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

**27th meeting**  
**Strasbourg, 18-19 March 2004**

**EUROPEAN OBSERVATORY OF RESERVATIONS TO INTERNATIONAL TREATIES:**  
**LIST OF OUTSTANDING RESERVATIONS AND DECLARATIONS**  
**TO INTERNATIONAL TREATIES**

Secretariat memorandum  
Prepared by the Directorate General of Legal Affairs

## **Foreword**

1. At its second meeting (Paris, 14-16 September 1998) the Group of Specialists on Reservations to International Treaties (DI-S-RIT) agreed to propose to the CAHDI to operate as an European observatory of reservations to international treaties (see meeting report, document DI-S-RIT (98) 10).
2. In this context, the CAHDI regularly considers a list of outstanding reservations.
3. The following list includes two parts. Part I concerns reservations and declarations to treaties concluded outside the Council of Europe. The information contained therein can be consulted at the United Nations Treaty Collection site <http://untreaty.un.org/>.
4. Part II concerns reservations and declarations to Council of Europe treaties. Information was provided by the Treaty Office of the Directorate General of Legal Affairs of the Council of Europe and can be accessed via internet at the new URL <http://conventions.coe.int/>.
5. The format of the information is CONVENTION: State reserving, date of notification to the depository, date of notification by the depository (where those dates coincide they are indicated only once), deadline for objections. In as far as possible, the text of the reservation and declaration is included.

## **Action required**

Members of the CAHDI are called upon to consider the following outstanding reservations and declarations in the context of its operation as an European observatory of reservations to international treaties.

## List of outstanding reservations and declarations

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

#### **1. INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, NEW YORK, 18 DECEMBER 1979<sup>1</sup>**

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

##### **Article 2**

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

##### **Article 9**

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

##### **Article 15**

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

##### **Article 16**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

##### **Article 24**

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

##### **Article 28**

- 1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
- 2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
- 3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

##### **Article 29**

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If

**Syrian Arab Republic, 7 April 2003, 6 April 2004****Reservations**

... subject to reservations to article 2; article 9, paragraph 2, concerning the grant of a woman's nationality to her children; article 15, paragraph 4, concerning freedom of movement and of residence and domicile; article 16, paragraph 1 (c), (d), (f) and (g), concerning equal rights and responsibilities during marriage and at its dissolution with regard to guardianship, the right to choose a family name, maintenance and adoption; article 16, paragraph 2 concerning the legal effect of the betrothal and the marriage of a child, inasmuch as this provision is incompatible with the provisions of the Islamic Shariah; and, article 29, paragraph 1, concerning arbitration between States in the event of a dispute.

The accession of the Syrian Arab Republic to this Convention shall in no way signify recognition of Israel or entail entry into any dealings with Israel in the context of the provisions of the Convention.

2. 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>2</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:

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within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

<sup>2</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.

".....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.

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.

3. 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>3</sup>

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<sup>3</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.

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

Reservation:

"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."

4. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, NEW YORK, 16 DECEMBER 1966<sup>4</sup>

**Turkey, 23 September 2003, 22 September 2004**

Declarations and reservation:

"The Republic of Turkey declares that; it will implement its obligations under the Covenant in accordance to the obligations under the Charter of the United Nations (especially Article 1 and 2 thereof).

The Republic of Turkey declares that it will implement the provisions of this Covenant only to the States with which it has diplomatic relations.

The Republic of Turkey declares that this Convention is ratified exclusively with regard to the national territory where the Constitution and the legal and administrative order of the Republic of Turkey are applied.

The Republic of Turkey reserves the right to interpret and apply the provisions of Article 27 of the International Covenant on Civil and Political Rights in accordance with the related provisions and rules of the Constitution of the Republic of Turkey and the Treaty of Lausanne of 24 July 1923 and its Appendixes".

5. INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, NEW YORK, 16 DECEMBER 1966<sup>5</sup>

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.

<sup>4</sup> *Relevant provision:*

**Article 27:** In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

<sup>5</sup> *Relevant provision:*

**Article 13:**

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

**Turkey, 23 September 2003, 22 September 2004**

Declarations and reservations:

The Republic of Turkey declares that; it will implement its obligations under the Covenant in accordance to the obligations under the Charter of the United Nations (especially Article 1 and 2 thereof).

The Republic of Turkey declares that it will implement the provisions of this Covenant only to the States with which it has diplomatic relations.

