



**Presentation by Mr Helmut TICHY,
Chair of the Committee of Legal Advisers on
Public International Law (CAHDI)**

**at the 1482nd meeting of the Ministers' Deputies
Strasbourg (France), 29 November 2023**

Monsieur le Président,

Mesdames et Messieurs les Ambassadeurs,

Mesdames et Messieurs les Anciens membres du CAHDI,

Mesdames et Messieurs,

C'est un honneur et un immense plaisir pour moi d'avoir l'opportunité de m'adresser au Comité des Ministres, pour la première fois en ma qualité de Président du Comité des conseillers juridiques sur le droit international public (CAHDI). Mon mandat a débuté le 1^{er} janvier de cette année à la suite des élections qui ont eu lieu lors de la 63^{ème} réunion qui s'est tenue à Bucarest les 22 et 23 septembre 2022. Jusqu'à présent, j'ai présidé deux réunions du CAHDI : la 64^{ème} réunion les 23 et 24 mars 2023, et la 65^{ème} réunion les 28 et 29 septembre 2023, toutes deux tenues à Strasbourg en format hybride. Lors de la dernière réunion, j'ai été réélu pour un nouveau mandat courant du 1^{er} janvier au 31 décembre 2024.

Comme l'ont fait mes prédécesseurs, je ferai tout mon possible pour servir le CAHDI et le Comité des Ministres de la meilleure manière possible.

I) INTRODUCTION

1. Tout d'abord, permettez-moi de rappeler que le CAHDI est composé des conseillers juridiques des ministères des Affaires étrangères des 46 Etats membres du Conseil de l'Europe, des 5 Etats observateurs auprès du Conseil de l'Europe¹, de 4 autres Etats observateurs² auprès du CAHDI et de 11 organisations internationales participantes³. Au total, le CAHDI se compose des représentants de **66 États et organisations internationales** – ce qui constitue une véritable réussite en termes de diffusion des activités du Conseil de l'Europe. Les réunions, qui rassemblent plus d'une centaine de participants à chacune d'entre elles, sont de plus en plus mises à profit pour organiser des événements parallèles.

2. Ce large intérêt pour le CAHDI se confirme. Ainsi, le CAHDI a récemment reçu une demande de statut d'observateur de la part de la Cour permanente d'arbitrage, qui sera examinée par le CAHDI lors de sa prochaine réunion en avril 2024.

3. J'ai constaté avec plaisir que votre Comité a décidé ce matin de prendre note du rapport abrégé de la dernière réunion du CAHDI qui s'est tenue en septembre, comme l'a proposé hier le Groupe de rapporteurs sur la coopération juridique (GR-J). Comme le reflète le rapport abrégé de cette réunion et celui de la réunion précédente, le CAHDI aborde un grand nombre de sujets dans le domaine du droit international public. J'évoquerai brièvement les points saillants des travaux du CAHDI en 2023.

II) HIGHLIGHTS OF THE CAHDI'S WORK IN 2023

4. For the CAHDI, 2023 was again marked by challenges to the international legal order, in particular those arising from the **Russian Federation's aggression against Ukraine**.

¹ Canada, Saint-Siège, Japon, Mexique et Etats-Unis d'Amérique.

² Australie, Israël, République de Corée et Nouvelle Zélande.

³ UE, ONU, OCDE, CERN, la Conférence de La Haye de droit international privé, INTERPOL, OTAN, CICR, OSCE, AALCO et OIDD.

5. In its **advisory role to the Committee of Ministers**, the CAHDI adopted, on 31 January last, an opinion on the participation of the Russian Federation and Belarus in the Committee of the Parties to the Council of Europe Convention on the counterfeiting of medical and other similar crimes involving threats to public health (CETS No. 211; Medicrime Convention).

6. Furthermore, the CAHDI held exchanges of views on the **public international law aspects of the situation of aggression against Ukraine** including accountability issues. These exchanges focused particularly on the possibility of establishing a Special Tribunal for the crime of aggression against Ukraine. In this regard, the Core Group for the Tribunal for the Crime of Aggression against Ukraine met in Strasbourg just before the CAHDI meeting held in March this year.

7. In terms of **thematic developments**, I wish to note the current work of the CAHDI on **non-legally binding instruments in international law**.

