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**COMMITTEE OF LEGAL ADVISERS**  
**ON PUBLIC INTERNATIONAL LAW**  
**(CAHDI)**

**26th meeting**  
**Strasbourg, 18-19 September 2003**

**EUROPEAN OBSERVATORY OF RESERVATIONS TO INTERNATIONAL  
TREATIES:**

**ADDENDUM TO THE LIST OF OUTSTANDING RESERVATIONS AND  
DECLARATIONS TO INTERNATIONAL TREATIES**

Secretariat memorandum  
Prepared by the Directorate General of Legal Affairs

### List of outstanding reservations and declarations

#### PART I: RESERVATIONS AND DECLARATIONS TO NON-COUNCIL OF EUROPE TREATIES

1. OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT, NEW YORK, 25 MAY 2000<sup>1</sup>

**United Kingdom of Great Britain and Northern Ireland, 24 June 2003, 23 June 2004**

Declaration made upon signature and confirmed upon ratification:

"The United Kingdom of Great Britain and Northern Ireland will take all feasible measures to ensure that members of its armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

The United Kingdom understands that article 1 of the Optional Protocol would not exclude the deployment of members of its armed forces under the age of 18 to take a direct part in hostilities where: -

- a) there is a genuine military need to deploy their unit or ship to an area in which hostilities are taking place; and
- b) by reason of the nature and urgency of the situation:-
  - i) it is not practicable to withdraw such persons before deployment; or
  - ii) to do so would undermine the operational effectiveness of their ship or unit, and thereby put at risk the successful completion of the military mission and/or the safety of other personnel."

Upon ratification:

Declaration:

".....in accordance with Article 3, paragraph 2, of the Optional Protocol:

- The minimum age at which individuals may join the UK Armed Forces is 16 years. This minimum broadly reflects the minimum statutory school leaving age in the United Kingdom, that is the age at which young persons may first be permitted to cease full-time education and enter the full-time employment market. Parental consent is required in all cases of recruitment under the age of 18 years.

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<sup>1</sup> *Relevant provisions:*

#### Article 1

States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

#### Article 3.2

Each State Party shall deposit a binding declaration upon ratification of or accession to this Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced.

The United Kingdom maintains the following safeguards in respect of voluntary recruitment into the armed forces:

1. The United Kingdom Armed Forces are manned solely by volunteers; there is no compulsory recruitment.

2. A declaration of age, backed by an authoritative, objective proof (typically the production of an authentic birth certificate) is an integral and early requirement in the recruitment process. Should an individual volunteering to enter the United Kingdom Armed Forces be found either by their own declaration or by inspection of supporting evidence of age to be under 18 years of age, special procedures are adopted. These procedures include:

- the involvement of the parent(s) or legal guardian(s) of the potential recruits:
- clear and precise explanation of the nature of duties involved in military service to the both the individual and their parent(s)/guardian(s); and
- as well as explaining the demands of military life to the individual volunteer and establishing that he/she remains a genuine volunteer, the requirement that the parent(s) or guardian(s), having been similarly informed, freely consent to the individual's entry into the Armed Forces and duly countersign the appropriate application or other appropriate recruitment process forms.

2. OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY, NEW YORK, 25 MAY 2000<sup>2</sup>

**Syrian Arab Republic**, 15 May 2003, 14 May 2004

"A reservation is entered to the provisions set forth in article 3, paragraph 5, and article 3, paragraph 1 (a) (ii) of the Optional Protocol on the sale of children, child prostitution and child pornography, which relate to adoption.

Ratification of the two Optional Protocols by the Syrian Arab Republic shall not in any event imply recognition of Israel and shall not lead to entry into any dealings with Israel in the matters governed by the provisions of the Protocols."

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<sup>2</sup> *Relevant provisions:*

Article 3

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:

(a) In the context of sale of children as defined in article 2:

(i) Offering, delivering or accepting, by whatever means, a child for the purpose of:

- a. Sexual exploitation of the child;
- b. Transfer of organs of the child for profit;
- c. Engagement of the child in forced labour;

(ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;

(b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;

(c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.

2. Subject to the provisions of the national law of a State Party, the same shall apply to an attempt to commit any of the said acts and to complicity or participation in any of the said acts.

3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.

4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, such liability of legal persons may be criminal, civil or administrative.