The Republic of Turkey declares that this Convention is ratified exclusively with regard to the national territory where the Constitution and the legal and administrative order of the Republic of Turkey are applied.

The Republic of Turkey reserves the right to interpret and apply the provisions of the paragraph (3) and (4) of the Article 13 of the Covenant on Economic, Social and Cultural Rights in accordance to the provisions under the Article 3, 14 and 42 of the Constitution of the Republic of Turkey.

6. INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF FINANCING OF TERRORISM, NEW YORK, 9 DECEMBER 1999<sup>6</sup>

**Israel, 10 Feb 2003, 9 February 2004**

"... with the following declarations:

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<sup>6</sup> *Relevant provisions*

**Article 2**

1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

(a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or

(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

2. (a) On depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the annex may declare that, in the application of this Convention to the State Party, the treaty shall be deemed not to be included in the annex referred to in paragraph 1, subparagraph (a). The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the depositary of this fact;

(b) When a State Party ceases to be a party to a treaty listed in the annex, it may make a declaration as provided for in this article, with respect to that treaty.

**Article 21**

Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes of the Charter of the United Nations, international humanitarian law and other relevant conventions.

**Article 24**

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.

2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.

Pursuant to Article 2, paragraph 2 (a) of the International Convention for the Suppression of the Financing of Terrorism, the Government of the State of Israel declares that in the application of the Convention the treaties to which the state of Israel is not a party shall be deemed not to be included in the Annex of the Convention.

...

Pursuant to Article 24, paragraph 2 of the Convention, the State of Israel does not consider itself bound by the provisions of Article 24, paragraph 1 of the Convention.

The Government of the State of Israel understands that the term "international humanitarian law" referred to in Article 21 of the Convention has the same substantial meaning as the term "the law of war". This body of laws does not include the provisions of the Protocols Additional to the Geneva Convention of 1977 to which the State of Israel is not a party."

**Jordan**, 28 Aug 2003, 27 August 2004

Declarations:

"1. The Government of the Hashemite Kingdom of Jordan does not consider acts of national armed struggle and fighting foreign occupation in the exercise of People's right to self-determination as terrorist acts within the context of paragraph 1(b) of article 2 of the Convention.

2. Jordan is not a party to the following treaties:

A. Convention on the Physical Protection of Nuclear Material, adopted in Vienna on 3 March 1980.

B. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.

C. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988.

D. International Convention for the Suppression of Terrorist Bombings, adopted in New York on 15 December 1997.

Accordingly Jordan is not bound to include, in the application of the International Convention for the Suppression of the Financing of Terrorism, the offences within the scope and as defined in such Treaties."



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

### 1. EUROPEAN CONVENTION ON EXTRADITION (ETS N° 24), 13 DECEMBER 1957<sup>7</sup>

**Bulgaria**, 6 January 2004, 5 February 2004, 4 February 2005

On 12 November 2003 the National Assembly of the Republic of Bulgaria adopted a Law amending the Law for the Ratification of the European Convention on Mutual Assistance in Criminal Matters and the Additional Protocol thereto, the Convention on the Transfer of Sentenced Persons and the European Convention on Extradition and the two Additional Protocols thereto. The said Law was published in the Official Journal, No. 103/2003, dated 25 November 2003.

Therefore, the text of the declaration made by the Republic of Bulgaria in respect of Article 6, paragraph 1, of the European Convention on Extradition is modified and shall read:

"The Republic of Bulgaria declares that it will recognise as a national for the purposes of the convention any person having Bulgarian nationality at the time of receiving the request for extradition."

*Note by the Secretariat:* The amendment of declaration has been formulated with respect to the relevant provisions. The original declaration of 17 June 1994 read as follows: " The Republic of Bulgaria declares that it will recognise as a national for the purposes of the convention any person having Bulgarian nationality at the time of the extradition order."

**Denmark**, 25 November 2003, 15 December 2003, 14 December 2004

In accordance with Article 28, paragraph 3, of the European Convention on Extradition the Danish Government hereby notifies of the implementation in Danish legislation of the EU

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<sup>7</sup> *Relevant provisions:*

**"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.

(...)"

