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## **The CAHDI Contribution to the Development of International Law**

### **Speech delivered on the occasion of an interactive dialogue on the Role of Regional and International Codification Bodies in the Development of International Law**

*organised by the Center for International Law and Policy in Africa (CILPA) and the  
Office of the Legal Counsel of the African Union Commission*

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#### **I. Introduction**

I would like to thank the Center for International Law and Policy in Africa, as well as the Office of Legal Counsel of the African Union Commission for the invitation to speak at this event on the *"Role of Regional and International Codification Bodies in the Development of International Law"*.

I am the Chair of the Council of Europe Committee of Legal Advisers on Public International Law, the CAHDI, a pan-European intergovernmental committee composed of Legal Advisers of the Ministries of Foreign Affairs of the 46 member States of the Council of Europe, the 5 observer States to the Council of Europe - Canada, Holy See, Japan, Mexico and United States of America, further observer States to the CAHDI including Australia, Israel, the Republic of Korea and New Zealand

– and 11 participating international intergovernmental organisations including the Asian-African Legal Consultative Organisation (AALCO) as well as others with global membership. The Committee thus also clearly has a reach outside Europe as well.

Impressive is not only the number of States and organisations allowed to attend CAHDI meetings or their global distribution, but also the actual number of participants at each meeting. It is also worth stressing that most of the Head of Delegations participating in the CAHDI meetings are the Legal Advisers of the respective Ministries of Foreign Affairs themselves, on the level of directors general or directors of international law departments, ensuring thus representation of States at the highest possible rank.

During its meetings, the CAHDI addresses a great range of topics in the field of public international law reaching from questions on immunities or sanctions over international treaty law to peaceful settlement of disputes and international humanitarian law, demonstrating an important role played by the Committee both within the Council of Europe and beyond, as regards its liaison role between the Council of Europe and other international organisations.

Moreover, within the Council of Europe, the CAHDI holds a number of important roles. The Committee is tasked with providing legal opinions on questions related to public international law at the request of the Committee of Ministers or other Steering or Ad Hoc Committees of the Council of Europe. The CAHDI is furthermore involved, as an observer, in the accession negotiations of the European Union to the European Convention on Human Rights.

## **II. CAHDI as an International Codification Body**

While the CAHDI is not a codification body in the traditional sense of the word, in that the CAHDI does not draft binding legal acts, our activities contribute greatly to the development of public international law, through cooperation, compilation and harmonisation of legal norms, as well as contributing to developing conventions and treaties.

Perhaps the most palpable achievement of the CAHDI in the field of the codification of International Law is the ***Declaration on Jurisdictional Immunities of State Owned Cultural Property***. The declaration was adopted at the 46<sup>th</sup> meeting of CAHDI. It recognises the customary law nature of certain provisions of the United Nations Convention on Jurisdictional Immunities of States and Their Property, which has not yet entered into force. The Declaration was elaborated as a non-legally binding document expressing common understanding on *opinio juris*, which could serve as valuable proof in proceedings. Thus, by introducing the relevant provisions into customary law by a declaration of common understanding, the work of the CAHDI could make the difference in bringing said provisions to an all-but-binding level.

Another important process in the work of the CAHDI is the usage of compilations of State practice as a catalyst for codification. One of the principal mechanisms with an ongoing character and one of the main topics of discussion at the Committee's biannual meetings are the CAHDI questionnaires. These questionnaires on national practices of international law are proposed and elaborated collaboratively between members of national delegations. All of the delegations are invited to reply to these questionnaires, replies which are then compiled by the CAHDI and discussed with the view of the harmonisation of national practices. Recent examples of these questionnaires include topics such as: "Immunities of special missions", the "Service of Process on a foreign State", "The Practice of States and International Organisations regarding non-legally binding agreements" or on "Treaties not requiring parliamentary approval". The topics that generate the most interest from the national delegations have led the way to the creation of full-fledged databases, with numerous contributions from the States, not only in the form of replies to questionnaires, but also as regards submissions of national laws and jurisprudence.

### III. CAHDI and Cooperation in International Law

However, I believe that the principal role of CAHDI is that of being a catalyst for cooperation in international law. The cooperation that CAHDI fosters takes place at the level of the Council of Europe, but, most importantly, nurturing cooperation

between the Council of Europe and other international codification bodies and institutions.

First and foremost, the CAHDI contributes to the development of public international law in its capacity as the "European Observatory of Reservations to International Treaties". This function, which the CAHDI has carried out for more than 20 years, has proved its usefulness. Indeed, the CAHDI makes use of the "*dialogue réservataire*", the emergence of which can be traced back to the CAHDI and for which this Committee has been praised as it fosters dialogue and conciliation. This working method not only allows States which have formulated a problematic reservation to have the opportunity to clarify its scope and effect and, if necessary, tone it down or withdraw it, but also facilitates the understanding by other delegations of the rationale behind reservations before formally objecting to them. During its two last meetings the CAHDI examined 28 reservations and declarations which had been identified as potentially problematic.

As regards cooperation with other international organisations, courts and institutions, the CAHDI holds regular exchanges of views with representatives, *inter alia*, from the International Law Commission (ILC), the International Court of Justice (ICJ), the International Committee of the Red Cross (ICRC), the UN family at large as well as EU institutions. Frequently, conversations on new topical issues, such as the application of international law in cyberspace or questions related to new technologies, to name a few examples, are triggered through an initial exchange of views with members of the academia or other experts in the given field. Through the presence of representatives of several international institutions at the biannual meetings, the CAHDI allows for a constant involvement of the national delegations in a dialogue with all the important stakeholders in international law. The CAHDI is also represented by its Chair at summits or dialogues before other international or regional bodies, such as the Asian-African Legal Consultative Organization or the United Nations General Assembly.

In this context, in the margins of the CAHDI meetings a number of conferences, seminars and workshops are organised by the country holding the Chair of the CAHDI and the CAHDI: The most recent one took place in Bucharest on 21 September 2022

on the topic of “States’ obligations under public international law in relation to immunity of State officials”.

Moreover, since 2017 the CAHDI publishes on its website a compilation on “Case-law of the European Court of Human Rights related to Public International Law” for which official press releases and legal summaries are available. This compilation is updated on an annual basis.

Finally, a regular and systematic reporting of the CAHDI exchanges is included in the very detailed CAHDI bi-annual meeting reports, which are used also to include in appendices the presentations of representatives of international institutions or other special guests.

#### IV. Final Remarks

In its over thirty years of existence, the CAHDI has become a forum in which debates are dynamic between member States, non-member States and international organisations on contemporary issues of public international law. This year, my last as Chair of the CAHDI, has been marked by a series of achievements, not the least of which has been reuniting all CAHDI members together again in person at the 63<sup>rd</sup> meeting in Bucharest this September, thanks to the improvement of the COVID sanitary situation. In the future, I hope the CAHDI will have the pleasure of cooperating with representatives of the CILPA and of the African Union Commission!

On behalf of the Committee that I still have the honor to chair, I wish to thank you once again for your invitation to participate in this dialogue and for the opportunity to share with you this overview of the CAHDI’s activities, and its role in the development of international law.