

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

**at the 1391<sup>st</sup> meeting of the Ministers' Deputies  
Strasbourg (France), 8 December 2020**

Mister Chairman,

Secretary General,

Ambassadors,

Ladies and Gentlemen,

It is an honour and a great pleasure for me to have the opportunity to address, for the second time, the Committee of Ministers in my capacity as the Chair of the Committee of Legal Advisers on Public International Law (CAHDI). After two years, my CAHDI Chairmanship will end at the end of this year, following the 59<sup>th</sup> meeting which took place in my own country, in Prague, on 24 and 25 September 2020. Today, I would like to present a brief overview of the CAHDI activities since June 2019 when I appeared before you last time, focusing on the following points:

- I. The “core” activities of the CAHDI
- II. The outreach of CAHDI to other institutions in the area of international law
- III. The contribution of CAHDI to the Council of Europe priorities over the next years (and, finally)
- IV. My personal remarks.

## I. The “core” activities of the CAHDI

As you are aware, the CAHDI is composed of Legal Advisers of the Ministries of Foreign Affairs of 47 member States of the Council of Europe, 5 observer States to the Council of Europe, 4 further observer States to the CAHDI – Australia, Belarus, Israel and New Zealand – and 11 participating international organisations. Moreover, the CAHDI, during its 59<sup>th</sup> meeting, unanimously agreed to the request for “observer” status by the Republic of Korea submitted on 17 January 2020. I am pleased to learn that you have approved this request today since wider representation of non-European observers has been one of the objectives of my chairmanship.

Let me recall that 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 119 participants at our last hybrid meeting in September in Prague, majority of them online due to the COVID-19 pandemic. It is also worth noting that most of the Head of Delegations participating in the CAHDI meetings are the Legal Advisers of the respective Ministries of Foreign Affairs, thus ensuring the senior level representation of the States involved.

One of the flagship activities of the CAHDI is the examination of reservations and declarations subject to objections, 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 as a tool to foster 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 last meeting, the CAHDI examined **13 reservations and declarations and one partial withdrawal of a reservation** which had been identified as potentially problematic.

In relation to this activity, I would like to highlight the close links established between the CAHDI and **the Treaty Office** of the Council of Europe, as treaty law constitutes a key part of daily business of CAHDI members. In this respect, allow me to make a remark in relation to the essence of our Committee: we are not a traditional standard-setting committee, but rather a legal forum available for exchanging best practice in treaty law and other practical questions of public international law. At the last CAHDI meeting in Prague, in our debates, there has been

a special focus on the current COVID-19 related questions in the diplomatic law, as well as on the content of the derogative notifications made recently under Article 15 of the European Convention as a response to the COVID-19 by some member States.

One of the main roles of the CAHDI is to provide legal advice to the Committee of Ministers. In accordance with its terms of reference, CAHDI provides **legal opinions** at your request or for other Steering or Ad Hoc Committees, transmitted via the Committee of Ministers. In relation to the current measures taken by States to fight the COVID-19 pandemic, I would like to recall the still very relevant CAHDI [opinion](#) adopted in 2018 in Helsinki on [Recommendation 2125 (2018)] – “State of Emergency: Proportionality Issues concerning Derogations under article 15 of the European Convention on Human Rights”.

Finally, 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 my dear friend and current Vice-Chair, Ms. Alina OROSAN to participate as observer in the meetings of the negotiation group 47+1. She already took part in the meetings of the 47+1 group in October and November this year.

## **II. The outreach of CAHDI to other institutions in the area of international law**

Let me now move on to the outreach of CAHDI to other institutions in the area of international law. First of all, the CAHDI plays an important role in fostering the **cooperation between the Council of Europe and the United Nations**, in particular with the International Law Commission and the Sixth Committee of the General Assembly.