**"Article 28 – Relations between this Convention and bilateral Agreements**

- 1 This Convention shall, in respect of those countries to which it applies, supersede the provisions of any bilateral treaties, conventions or agreements governing extradition between any two Contracting Parties.
- 2 The Contracting Parties may conclude between themselves bilateral or multilateral agreements only in order to supplement the provisions of this Convention or to facilitate the application of the principles contained therein.
- 3 Where, as between two or more Contracting Parties, extradition takes place on the basis of a uniform law, the Parties shall be free to regulate their mutual relations in respect of extradition exclusively in accordance with such a system notwithstanding the provisions of this Convention. The same principle shall apply as between two or more Contracting Parties each of which has in force a law providing for the execution in its territory of warrants of arrest issued in the territory of the other Party or Parties. Contracting Parties which exclude or may in the future exclude the application of this Convention as between themselves in accordance with this paragraph shall notify the Secretary General of the Council of Europe accordingly. The Secretary General shall inform the other Contracting Parties of any notification received in accordance with this paragraph."

Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States of the European Union (2002/584/JHA).

The Framework Decision was implemented in Danish law by Act no. 443 of 10 June 2003. The Act will enter into force on 1 January 2004 and will be applicable to requests for surrender (extradition) made by Member States of the European Union as from that date. The provisions of the European arrest warrant will thereby replace corresponding provisions in the European Convention on Extradition of 13 December 1957 and its two Protocols of 15 October 1975 and 17 March 1978 in the mutual relationship between Denmark and the other Member States of the European Union.

Reference is made to Article 31 (1)(a) of the EU Framework Decision.

*Note by the Secretariat:* The declaration has been formulated in accordance with Article 28, paragraph 3, of the Convention.

2. EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS (ETS NO. 30), 20 APRIL 1959<sup>8</sup>

**Bulgaria**, 6 January 2004, 5 February 2004, 4 February 2005

On 12 November 2003 the National Assembly of the Republic of Bulgaria adopted a Law amending the Law for the Ratification of the European Convention on Mutual Assistance in Criminal Matters and the Additional Protocol thereto, the Convention on the Transfer of Sentenced Persons and the European Convention on Extradition and the two Additional Protocols thereto. The said Law was published in the Official Journal, No. 103/2003, dated 25 November 2003.

Therefore, the reservation made by the Republic of Bulgaria in respect of Article 2 of the European Convention on Mutual Assistance in Criminal Matters is partially withdrawn and shall read:

"The Republic of Bulgaria declares that it will refuse legal aid in cases where:

- the offender shall not be held responsible by virtue of amnesty;
- the criminal responsibility is precluded by statutory limitation;
- after having committed the offence, the offender has fallen into a state of lasting mental disturbance precluding criminal responsibility;
- there is a pending penal procedure, an enforceable sentence, an order or an enforceable decision to terminate the case, with respect to the same person for the same offence."

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<sup>8</sup> *Relevant provisions:*

**"Article 2**

Assistance may be refused:

- a if the request concerns an offence which the requested Party considers a political offence, an offence connected with a political offence, or a fiscal offence;
- b if the requested Party considers that execution of the request is likely to prejudice the sovereignty, security, *ordre public* or other essential interests of its country."

*Note by the Secretariat:* The partial withdrawal has been made with respect of the relevant provisions. The original reservation dated 17 June 1994 read as follows:

"The Republic of Bulgaria declares that it will refuse assistance where:

- *the committed act is not incriminated as an offence according to the Bulgarian criminal law;*
- the offender shall not be held responsible by virtue of amnesty;
- the criminal responsibility is precluded by statutory limitation;
- after having committed the offence, the offender has fallen into a state of lasting mental disturbance precluding criminal responsibility;
  - there is a pending penal procedure, an enforceable sentence, an order of *the Public Prosecutor* or an enforceable decision of *the court* to terminate the case, with respect to the same person for the same offence."

### 3. EUROPEAN CONVENTION ON STATE IMMUNITY (ETS NO. 74), 16 MAY 1972<sup>9</sup>

**Belgium**, 23 September 2003, 29 October 2003, 28 October 2004

In accordance with Article 28, paragraph 2, of the Convention, the Kingdom of Belgium declares that the French Community, the Flemish Community and the German-speaking Community as well as the Walloon Region, the Flemish Region and the Brussels-Capital Region may invoke the provisions of the European Convention on State Immunity applicable to Contracting States, and have the same obligations.

*Note by the Secretariat:* The declaration has been formulated in accordance with Article 28, paragraph 2, of the Convention.

