

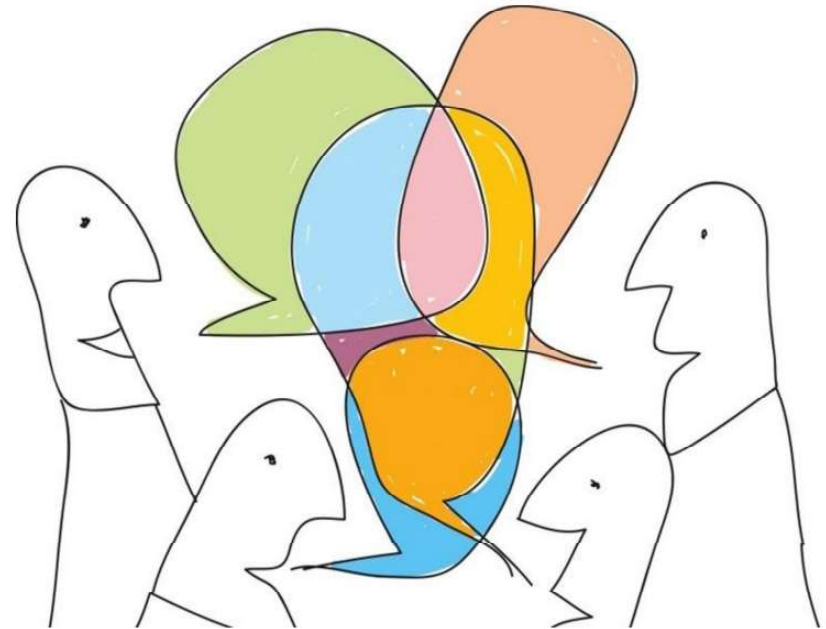
Second CAHDI workshop on non-legally binding instruments

# Concluding panel

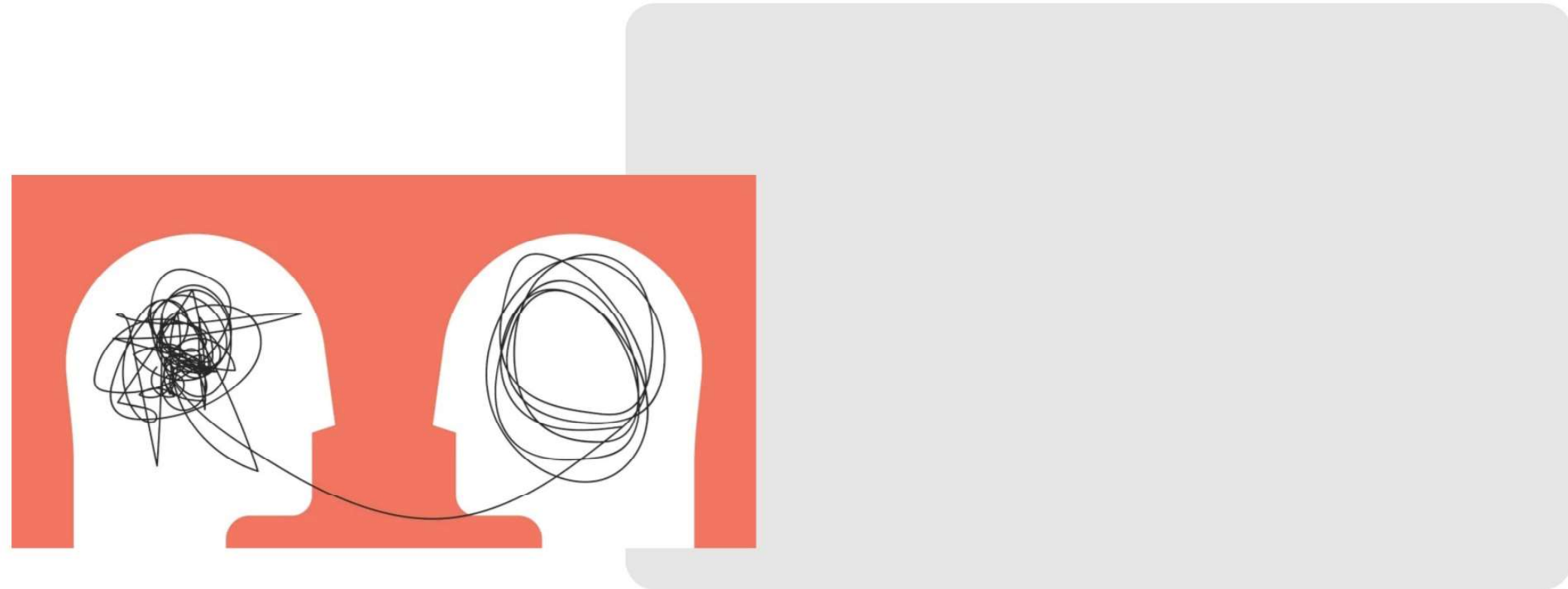
Exploring the usefulness and appropriateness of a potential model text for NLBIs, guidelines, compilations of good practices or a glossary

