

**Presentation by Ms Alina OROSAN,
Chair of the Committee of Legal Advisers on
Public International Law (CAHDI) at the 59th Annual Session of
the Asian-African Legal Consultative Organization**

(29 November – 1 December 2021 in Hong Kong/People's Republic of China)

Mister Secretary-General, Ambassadors, Ladies and Gentlemen, it is an honour and a great pleasure for me to have the opportunity to address, for the first time, the Asian-African Legal Consultative Organization in my capacity as the Chair of the Committee of Legal Advisers on Public International Law (CAHDI), a position to which I was re-elected September last. In this brief intervention, I would like to present to you the work of CAHDI and its contributions to the international legal order.

I) Presentation of the CAHDI

First of all, allow me to recall that the CAHDI is composed of Legal Advisers of the Ministries of Foreign Affairs of the 47 member States of the Council of Europe, the 5 observer States to the Council of Europe, 5 further observer States to the CAHDI – Australia, Belarus, Israel, the Republic of Korea and New Zealand – and 11 participating international organisations, among them, since 2017, the AALCO.

Impressive is not only the number of States and organisations allowed to attend the CAHDI meetings or their global distribution, but also the actual number of participants at each meeting. Indeed, we welcomed a total of **123 participants (38 physically in the room and 85 connected online)** at our last hybrid meeting in September in Strasbourg. 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 the last meetings of the CAHDI, the Committee discussed its working methods, declarations and reservations to treaties, cases before the European Court of Human Rights involving issues of public international law, humanitarian needs, peaceful settlement of disputes and different aspects of immunities among other things.

Indeed, the CAHDI addresses a great range of topics in the field of public international 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.

Within the Council of Europe, the CAHDI holds a number of important roles. The Committee is tasked with providing legal opinions 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) Contributions of the CAHDI to the development of Public International Law

Beyond the extensive substantive discussions during the sessions, the CAHDI has contributed to the development of public international law through a variety of different means. In honour of the AALCO's topic for this session "Upholding International Law for Community of Shared future: the role of Asian and African Countries", it might be interesting for you to hear about the CAHDI's role in upholding and fostering cooperation between the Council of Europe and other institutions in the area of international law. First of all, the CAHDI plays an important role in **fostering cooperation between the Council of Europe and the United Nations**, in particular with the International Law Commission (ILC) and the Sixth Committee of the

UN General Assembly. In this regard, during the 61st meeting this September in Strasbourg, the CAHDI had the chance to hold an exchange of views with **Ambassador Mahmoud Hmoud**, Chair of the ILC, on the substantial progress made by the ILC in its work.

As regards **cooperation with other international organisations, courts and institutions**, the CAHDI, during its 60th meeting in March last, welcomed presentations and an exchange of views with its special guests **Professor Emmanuel DECAUX** and **Judge Erkki KOURULA**, President and Vice-President of the **OSCE Court of Conciliation and Arbitration (CCA)** on the role that this court could play as a means of peaceful settlement of disputes. The CAHDI also had the chance to welcome, during the same meeting, **Mr Peter LEWIS**, Registrar of the **International Criminal Court (ICC)**, who presented recent developments concerning the ICC. Mr Lewis applauded the efforts of the Council of Europe, notably in various Resolutions and Recommendations, encouraging States to reform legislation in line with international standards with respect to war crime trials, including the transfer of war trial proceedings. He also thanked the work of the CAHDI and the Council of Europe in its consistent support for the work of the ICC. At its 61st meeting, September last, the CAHDI held an exchange of views with **Ms Joan E. Donoghue**, President of the **International Court of Justice (ICJ)**, on the peaceful settlement of disputes. In her presentation, President Donoghue recalled the instrumental role of the CAHDI in promoting the significance of declarations in accordance with Article 36, paragraph 2 of the ICJ's Statute (which concerns "optional clauses" of jurisdiction), to the Committee of Ministers, which led several member States to deposit respective declarations or withdraw reservations to their earlier acceptance.

The input of the CAHDI to discussions of topical issues of public international law is by far not limited to discussions at its biannual meetings. In fact, there exists an established practice of organising expert seminars in the margins of CAHDI meetings. For instance, on 26 March last, **an online seminar on "Non-Legally Binding Agreements in International Law"** was organised by the German Federal Foreign Office, the University of Potsdam and the CAHDI Secretariat in the framework of the

German Chairmanship of the Committee of Ministers. The event focused on the question of how to clearly identify a non-legally binding agreement in order to minimise potentially negative and unintended consequences associated with the use of such instruments; legal consequences that can arise out of non-legally binding agreements; and the practice of States with regard to Memoranda of Understanding. Subsequently, during its 61st meeting, the CAHDI held, on the basis of a document presented by Germany, an exchange of views on the possible follow-up by the CAHDI to the seminar and agreed to pursue its work on this issue on the basis of a questionnaire prepared by Germany in cooperation with the Chair, the Vice-Chair and the Secretariat.

Finally, 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 **29 reservations and declarations** which had been identified as potentially problematic.

III) Final remarks

In its 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. Certainly, this year, my first as Chair of the CAHDI, has been marked by many challenges, notably those related to the continuing Covid-19 pandemic, which has affected both the organisation of our meetings and the daily work and travel of Legal Advisers of the various member States. The 60th meeting of the CAHDI in March had to be held exclusively remotely. The

improvement of the sanitary situation, albeit fragile, nevertheless enabled us to hold our 61st meeting in September again in a hybrid format allowing an increasing number of Legal Advisers to travel to Strasbourg in person, which I particularly welcomed. Indeed, CAHDI's working methods rely heavily on physical meetings, also because they are a unique opportunity for bilateral meetings between Legal Advisers. I hence hope that the sanitary situation will allow us, among other things, to reunite all CAHDI members together again in person as soon as possible. It would be wonderful, if this could be accomplished for my last meeting as the Chair of the CAHDI in September 2022 to be held in my capital (the one-year mandate of the Chair of Council of Europe intergovernmental committees is renewable only once). I hope to be able to welcome a representative of the AALCO at this occasion in Bucharest!

On behalf of the Committee that I have the honour to chair, I wish to thank you once again for your invitation to participate in this Annual Session and for the opportunity to share with you this short overview of the CAHDI's activities.