In this regard, at the 58<sup>th</sup> CAHDI meeting in September 2019 in Strasbourg, the CAHDI held an exchange of views with **Prof. Pavel ŠTURMA, Chair of the International Law Commission (ILC)**, in the framework of the annual interaction between the CAHDI and the ILC. Prof. ŠTURMA gave us an overview of the ongoing work of the ILC concentrating, in particular, on the topic of “Crimes against humanity”. In 2019, the ILC adopted a full set of draft articles on the prevention and punishment of crimes against humanity together with commentaries thereto. The ILC decided to recommend the draft articles to the General Assembly with the view of a convention to be potentially elaborated on the basis of these draft articles, however, to achieve this goal will not be easy. This year, due to the COVID-19 pandemic, the ILC could not meet and work, so we had no ILC report to discuss.

Furthermore, on 31 October 2019, during the session of the Sixth (Legal) Committee of the UN General Assembly, I organized, together with the CAHDI Secretariat, a **Side-Event** devoted to “**The CAHDI and its contribution to the International Law Practice**”. During this event, a presentation was made by the former Chair of GR-J, **Ambassador Emil RUFFER**, on the legal procedure necessary to become observer to the CAHDI. In fact, this presentation and event was particularly timely, as we have received requests for information on the possibility to be granted the Observer Status to the CAHDI by the Republic of Korea, Chile and China. You had an opportunity to examine the Korean request today, while the requests of the other two States may reach you in the near future.

At this side-event, I spoke on the “**Declaration on Jurisdictional Immunities of State Owned Cultural Property**”<sup>1</sup>, which was a joint initiative of my country, the Czech Republic, and Austria. This non-legally binding instrument, developed within the CAHDI, expresses a common understanding of *opinio juris* concerning the fundamental rule that certain kind of State property – cultural property on exhibition – enjoys immunity from any measure of constraint - such as attachment, arrest or execution - in another State. The Declaration has so far been signed by 20 Ministers of Foreign Affairs<sup>2</sup> of member and non-member States of the Council of Europe and was also circulated as an official UN document under the General Assembly agenda item “rule of law at the national and international levels” among the UN missions in New York. In this context, I would like to encourage all member and non-member States that have not yet done so, to sign this Declaration at their earliest opportunity.

In addition to the UN, the CAHDI recently established cooperation with a similar legal forum comprising the African and Asian States – it is called the **AALCO**, i.e., **the Asian-African Legal Consultative Organization**. Its roots stem from the well-known 1956 Bandung Conference. The AALCO is currently seated in New Delhi. Upon the invitation of its Secretary General, Prof. Kennedy GASTORN, I participated at the 58<sup>th</sup> annual session of the AALCO in Dar es Salaam, Tanzania, from October 21 to 23, 2019, in order to present CAHDI and its activities to the AALCO members. I consider this trip quite useful for the promotion of my committee - and the Council of Europe - among our partners from Africa and Asia.

For our Prague meeting in September, I decided to invite a representative of another important institution: **Judge Ekaterina TRENDAFILOVA**, President of the Kosovo Specialist

---

<sup>1</sup> [“Declaration on Jurisdictional Immunities of State-Owned Cultural Property”](#).

<sup>2</sup> Albania, Armenia, Austria, Belarus, Belgium, Czech Republic, Estonia, Finland, France, Georgia, Holy See, Hungary, Ireland, Latvia, Luxembourg, the Netherlands, Portugal, Romania, Russian Federation and Slovak Republic.

Chambers (KSC). As you well know, the KSC were established by the European Union (EU) in August 2015 following the 2011 report on “Inhuman treatment of people and illicit trafficking in human organs in Kosovo\*” of the Committee of Legal Affairs and Human Rights of the Council of Europe Parliamentary Assembly which made allegations that serious crimes in the context of the Kosovo\* conflict had not been investigated and prosecuted, unlike other crimes that had been tried by the International Criminal Tribunal for the former Yugoslavia (ICTY). The KSC became judicially operational in July 2017 and will function until such time as the Council of the EU notifies the Government of Kosovo\* of completion of their mandates. In her presentation, Judge TRENDAFILOVA focused on the specific features of the KSC.

Equally at the 59<sup>th</sup> meeting, the CAHDI also welcomed **Mr Klaus RACKWITZ, Director of the International Nuremberg Principles Academy**. Mr RACKWITZ gave a presentation on “The Significance of the Nuremberg Principles – Past, Present, Future” on the occasion of the 70<sup>th</sup> anniversary of the formulation of the Nuremberg Principles by the ILC and their adoption by the UN General Assembly.