# Objectives of this Panel

- To discuss arguments for and against the elaboration of tools.
- To explore potential tools for harmonising formats, contents, and terminology of NLBIs.
- To formulate actionable proposals to the CAHDI session.



# Arguments for and against tools





*Interlinkages?*



**On the international level**



**On the regional level**



**On the national level**

*Timing?*



# Arguments in Favour

- Consistency across jurisdictions
- Legal clarity
- Facilitates international cooperation
- Procedural efficiency
- Facilitation of daily work

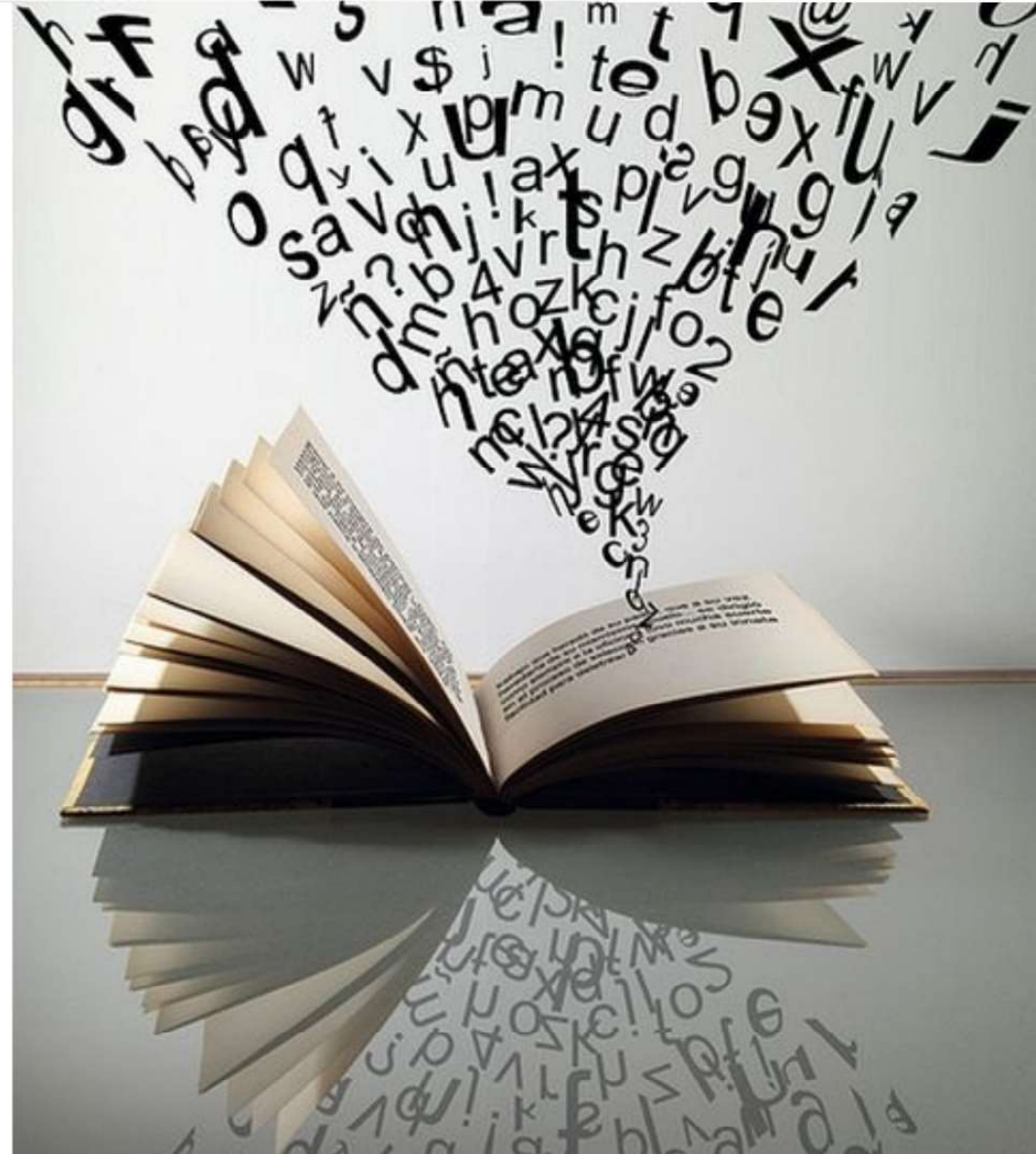




# Arguments Against

- Oversimplification?
  - Flexibility
- National solutions adapted to constitutional and political environment

# Potential Tools for Harmonisation



## Annex 2: Model MOU including sample paragraphs

MEMORANDUM OF UNDERSTANDING BETWEEN

THE GOVERNMENT OF [ ]

AND

THE GOVERNMENT OF [ ]

CONCERNING [ ]

The Government of [ ] and the Government of [ ] ('the Participants'),

Desiring to [ ];

Have reached the following understanding:

### Paragraph 1

*Purpose*

The Participants will seek to [ ]

### Paragraph 2

*[heading]*

The Participants will [ ]

### Paragraph [ ]

*Amendment*