### 4. CONVENTION FOR THE PROTECTION OF INDIVIDUALS WITH REGARD TO AUTOMATIC PROCESSING OF PERSONAL DATA (ETS No. 108), 28 JANUARY 1981<sup>10</sup>

<sup>9</sup> *Relevant provisions:*

**"Article 28**

- 1 Without prejudice to the provisions of Article 27, the constituent States of a Federal State do not enjoy immunity.
- 2 However, a Federal State Party to the present Convention, may, by notification addressed to the Secretary General of the Council of Europe, declare that its constituent States may invoke the provisions of the Convention applicable to Contracting States, and have the same obligations.
- 3 Where a Federal State has made a declaration in accordance with paragraph 2, service of documents on a constituent State of a Federation shall be made on the Ministry of Foreign Affairs of the Federal State, in conformity with Article 16.
- 4 The Federal State alone is competent to make the declarations, notifications and communications provided for in the present Convention, and the Federal State alone may be party to proceedings pursuant to Article 34."

<sup>10</sup> *Relevant provisions:*

**"Article 3 – Scope**

- 1 The Parties undertake to apply this convention to automated personal data files and automatic processing of personal data in the public and private sectors.
- 2 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, or at any later time, give notice by a declaration addressed to the Secretary General of the Council of Europe:
  - a that it will not apply this convention to certain categories of automated personal data files, a list of which will be deposited. In this list it shall not include, however, categories of automated data files subject under its domestic law to data protection provisions. Consequently, it shall amend this list by a new declaration whenever additional categories of automated personal data files are subjected to data protection provisions under its domestic law;

(...)"

**"Article 8 – Additional safeguards for the data subject**

Any person shall be enabled:

**Malta**, 28 February 2003, 7 April 2003, 6 April 2004

Malta declares that, in accordance with Article 3 (2) (a) of the Convention, the said Convention will not apply to the following categories of automated personal data files, which are included in Article 5 of Malta's Data Protection Act No XXVI of 2001:

- a) personal data files processed by a natural person in the course of a purely personal activity;
- b) personal data files processed for purposes of public security, defence or State security (including the economic well being of the State when the processing operation relates to security matters).

*Note by the Secretariat:* The declaration has been formulated in accordance with Article 3, paragraph 2, of the Convention.

Malta understands that a request for information pursuant to paragraph (b) of Article 8 of the Convention cannot be complied with if the data subject is unable to adequately specify his or her request.

*Note by the Secretariat:* The declaration has been formulated in accordance with Article 8, paragraph b, of the Convention.

5. EUROPEAN CHARTER ON REGIONAL OR MINORITY LANGUAGES (ETS No. 148), 5 NOVEMBER 1992<sup>11</sup>

- a to establish the existence of an automated personal data file, its main purposes, as well as the identity and habitual residence or principal place of business of the controller of the file;
- b to obtain at reasonable intervals and without excessive delay or expense confirmation of whether personal data relating to him are stored in the automated data file as well as communication to him of such data in an intelligible form;

(...)"

<sup>11</sup> *Relevant provisions:*

**"Article 1 – Definitions**

(...)

- c "non-territorial languages" means languages used by nationals of the State which differ from the language or languages used by the rest of the State's population but which, although traditionally used within the territory of the State, cannot be identified with a particular area thereof.

**Article 2 – Undertakings**

- 1 Each Party undertakes to apply the provisions of Part II to all the regional or minority languages spoken within its territory and which comply with the definition in Article 1.
- 2 In respect of each language specified at the time of ratification, acceptance or approval, in accordance with Article 3, each Party undertakes to apply a minimum of thirty-five paragraphs or sub-paragraphs chosen from among the provisions of Part III of the Charter, including at least three chosen from each of the Articles 8 and 12 and one from each of the Articles 9, 10, 11 and 13.

**Article 3 – Practical arrangements**

- 1 Each Contracting State shall specify in its instrument of ratification, acceptance or approval, each regional or minority language, or official language which is less widely used on the whole or part of its territory, to which the paragraphs chosen in accordance with Article 2, paragraph 2, shall apply.
- 2 Any Party may, at any subsequent time, notify the Secretary General that it accepts the obligations arising out of the provisions of any other paragraph of the Charter not already specified in its instrument of ratification, acceptance or approval, or that it will apply paragraph 1 of the present article to other regional or minority languages, or to other official languages which are less widely used on the whole or part of its territory.
- 3 The undertakings referred to in the foregoing paragraph shall be deemed to form an integral part of the ratification, acceptance or approval and will have the same effect as from their date of notification.