8. The practical value of this work for member states and their legal advisers has been acknowledged by the Council of Europe and is also why the topic has been on the agenda of the CAHDI since 2021. The topic "Non-legally binding international agreements" is also included in the programme of work of the International Law Commission (ILC), which recently appointed Mr Mathias Forteau as Special Rapporteur. We intend to cooperate with the Special Rapporteur in our future work.

9. As a follow-up to an Expert Workshop on the topic of non-legally binding agreements in international law organised by Germany in March 2021, the first step taken by the CAHDI on this topic was to prepare a detailed questionnaire on "The practice of States and international organisations regarding non-legally binding agreements". The questionnaire aimed at establishing an overview of state practice in relation to the substantive and procedural aspects characterising non-legally binding agreements and the rules applicable in this field.

10. A first report analysing the first 22 replies was presented in March 2023. The CAHDI took note of this report and decided to keep the item on the agenda under a new denomination “**Non-legally binding instruments in international law**”; that is, to change “agreements” to “instruments” as it was thought that “instruments” better reflects the non-legally binding nature of the objects under discussion.

11. Since this first CAHDI report, further replies to the questionnaire were received, 32 in total, and a revised report analysing these responses was presented at the last CAHDI meeting in September. The CAHDI is now considering organising a practically oriented workshop to discuss the existing material, address open issues, and clarify what future action may be taken on this topic.

12. It is also appropriate at this point to express our gratitude to Germany for the provision of a secondee to the CAHDI Secretariat in support of this topic and other public international law matters within the portfolio of DLAPIL.

13. Moreover, the CAHDI discussed and prepared **questionnaires** on two other distinct but related subjects. The first questionnaire concerns **treaties not requiring parliamentary approval** proposed by the delegation of Slovenia, and the second concerns the topic of **soft law instruments** suggested by the Italian delegation.

14. In particular, the CAHDI continued its strong tradition of **dialogue with the ILC**. I took part together with the Director of DLAPIL in the annual exchange with the Commission in July this year. Moreover, at the last CAHDI meeting we were privileged to welcome the co-Chairs of the ILC, Ms Patricia Galvao Teles and Ms Nilüfer Oral, together with Mr Bogdan Aurescu, member of the ILC, for exchanges of views. The work of the ILC remains permanently on our agenda and is of practical value to participants in their preparation for discussions in the Sixth Committee of the General Assembly. The value of this relationship was noted by the Chair of the ILC during the last CAHDI meeting, where she noted that the ILC also has regard to the agenda of CAHDI because it is a body that is “closer” to States.

[15. The CAHDI regularly engages in **dialogue with other international actors**. During our meeting in September, the CAHDI held an exchange of views on the adoption of a *Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and other International Crimes*, the so-called Ljubljana-The Hague Convention, with **Ms Silvia Fernández de Gurmendi**, Chair of the Diplomatic Conference for the Adoption of this Convention and President of the Assembly of State Parties to the Rome Statute of the International Criminal Court (ICC).]

III) FUTURE CHALLENGES AND REMARKS

16. In its thirty-two years of existence, the CAHDI has become a dynamic forum for valuable debates and the sharing of state practice between member States, non-member States, and international organisations on contemporary issues of public international law. However, our committee is not limited to a mere discussion forum. As a platform for participants to formulate common positions and coordinate actions in response to new challenges for the international community and violations of international law, CAHDI contributes to respect for the international rule of law. We are grateful that we could assist your Committee in identifying responses to the aggression of the Russian Federation against Ukraine that are in compliance with international law, notably regarding Russia's participation in 'open' conventions.

17. The CAHDI approaches its work in a dynamic and pragmatic manner. In doing so, it considers relevant work in other fora and by other international actors. Furthermore, the established practice of organising expert seminars in the margins of CAHDI meetings also acts as a catalyst for new ideas and can shed light on certain issues where there is a lack of consensus among States about the current state of public international law or about the direction in which it should develop.

18. The advantages of this approach were identified by the Core Group on a tribunal for the crime of aggression against Ukraine at its last meeting in November. Indeed, the Group suggested to organise, in the margins of the next CAHDI meeting, a seminar

on a specific topic yet to be determined but linked to the establishment of a Special Tribunal.

19. I am very pleased that the CAHDI draft Terms of Reference for the coming years have now been adopted by your Committee. On behalf of the CAHDI, I wish to thank you for your confidence in and your continued support for the CAHDI. As always, the CAHDI stands ready to assist and provide advice to your Committee within its mandate.

Thank you for the opportunity to speak to you today. I of course remain available to answer any questions.