This Memorandum may be amended at any time by the mutual written consent of the Participants.

### Paragraph [ ]

*Termination*

This Memorandum may be terminated by either Participant giving at least six months' written notice to the other Participant. The Participants will consult to determine how any outstanding matters should be dealt with.

# Model Text(s)

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### Paragraph [ ]

*Disputes*

Any disputes about the interpretation or application of the Memorandum will be resolved by consultations between the Participants, and will not be referred to any national or international tribunal or third party for settlement.

### Paragraph [ ]

*Duration and effect*

1. This Memorandum will come into effect on the date it has been signed on behalf of the Participants and will remain in effect until terminated in accordance with Paragraph [ ].
2. This Memorandum represents the understanding reached between the Participants and does not create any legally binding rights or obligations.

Signed in duplicate at [place] on [date] in the English and [other language] languages, both texts having equal validity.

For the Government of [ ]

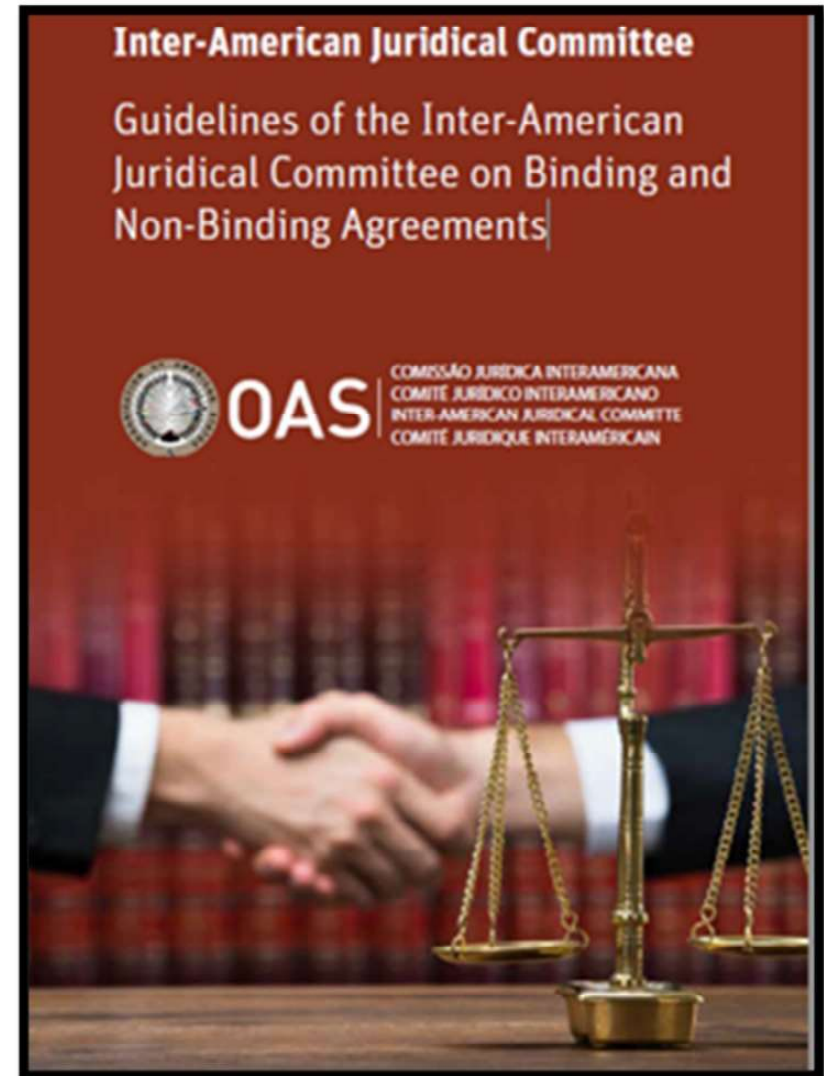
For the Government of [ ]