5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

## **PART II: RESERVATIONS AND DECLARATIONS TO COUNCIL OF EUROPE TREATIES**

### **1. EUROPEAN CONVENTION ON EXTRADITION, (ETS NO. : 024), 13 DECEMBER 57<sup>3</sup>**

**South Africa : Reservation contained in a Note Verbale from the Embassy of South Africa in Brussels, dated 26 May 2003 and registered at the Secretariat General on 11 June 2003, supplemented by a Note Verbale dated 17 June 2003 and registered at the Secretariat General on 17 June 2003 - Or. Engl.**

For the purposes of Article 2 of the Convention, the Republic of South Africa shall not

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<sup>3</sup> Relevant provisions :

#### **Article 2 – Extraditable offences**

- 1 Extradition shall be granted in respect of offences punishable under the laws of the requesting Party and of the requested Party by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty. Where a conviction and prison sentence have occurred or a detention order has been made in the territory of the requesting Party, the punishment awarded must have been for a period of at least four months.
- 2 If the request for extradition includes several separate offences each of which is punishable under the laws of the requesting Party and the requested Party by deprivation of liberty or under a detention order, but of which some do not fulfil the condition with regard to the amount of punishment which may be awarded, the requested Party shall also have the right to grant extradition for the latter offences.
- 3 Any Contracting Party whose law does not allow extradition for certain of the offences referred to in paragraph 1 of this article may, in so far as it is concerned, exclude such offences from the application of this Convention.
- 4 Any Contracting Party which wishes to avail itself of the right provided for in paragraph 3 of this article shall, at the time of deposit of its instrument of ratification or accession, transmit to the Secretary General of the Council of Europe either a list of the offences for which extradition is allowed or a list of those for which it is excluded and shall at the same time indicate the legal provisions which allow or exclude extradition. The Secretary General of the Council shall forward these lists to the other signatories.
- 5 If extradition is subsequently excluded in respect of other offences by the law of a Contracting Party, that Party shall notify the Secretary General. The Secretary General shall inform the other signatories. Such notification shall not take effect until three months from the date of its receipt by the Secretary General.
- 6 Any Party which avails itself of the right provided for in paragraphs 4 or 5 of this article may at any time apply this Convention to offences which have been excluded from it. It shall inform the Secretary General of the Council of such changes, and the Secretary General shall inform the other signatories.
- 7 Any Party may apply reciprocity in respect of any offences excluded from the application of the Convention under this article.

#### **Article 6 – Extradition of nationals**

- 1
  - a A Contracting Party shall have the right to refuse extradition of its nationals.
  - b Each Contracting Party may, by a declaration made at the time of signature or of deposit of its instrument of ratification or accession, define as far as it is concerned the term "nationals" within the meaning of this Convention.
  - c Nationality shall be determined as at the time of the decision concerning extradition. If, however, the person claimed is first recognised as a national of the requested Party during the period between the time of the decision and the time contemplated for the surrender, the requested Party may avail itself of the provision contained in sub-paragraph a of this article.
- 2 If the requested Party does not extradite its national, it shall at the request of the requesting Party submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. For this purpose, the files, information and exhibits relating to the offence shall be transmitted without charge by the means provided for in Article 12, paragraph 1. The requesting Party shall be informed of the result of its request.

extradite any person unless the punishment awarded for a conviction in respect of which he or she is being sought, is a sentence of imprisonment of at least six months.

**Note by the Secretariat:**

The Note Verbale dated 17 June 2003 reads as follows:

"The Embassy of the Republic of South Africa regrets the belated communication of the reservation and declaration regarding the European Convention on Extradition, which is the result of an unfortunate administrative oversight. The Embassy agrees that the provisions of the Convention concerning the making of reservations and declarations should be respected by Contracting States. However, it needs to be pointed out that the declaration and reservation were made by the South African Parliament during the process of domestic approval of the Convention and its two Additional Protocols. Parliament is the only institution authorised by the South African Constitution to approve international agreements of this nature, and the declaration and reservation consequently form an inseparable part of the Parliamentary decision in this regard."

**Declaration contained in a Note Verbale from the Embassy of South Africa in Brussels, dated 26 May 2003 and registered at the Secretariat General on 11 June 2003, supplemented by a Note Verbale dated 17 June 2003 and registered at the Secretariat General on 17 June 2003 - Or. Engl.**

For the purposes of Article 6 of the Convention, the term "nationals" is defined, in terms of South Africa's legal system, as persons who have acquired South African citizenship by means of birth, descent or naturalisation. This includes persons with citizenship of South Africa and of another country. These persons will all be liable to be extradited. South Africa's acceptance of dual citizenship will therefore not bar the extradition of a person where he or she is also in possession of a citizenship of a country which prohibits the extradition of its nationals.

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