

**Presentation by Ms Alina OROSAN,
Chair of the Committee of Legal Advisers on
Public International Law (CAHDI)**

**at the 1416th meeting of the Ministers' Deputies
Strasbourg (France), 3 November 2021**

Mister Chair, Ambassadors, dear former CAHDI members, Ladies and Gentlemen, it is an honour and a great pleasure for me to have the opportunity to address, for the first time, the Committee of Ministers in my capacity as the Chair of the Committee of Legal Advisers on Public International Law (CAHDI). I started my term of office on 1 January this year following the elections which took place during the 59th meeting held in Prague, on 24 and 25 September 2020. I have now chaired two CAHDI meetings: the 60th meeting held in Strasbourg, by videoconference, on 24 and 25 March 2021, and the 61st meeting also held in Strasbourg, in hybrid format, on 23 and 24 September 2021, during which I was elected for a new term of office from 1 January to 31 December 2022. As my predecessors, I will do my utmost to be worthy of the trust placed in me and hope to be able to serve the CAHDI – and also the Committee of Ministers – in the best possible way.

Today, I would like to present a brief overview of the CAHDI activities since December 2020 focusing on the following points:

- I. Presentation of the CAHDI
- II. Contributions of the CAHDI to the work undertaken within the Council of Europe

- III. Contributions of the CAHDI beyond the Council of Europe and its liaison role with other international organisations
- IV. Future challenges and personal remarks

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.

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 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.

I was pleased to learn that on 16 June 2021, you took note of the abridged report of the 60th CAHDI meeting held in March 2021.

As regards the 61st CAHDI meeting held in September 2021, the abridged report of this meeting will be submitted to you, following its consideration by the Rapporteur Group on Legal Co-operation (GR-J) in December 2021.

At these meetings, the CAHDI 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. Let me now illustrate this with some examples of how the CAHDI has operated at these two levels since December 2020, when my predecessor, Mr Petr VALEK from the Czech Republic, presented the CAHDI's work to your Committee.

II) Contributions of the CAHDI to the work undertaken within the Council of Europe

Firstly, with regard to the contribution of the CAHDI to the work undertaken within the Council of Europe, it is important to recall one of the major strengths of this Committee: to be able to focus pragmatically on issues that cannot be addressed in the same way within other international organisations. Indeed, international law is by definition universal and cannot be constrained to the European continent but, as you know, tackling issues among 193 States is far more complex than among the CAHDI members and observers. The CAHDI takes full advantage of this undeniable asset of the Council of Europe.

With this in mind, the CAHDI performs one of its main roles, which is to provide legal advice to the Committee of Ministers. In accordance with its terms of reference, the CAHDI is instructed to provide legal opinion at your request – or at the request of other Steering or *Ad Hoc* Committees, transmitted via the Committee of Ministers.

This year, the CAHDI adopted **two legal opinions and a reply concerning Recommendations of the Parliamentary Assembly.**

- The first opinion concerned "**Investment Migration**".¹ In this opinion, the CAHDI recalled that several Council of Europe treaties constitute relevant legal instruments in the context of "Investment Migration". It also shared the

¹ Recommendation 2191 (2020) of the Parliamentary Assembly of the Council of Europe (PACE) on "[Investment migration](#)"

Assembly's view on the need to strengthen mutual legal assistance and international co-operation between member States, in particular through the development of common policies for the prevention, detection and prosecution of typical money laundering cases.

- The second opinion addressed **"The protection of victims of arbitrary displacement"**.² The CAHDI reflected on the feasibility of developing guidelines for member States willing to implement the principle of universal jurisdiction and considered the Sixth Committee of the United Nations General Assembly to be the more appropriate forum to deal with the matter.
- Finally, the CAHDI was requested to comment on the PACE Recommendation entitled **"Human rights violations in Belarus require an international investigation"**.³ The CAHDI considered that drafting an opinion on any country-specific human rights situation fell outside of its Terms of Reference, in the sense that CAHDI has no mandate to evaluate the human rights situation in a country either in general or in a particular context. The CAHDI therefore replied to this request with general remarks in relation to universal jurisdiction underlining, *inter alia*, that the primary responsibility to prosecute lays with the State or States with direct jurisdictional links, notably those with territorial or personal jurisdiction.