**Article 7 – Objectives and principles**

(...)

**Germany**, 21 March 2003, 24 June 2003, 23 June 2004

In accordance with Article 3, paragraph 2, of the Charter, the Federal Republic of Germany will apply to the minority languages named below the following additional provision pursuant to Article 2, paragraph 2:

- . North Frisian in the North Frisian language area in Land Schleswig-Holstein:  
Article 10, paragraph 2 (g)
- . Sater Frisian in the Sater Frisian language area in Land Lower Saxony:  
Article 10, paragraph 2 (g)
- . Romanes for the area of Land Hesse:  
Article 8, paragraph 1 (a) (iii) and (iv); (b) (iv); (c) (iv); (d) (iv); (e) (iii); (i); paragraph 2  
Article 10, paragraph 2 (e); (f); paragraph 3 (c); paragraph 4 (c)  
Article 11, paragraph 1 (b) (ii); (c) (ii); (e) (i)  
Article 12, paragraph 1 (a); (d); (f); paragraph 2

In connection with the undertakings given for the entire federal territory:

- Article 8, paragraph 1 (f) (iii); (g); (h)
- Article 9, paragraph 1 (b) (iii); (c) (iii); paragraph 2 (a)
- Article 10, paragraph 5
- Article 11, paragraph 1 (d); (e) (ii); (f) (ii); (g); paragraph 2
- Article 12, paragraph 1 (g); paragraph 3
- Article 13, paragraph 1 (a); (c); (d)
- Article 14 (a)

*Note by the Secretariat:* The declaration has been formulated in accordance with Article 3, paragraph 2, of the Charter.

6. CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND DIGNITY OF THE HUMAN BEING WITH REGARD TO THE APPLICATION OF BIOLOGY AND MEDICINE: CONVENTION ON HUMAN RIGHTS AND BIOMEDICINE (ETS No. 164), 4 APRIL 1997<sup>12</sup>

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- 5 The Parties undertake to apply, *mutatis mutandis*, the principles listed in paragraphs 1 to 4 above to non-territorial languages. However, as far as these languages are concerned, the nature and scope of the measures to be taken to give effect to this Charter shall be determined in a flexible manner, bearing in mind the needs and wishes, and respecting the traditions and characteristics, of the groups which use the languages concerned."

<sup>12</sup> *Relevant provisions:*

**"Article 20 – Protection of persons not able to consent to organ removal**

- 1 No organ or tissue removal may be carried out on a person who does not have the capacity to consent under Article 5.
- 2 Exceptionally and under the protective conditions prescribed by law, the removal of regenerative tissue from a person who does not have the capacity to consent may be authorised provided the following conditions are met:
  - i there is no compatible donor available who has the capacity to consent;
  - ii the recipient is a brother or sister of the donor;
  - iii the donation must have the potential to be life-saving for the recipient;
  - iv the authorisation provided for under paragraphs 2 and 3 of Article 6 has been given specifically and in writing, in accordance with the law and with the approval of the competent body;
  - v the potential donor concerned does not object."

**"Article 36 – Reservations**

- 1 Any State and the European Community may, when signing this Convention or when depositing the instrument of ratification, acceptance, approval or accession, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article.

**Croatia**, 28 November 2003, 15 December 2004, 14 December 2004

In accordance with Article 36 of the Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, the Republic of Croatia puts forward a reservation with regard to the conditions regulated in Article 20, paragraph 2, sub-paragraph ii of the Convention.

The Republic of Croatia excludes the limitation within Article 20, paragraph 2, sub-paragraph ii of the Convention, which exceptionally allows the removal of regenerative tissue from a person who is not able to consent solely when no compatible donor with the ability to consent is available, and the recipient is a brother or a sister of the donor. The limitation does not allow the removal of regenerative tissue (bone marrow) from a minor for the benefit of his/her parent. Such a limitation is not compatible with the Law of the Republic of Croatia in force – the Removal and Transplantation of Human Body Parts Act (Official Gazette No. 53/91), which allows the transplantation of regenerative tissue from a minor for the benefit of his/her parent. The Republic of Croatia hereby protects the vital interests of an underage donor, thereby saving the life of the donor's parent who is of the utmost importance (for the minor). The Republic of Croatia will apply Article 20, paragraph 2, sub-paragraph ii of the Convention, to the effect that the receiver is a parent, a brother or a sister of the donor.