# Guidelines

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- Definitions
- Capacity to Conclude
- Methods for Identifying
- Procedures
- Legal Effects
- Training and Education
- **NB:** could include Sample Texts and Glossary of Terms



# Good practices

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- Methodology
- Criteria for good practices



DO NOT USE	DO USE
article	paragraph
agree	accept/approve/decide
agreement/ undertaking	arrangement/understanding
authoritative/authentic	equally valid
clause	paragraph
conditions	provisions
continue in force	continue to have effect/continue in effect or operation/continue to apply
done	signed
enter into force	come into operation/come into effect



mutually agreed	jointly decided
obligations	commitments
parties	participants
preamble	introduction
rights	benefits
have the right	be permitted to
shall	will
undertake /agree/undertake to	carry out/decide/will

# Publication in print...

- Part I: Analytical part
- Part II: State practice
  - II.1 Country .... (CAHDI member)
  - II.2 Country or Organisation .... (Observer)



You are here: Committee of Legal Advisers on Public International Law > CAHDI Questionnaires and Databases > Questionnaires



## Questionnaires

A number of the replies gathered by the CAHDI along the years from delegations in the form of questionnaires and databases have been made available to the public either on the CAHDI website (e.g., the questionnaire and database on the "Organisation and functions of the Office of the Legal Adviser of the MFA") or in CAHDI publications (e.g., the questionnaire on "Immunities of special missions").

On the occasion of the 62<sup>nd</sup> CAHDI meeting, on 24 March 2022, the Chair noted that replies to certain questionnaires were currently still confidential. Delegations held an exchange of views on whether the confidentiality status of these questionnaires was still justified or whether this could be lifted in the interest of making this information publicly available. An inquiry form was sent to all delegations to find out which questionnaires each delegation would be ready to render public.

On the occasion of the 65<sup>th</sup> and 66<sup>th</sup> meetings, the CAHDI decided to lift the confidentiality of replies to the following questionnaires:

- › [Settlement of disputes of a private character to which an international organisation is party](#)
- › [Immunity of state-owned cultural property on loan](#)
- › [Immunities of special missions](#)
- › [Service of process on a foreign State](#)
- › [Possibility for the MFA to raise public international law issues in procedures pending before national tribunals and related to States' or international organisations' immunities](#)

The replies can be found on each questionnaire dedicated page.

# ....or online

You are here: Committee of Legal Advisers on Public International Law > CAHDI Questionnaires and Databases > Databases



## Databases

Major research projects undertaken by the CAHDI gave rise to the development of three databases. These databases reflect the States' practice in specific domains of public international law through the contributions of member and observer States of the Council of Europe. These contributions are based on domestic legislation and case-law as well as any other relevant documents.

These databases cover:

- › [The immunities of States and international organisations](#)  
[Background](#)
- › [The organisation and functions of the Office of the Legal Adviser in the Ministry of Foreign Affairs](#)  
[Background](#)
- › [The implementation of United Nations sanctions and respect for Human Rights](#)  
[Background](#)

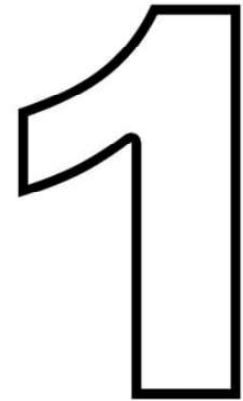
Each of these three databases enable the consultation of the contributions by State or by thematic issues through the research tools based on key words.



# Discussion and Next Steps

# Approval of the Final Report and Publication

- Approval of the final report
- Authorising its publication and dissemination



## Potential CAHDI tools

2

- a) Glossary
- b) Compilation of good practices
- c) Guidelines
- d) Potential model text(s)



