finally, the **draft Convention on the Co-Production of Audiovisual Works in the Form of Series and its draft Explanatory Report** are currently under consideration by the Rapporteur Group on Education, Culture, Sport, Youth and Environment (GR-C) of the Committee of Ministers.
- All these conventions and protocols are in one way or another related to EU law. It is therefore a natural and welcomed development that the European Union joins those treaties that are open to its participation. The **participation of the EU within bodies set up by CoE conventions** has recently been brought to the attention of the CM. The background are discussions about amendments to the rules of procedure of the Committee of the Parties of the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention, CETS No. 210) which the EU joined in 2023. At stake are the concerns of non-EU CoE members that their positions will be 'outweighed' by the EU and its member states voting as a bloc. Without special voting rules, non-EU member states will systematically be in a minority which risks undermining the independence, credibility and ultimately the effective functioning of CoE monitoring mechanisms. I mention this development because the **CAHDI may be seized of this question** for opinion.

III. European Convention on Human Rights ('ECHR')

- **The Convention is marking its 75th anniversary this year.** The CoE's first convention is the cornerstone of all its activities. It was adopted in Rome in November 1950 and entered into force in 1953. Its ratification is a prerequisite for joining the organisation. Several events have been or will be organised in relation to this anniversary and notably an **International Conference on the theme 'The European Convention on Human Rights as a living instrument' that was held at the Strasbourg University Faculty of Law on Friday 14 March 2025**, coorganised by the ECHR, the University of Strasbourg Law Faculty, the Institut Carré de Malberg and the René Cassin Foundation.
- I take this occasion to remind you of the existence of **the Court's Knowledge Sharing platform (ECHR-KS) which was opened to the public on 18 October 2022**. Its mission is to share Convention case-law knowledge, complementing the existing information tools such as HUDOC. The platform presents the latest analysis of case-law developments in a thematic and contextualised manner through particular Convention Articles and Transversal Themes. The materials produced by the Registry are supplemented by documents and links of more general case-law relevance. The platform's content is updated weekly, making it a comprehensive and up-to-date source of Convention case-law analysis.

IV. Closing remarks

³³ Decision [CM/Del/Dec\(2025\)1520/10.8](#) adopted by the Ministers' Deputies at their 1520th meeting on 26 February 2025.

- These times I am often reminded of the sentence ‘**there are decades where nothing happens; and there are weeks where decades happen**’. Confronted with so many challenges to our international law-based order, we should not underestimate the **resilience of international law**. International law has a long memory. The Baltic republics, for instance, survived an annexation and regained their sovereignty after fifty years of Soviet occupation. When the USSR collapsed, the world promptly recognised their restored statehood.
- I think it is our duty as lawyers to uphold fundamental norms protecting the right to self-determination or prohibiting the use of force against whoever puts them into question.
- This concludes my update of what was a very interesting and dynamic start to 2025. Please do not hesitate to contact the Secretariat if you have any questions.
- Thank you again for your participation and I look forward to our discussions.

Appendix: Accessions to Council of Europe conventions by non-member States³⁴

- Since the last CAHDI meeting, 3 non-member states have asked to be invited to become party to a Council of Europe treaty:
 - **Kazakhstan** – European Convention on Mutual Assistance in Criminal Matters ([ETS No. 30](#));
 - **Seychelles** – Convention on Cybercrime ([ETS No. 185](#));
 - **Guinea** - Convention on Mutual Administrative Assistance in Tax Matters as amended by the 2010 Protocol ([ETS No. 127](#)).
- In addition, 8 signatures were affixed by non-member states:
 - **Chile** – Council of Europe Convention on counterfeiting of medical products and similar crimes involving threats to public health ([CETS No. 211](#));
 - **Chile** – Council of Europe Convention against Trafficking in Human Organs ([CETS No. 216](#));
 - **Paraguay and Peru** – Second Additional Protocol to the Convention on Cybercrime on enhanced co-operation and disclosure of electronic evidence ([CETS No. 224](#)).
 - **Canada and Japan** – Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law ([CETS No. 225](#));
 - **Algeria and Trinidad and Tobago** – Convention on Mutual Administrative Assistance in Tax Matters as amended by the 2010 Protocol ([ETS No. 127](#)).
- Lastly, there were 8 accessions by non-member states:
 - **Ecuador and Rwanda** – Convention on Cybercrime ([ETS No. 185](#));
 - **Rwanda** – 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](#));
 - **Chile** – European Convention on Extradition ([ETS No. 24](#));
 - **Chile** – Additional Protocol to the European Convention on Extradition ([ETS No. 86](#));
 - **Chile** – Second Additional Protocol to the European Convention on Extradition ([ETS No. 98](#));
 - **Philippines and Trinidad and Tobago** – Convention on Mutual Administrative Assistance in Tax Matters as amended by the 2010 Protocol ([ETS No. 127](#))

³⁴ 171 of the total number of 225 conventions are open to non-member States.

APPENDIX IV – PRESENTATIONS OF SPECIALS GUESTS

- **Dr Danae Azaria, Associate Professor, UCL Faculty of Laws**

The Law of the Sea and the Protection of Critical Submarine Infrastructure

The presentation of Dr Danae Azaria is available under [this link](#).

- **Professor Mathias Forteau, Professor of Public International Law at Paris Nanterre University and member of the International Law Commission (ILC)**

The ongoing work of the ILC on “Non-legally binding international agreements”

The presentation of Pr Mathias Forteau is available under [this link](#).

APPENDIX V – PRESENTATIONS OF MEMBERS AND OBSERVERS

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-Eighth Meeting

The statement is available under this [link](#).

INTERNATIONAL COMMITTEE OF THE RED CROSS

- **Dr Cordula DROEGE, Chief Legal Officer and Head of the Legal Division**

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