7. CRIMINAL LAW CONVENTION ON CORRUPTION (ETS No. 173), 27 JANUARY 1999<sup>13</sup>**Bulgaria**, 9 January 2004, 5 February 2004, 4 February 2005

On 10 December 2003 the National Assembly of the Republic of Bulgaria adopted a Law on withdrawal of the Reservations made under Article 37, paragraph 1, of the Convention. The said Law was published in the Official Journal, No. 110/2003, dated 19 December 2003. Therefore, the Republic of Bulgaria withdraws the reservations concerning Articles 6, 7, 8, 10 and 12 as well as the reservation concerning the passive bribery offences defined in article 5.

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2 Any reservation made under this article shall contain a brief statement of the relevant law.

3 Any Party which extends the application of this Convention to a territory mentioned in the declaration referred to in Article 35, paragraph 2, may, in respect of the territory concerned, make a reservation in accordance with the provisions of the preceding paragraphs.

(...)"

<sup>13</sup> *Relevant provisions:*

**"Article 37 – Reservations**

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, reserve its right not to establish as a criminal offence under its domestic law, in part or in whole, the conduct referred to in Articles 4, 6 to 8, 10 and 12 or the passive bribery offences defined in Article 5.
- 2 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession declare that it avails itself of the reservation provided for in Article 17, paragraph 2.
- 3 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession declare that it may refuse mutual legal assistance under Article 26, paragraph 1, if the request concerns an offence which the requested Party considers a political offence.
- 4 No State may, by application of paragraphs 1, 2 and 3 of this article, enter reservations to more than five of the provisions mentioned thereon. No other reservation may be made. Reservations of the same nature with respect to Articles 4, 6 and 10 shall be considered as one reservation."

*Note by the Secretariat:* These reservations, contained in the instrument of ratification deposited on 7 November 2001, read as follows:

*"In accordance with Article 37, paragraph 1, of the Convention, the Republic of Bulgaria reserves the right not to establish as criminal offence under its domestic law the conduct referred to in Articles 6, 10 and 12 as well as the passive bribery offences defined in Article 5. In accordance with Article 37, paragraph 1, of the Convention, the Republic of Bulgaria declares that it shall establish the conduct referred to in Articles 7 and 8 as criminal offence under its domestic law only if it comes under any of the definitions of criminal offences laid down in the Criminal Code of the Republic of Bulgaria."*

**Moldova**, 14 January 2004, 5 February 2004, 4 February 2005

The provisions of the Convention will not be applicable on the territory effectively controlled by the institutions of the self-proclaimed transnistrian republic until the durable settlement of the conflict in this region.

*Note by the Secretariat:* Moldova deposited quite similar declarations to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), the European Convention on the Control of the Acquisition and Possession of Firearms by Individuals (ETS No. 101) and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141).

**United Kingdom**, 9 December 2003, 15 December 2003, 14 December 2004

Section 109 of the Anti-terrorism, Crime and Security Act 2001 (and section 69 of the Criminal Justice (Scotland) Act 2003) extend the normal jurisdiction of the United Kingdom courts over any offence of bribery at common law or under the Public Bodies Corrupt Practices Act 1889 or the Prevention of Corruption Act 1906 ("the 1906 Act") to cover offences by United Kingdom nationals which take place outside the United Kingdom.

The United Kingdom therefore applies the jurisdictional rule laid down in Article 17, paragraph 1 (b), except that United Kingdom jurisdiction is limited to United Kingdom nationals, and accordingly does not cover public officials or members of domestic public assemblies except where they are United Kingdom nationals. The United Kingdom therefore makes a declaration under Article 17, paragraph 2, that it reserves the right to apply the jurisdictional rule laid down in paragraph 1.b only where the offender is a United Kingdom national. In addition, the United Kingdom makes a declaration under Article 17, paragraph 2 that it reserves the right not to apply the jurisdictional rule laid down in paragraph 1.c at all. Since United Kingdom law places no bar on the extradition of United Kingdom nationals, the United Kingdom does not need to change the law to meet the requirements of Article 17, paragraph 3.

The conduct referred to in Article 7 is largely covered by section 1 of the 1906 Act. The 1906 Act does not however cover the case where the undue advantage is not given directly to the agent but is given to a third party. The United Kingdom accepts this aspect of the law is in need of amendment and the draft Corruption Bill published in 2003 would make this change in respect of England, Wales and Northern Ireland. However for the present a reservation is necessary. Accordingly, in accordance with Article 37, paragraph 1, the United Kingdom reserves the right not to establish as a criminal offence all of the conduct referred to in Article 7.