I would like also to inform you on the **involvement of the CAHDI in the accession process of the European Union to the European Convention**. In this respect and further to your decision, the CAHDI appointed me to participate as observer in the meetings of the Ad hoc negotiation Group 47+1. I take this role, which combines the CAHDI with the wider work of the Council (one of the aims for the future of the CAHDI as identified during the evaluation of our activities) with great enthusiasm. Between September 2020 and now, I was able to participate in 4 of the 5 meetings held and, on occasion, I have already had the opportunity to assist the Group with issues related to public international law (for instance in what concerns the questions of reservations,

²Recommendation 2197 (2021) of the Parliamentary Assembly of the Council of Europe (PACE) on "[The protection of victims of arbitrary displacement](#)"

³Recommendation 2201 (2021) of the Parliamentary Assembly of the Council of Europe (PACE) on "[Human rights violations in Belarus require an international investigation](#)"

the legal value of the preamble and of the explanatory report). I anticipate that greater assistance will be required, from public international law perspective, in the context of the discussions on attribution and responsibility in connection with measures taken in the framework of the EU's Common Foreign and Security Policy (an area where the EU Courts have only limited jurisdiction) from the point of view of the application of the European Convention on Human Rights.

If I were allowed to share a personal impression, I would argue that the fact that discussions progress somehow at slow pace, is due, primarily, if not exclusively, to the difficult technical aspects which the accommodation of the accession to a human rights treaty of a complex integration organisation, like EU, raises and certainly not to a lack of a political will that this process be finalised in the shortest delay possible. However, "shortest delay possible" is reached when the most adequate solutions are found in order to ensure that the accession of the EU to the European Convention on Human Rights fits perfectly into the Council of Europe system of human rights protection, contributing to increased coherence and to the definition of a comprehensive system of human rights protection in Europe and by European States.

To conclude this part on the contribution of the CAHDI to the work of the Council of Europe, let me now come to one of the flagship activities of the CAHDI, namely the examination of reservations and declarations subject to objection, 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*", a concept whose emergence 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) Contributions of the CAHDI beyond the Council of Europe and its liaison role with other international organisations

Let me now move on to the outreach of the CAHDI to 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: It concluded the second reading of two topics, adopting a full set of draft guidelines and commentaries thereto on the protection of the atmosphere and a draft Guide to Provisional Application of Treaties, comprising draft guidelines, an annex and commentaries thereto.

As regards **cooperation with other international organisations, courts and institutions**, the CAHDI, during its 60th meeting, 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. Finally, at its 61st meeting, 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 this regard, CAHDI members welcomed the established practice of organising expert seminars in the margins of CAHDI meetings. In this perspective, **an online seminar on “Non-Legally Binding Agreements in International Law”** was organised by the German Federal Foreign Office and the University of Potsdam in the framework of the German Chairmanship of the Committee of Ministers on 26 March last. 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.

IV) Future challenges and personal 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.

I’m very pleased that the CAHDI draft Terms of Reference for the coming years are currently under your consideration and I thank you very much for your continued support to the CAHDI. In this respect, I would also like to draw your attention to the fact that adequate resources, both financial and human, are needed for the proper implementation of its mandate.

The CAHDI continually strives to improve its contribution to the Council of Europe and to the promotion and development of public international law. In the framework of the recent evaluation of its activities, the CAHDI identified some aspects of formal and substantive nature to improve its functioning. In the course of this evaluation exercise, the CAHDI agreed to identify new topics on which the assessment of State practice might be relevant; to introduce a general topic in its agenda on "Treaty law" and "The work of the International Law Commission (ILC)" for all plenary meetings of the CAHDI; and finally, to identify new topics on which exchanges of views between Legal Advisers might be deemed useful as also reflecting general discussions at international level. In addition, the CAHDI agreed to continue the established practice of organising expert seminars in the margins of CAHDI meetings. These changes were implemented in part already at the 61st CAHDI meeting. They are reflected in the CAHDI reply to your Committee dated 23 September 2021 [to be presented to the GR-J and then to the CM in December].

Mr Chairman, Secretary General, Ambassadors, please allow me, finally, to make a few personal remarks. This year, my first as Chair of the CAHDI, has been marked by many challenges, notably those related to the evaluation of the CAHDI working methods and continuing Covid-19 pandemic, which have 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 had to be held exclusively remotely (except for the presence in Strasbourg of myself and members of the Secretariat). However, the improvement of the sanitary situation, albeit fragile, has nevertheless enabled us to hold our 61st meeting again in a hybrid format allowing an increasing number of Legal Advisers to travel to Strasbourg in person, which I particularly welcome. I hope that the improvement of the sanitary situation will continue and allow us, among other things, to reunite all CAHDI members together again in person. Indeed, CAHDI's working methods rely heavily on physical meetings, also because they are a unique opportunity for bilateral meetings between Legal Advisers.

As my predecessors, I will do my best to advance the objectives of CAHDI and also those of the Committee of Ministers. I consider my chairmanship as a personal

responsibility to ensure that the CAHDI will continue to fulfil its mandate and will be preserved in its current form for future generations of Legal Advisers. This objective would not be possible without your continued support.

On behalf of the Committee that I have the honour to chair, I wish to thank you for the confidence you have placed in the CAHDI over thirty years, and I am most grateful for the opportunity to speak to you today.