### **III. The contribution of CAHDI to the Council of Europe priorities over the next years**

Mister Chairman, Secretary General, Ambassadors, coming to the final part of my statement, I would like to address possible contribution of CAHDI to the fulfilment of the strategic priorities of the Organisation over the next years.

The COVID-19 pandemic has had a huge impact also in the field of public international law. Measures adopted by Governments have included a broad spectrum of restrictions ranging from general alerts to mandatory quarantines and isolations of individuals to blanket travel bans and cordoning-off of cities and, in some cases, entire countries. Lawyers are confronted with difficult questions: what are the pertinent international law obligations and procedures in the current situation? Have they been complied with? For instance, has the principle of proportionality been respected by States exercising - facing with the pandemic - their right to derogate from human rights treaties?

The global spread of COVID-19 has put international law to the test, in particular, international human rights law and diplomatic law, as some of you have probably found out during your travels. The new questions increase the need for exchange of information and best practices. In this context, it is essential to have a common understanding of international law. The CAHDI

is uniquely placed to strengthen this understanding, thereby fostering multilateralism and the rule of law at the international level.

Indeed, as the Secretary General emphasised in her annual report “Multilateralism 2020”, we are living in a time where multilateralism and the international rule of law are increasingly put into question. It is precisely in those times that you need the legal forums like CAHDI. The fact that non-member States are requesting for “observer” status to the CAHDI shows that they are aware of its “added value”.

The main challenge facing the Committee and its secretariat has been the issue of inadequate resources, both financial and human. I understand that this was the consequence of the policy of zero-nominal growth being applied over many years and the way in which the resulting cuts have been implemented in the Council of Europe budget, affecting disproportionately the intergovernmental sector. Unfortunately, despite its results and worldwide recognition, the CAHDI’s resources have been continuously reduced. As a result of this uncertain situation, within the short period of four years of my vice-chairmanship and chairmanship, I was confronted with frequent staff changes in the CAHDI secretariat. I believe that the CAHDI needs to be serviced by a permanent and specialised secretariat with all staff members financed under the ordinary budget. In my opinion, this is fully in line with the strengthening of the coordination and role of intergovernmental committees, underlined in the Strategic Framework presented by the Secretary General on 23 November 2020.

#### **IV. My personal remarks**

Mr Chairman, Secretary General, Ambassadors, please allow me to make a few personal remarks. When I was elected the Chair of CAHDI in Helsinki in 2018, after two years of service as Vice-Chair, I had certain plans and ideas that I wanted to pursue. Due to the Contingency Plan last year and the COVID-19 pandemic this year, however, my CAHDI chairmanship has become for me a “crash course in crisis management”.

Particularly this year has been difficult: I had to cancel one meeting in March at the very last moment, when everything was prepared, so I felt like a sportsman when the Olympics are cancelled. The last CAHDI meeting under my chairmanship took place in a hybrid setting, i.e., I had about thirty experts in the room in Prague and the rest connected via internet from Tokyo in the East to Washington, D.C., in the West. While the meeting went - from the technical point of view - better than expected, there are clear limits to this “on-line or internet diplomacy”. I

sincerely believe that the technical means cannot replace the human contact. By meetings in a hybrid or fully on-line form, we are losing an important CAHDI feature - an opportunity to discuss legal issues informally, be it during coffee breaks or side-events. I hope, therefore, that we shall soon be able to resume our meetings in physical form again.

As my predecessors, I have done my utmost to be worthy of the trust placed in me and to serve the CAHDI – and also the Committee of Ministers – in the best possible way. I have always considered 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, so I would like to kindly ask you to extend your valuable support also to my successor, Ms. Alina OROSAN, the Romanian Legal Adviser, and to Mr. Helmut TICHY, the Austrian Legal Adviser and her Vice-Chair. In the uncertain times to come, they will certainly need it.

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 in all those years and I am most grateful for the opportunity to speak to you today.