The conduct referred to in Article 12 is covered by United Kingdom law in so far as an agency relationship exists between the person who trades his influence and the person he influences. However not all of the conduct referred to in Article 12 is criminal under United Kingdom law. Accordingly, in accordance with Article 37, paragraph 1, the United Kingdom reserves the right not to establish as a criminal offence all of the conduct referred to in Article 12.

*Note by the Secretariat:* The reservation has been formulated in accordance with Article 37, paragraphs 1 and 2, of the Convention.

8. PROTOCOL No. 13 TO THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, CONCERNING THE ABOLITION OF THE DEATH PENALTY IN ALL CIRCUMSTANCES (ETS No. 187), 3 MAY 2002

**Georgia**, 22 May 2003, 24 June 2003, 23 June 2004

Georgia declares, that until the full jurisdiction of Georgia is restored on the territories of Abkhazia and Tskhinvali Region, it cannot be held liable for the violations on these territories of the provisions of Protocol No. 13.

*Note by the Secretariat:* Georgia has formulated similar declarations with respect to the European Convention on Extradition (ETS No. 24) and its Additional Protocol (ETS No. 86), the European Convention on the Suppression of Terrorism (ETS No. 90), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126) and Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 177). However, Georgia has not deposited such declaration with respect to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5). An exchange of views took place during CAHDI's September 2001 meeting. It was stressed that CAHDI would not prejudge a possible decision from the European Court of Human Rights concerning Georgia's declaration.

9. PROTOCOL AMENDING THE EUROPEAN CONVENTION ON THE SUPPRESSION OF TERRORISM (ETS NO. 190), 15 MAY 2003

**Spain**, 9 October 2003, 15 December 2003, 14 December 2004

**Declaration made at the time of signature of the instrument, on 9 October 2003**

In conformity with the Conclusions of the Council of the European Union of 2 October 2003 on the application of the European arrest warrant and its relationship with Council of Europe legal instruments, and as recognised explicitly by the member States of the European Union, Spain declares that Council of Europe legal instruments allow member States of the European Union to apply between themselves pre-existing agreements or conclude new agreements in order to facilitate or simplify even further their procedures for the surrender of individuals.

In conformity with the aforementioned Conclusions, Spain declares that the instruments adopted within the European Union in matters which affect the European Convention on the Suppression of Terrorism and its amending Protocol, constitute a series of agreements or a uniform law which will take precedence as between the member States of the European Union.

In conformity with the aforementioned Conclusions, Spain declares that the series of European Union instruments will continue to take precedence when the present Protocol enters into force.

In conformity with the aforementioned Conclusions, Spain understands that the said instruments adopted within the European Union, which take precedence as between the member States of the European Union, inter alia:

The Agreement of 26 May 1989 between the Member States of the European Communities on the simplification and modernization of methods of transmitting extradition requests,



The Convention of 10 March 1995 drawn up on the basis of article K.3 of the Treaty on European Union, on simplified extradition procedure between the Member States of the European Union (O.J. C 78-30/03/95 et O.J. C 375-12/12/96),

The Convention of 27 September 1996 drawn up on the basis of article K3 of the Treaty on European Union, relating to extradition between the Members States of the European Union (O.J. C313-23/10/96 et O.J. C191-23/07/97),

The Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism (O.J. L 344-28/12/2001) and its modifications,

The Council Common Position of 27 December 2001 on combating terrorism (O.J. L 344-28/12/2001),

The Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (O.J. L 344-28/12/2001), and its modifications,

The Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering (O.J. L 344-28/12/2001),

The Council Decision 2001/927/EC of 27 December 2001 establishing the list provided for in Article 2(3) of Council Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (O.J. L 344-28/12/2001), the Council Decision 2002/344/EC (O.J. L116-03/05/2002) and its modifications,

The Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (O.J. L190-18/07/2002),

The Council Framework Decision of 13 June 2002 on combating terrorism (O.J. L190-18/07/2002),

As well as those which will be adopted in the future, in the matters affecting the European Convention on the Suppression of Terrorism,

Will not be affected by the entry into force of the present Protocol.

<p><i>Note by the Secretariat:</i> This declaration which concerns no particular Article of the Protocol aims at ensuring the precedence of European Union law.</p>
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