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

**EUROPEAN OBSERVATORY OF RESERVATIONS TO INTERNATIONAL TREATIES :**  
**LIST OF PROBLEMATIC RESERVATIONS AND DECLARATIONS TO INTERNATIONAL**  
**TREATIES APPLICABLE TO THE FIGHT AGAINST TERRORISM – COMPILED ON THE**  
**BASIS OF CONTRIBUTIONS FROM DELEGATIONS**

Secretariat memorandum prepared by the  
Directorate General of Legal Affairs

## **Foreword**

At its 23<sup>rd</sup> meeting (Strasbourg, 4-5 March 2002) the CAHDI took note of the decisions taken by the Committee of Ministers at Ministers' Deputies level at the 765 bis meeting (Strasbourg, 21 September 2001) on the Council of Europe's activities in the fight against terrorism instructing the CAHDI, in conjunction with its Observatory on Reservations to International Treaties, to consider the question of reservations to regional and universal conventions relating to terrorism and to hold exchanges of views – with the involvement of observers – on conventions currently being drafted in the United Nations with a view to co-ordinating the positions taken by member states.

As a result thereof, the CAHDI agreed to place on the agenda of its forthcoming meetings an item on developments in the fight against terrorism to enable it to be kept informed of the activities underway in the various international organisations and the measures taken at national level and decided to extend the scope of its Observatory on Reservations to International Treaties to include treaties relating to the fight against terrorism in order to provide input to the Council of Europe's activities to counter terrorism (see draft report of the 23<sup>rd</sup> CAHDI meeting, document CAHDI (2002) 8, Paras. 17-18 & 102-104).

At its 26<sup>th</sup> meeting (Strasbourg, 18-19 September 2003) the CAHDI agreed to include national contributions identifying reservations to treaties which raise difficulties. The Secretariat was asked to prepare a document compiling both national contributions, state of signatures and ratifications as well as reservations and declarations to most significant anti-terrorist conventions.

Further to that, at its 27<sup>th</sup> meeting (Strasbourg, 18-19 March 2004) the CAHDI considered reservations to international treaties applicable to the fight against terrorism in accordance with the above mentioned decision of the Committee of Ministers and agreed to submit a list of reservations that posed significant problems to the Committee of Ministers at its next meeting. To this end, delegations were invited to make submissions to the Secretariat. Contribution of the following States are included in this document: Greece, Russian Federation and United Kingdom.

## **Action required**

Delegations are invited to take note of the document and discuss about its possible follow-up.

Convention	Reservation/Declaration by		Comments by delegations
	Country/Date	Content/Notes	
<b>Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, 23 September 1971</b>	Venezuela  21 November 1983	<p>Reservation upon ratification, regarding Articles 4, 7 and 8 of the Convention:</p> <p>"Venezuela will take into consideration clearly political motives and the circumstances under which offences described in Article 1 of this Convention are committed, in refusing to extradite or prosecute an offender, unless financial extortion or injury to the crew, passengers, or other persons has occurred".</p> <p>The Government of the United Kingdom of Great Britain and Northern Ireland made the following declaration in a Note dated 6 August 1985 to the Department of State of the Government of the United States:</p> <p>"The Government of the United Kingdom of Great Britain and Northern Ireland do not regard as valid the reservation made by the Government of the Republic of Venezuela insofar as it purports to limit the obligation under Article 7 of the Convention to submit the case against an offender to the competent authorities of the State for the purpose of prosecution".</p> <p>With reference to the above declaration by the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of Venezuela, in a Note dated 21 November 1985, informed the Department of State of the Government of the United States of the following:</p>	<p><b>United Kingdom (UK):</b> Reservation is contrary to the paragraph 3(g) of UNSCR 1373 (2001) in so far as it purports to permit the Venezuelan authorities to take the political motives of offenders into consideration deciding whether to permit extradition of an offender.</p> <p><b>Finland:</b> This reservation is not as problematic as the other ones in the list since it concerns minor offences. The thrust of the reservation is the discrimination clause which is the corollary to the political exception clause.</p>

		<p>"The reserve made by the Government of Venezuela to Articles 4, 7 and 8 of the Convention is based on the fact that the principle of asylum is contemplated in Article 116 of the Constitution of the Republic of Venezuela. Article 116 reads: 'The Republic grants asylum to any person subject to persecution or which finds itself in danger, for political reasons, within the conditions and requirements established by the laws and norms of international law.'</p> <p>It is for this reason that the Government of Venezuela considers that in order to protect this right, which would be diminished by the application without limits of the said articles, it was necessary to request the formulation of the declaration contemplated in Art. 2 of the Law approving the Convention for the Suppression of Unlawful Acts Against the Security (sic) of Civil Aviation".</p>	
<b>Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents, New York, 14 December 1973</b>	Burundi  17 December 1980	In respect of cases where the alleged offenders belong to a national liberation movement recognized by Burundi or by an international organization of which Burundi is a member, and their actions are part of their struggle for liberation, the Government of the Republic of Burundi reserves the right not to apply to them the provisions of article 2, paragraph 2, and article 6, paragraph 1.	<b>UK:</b> Reservation purporting to reserve to Burundi the right not to apply the aspects of the Convention to members of national liberation movements is contrary to the objects and purpose of the Convention.
	Malaysia  24 September 2003	The Government of Malaysia understands Article 7 of the Convention to include the right of the competent authorities to decide not to submit any particular case for prosecution before the judicial	<b>Greece (Gr):</b> Declaration by Malaysia concerning article 7 runs contrary to the substance of this article which expressly provides that the case will be submitted to the competent authorities "without

		authorities if the alleged offender is dealt with under national security and preventive detention laws.	exception whatsoever and without undue delay". By the same token, the declaration seems to violate rules of due process.
<b>Convention on the Physical Protection of Nuclear Material, Vienna, 3 March 1980</b>	Pakistan  12 September 2000	1. The Government of the Islamic Republic of Pakistan does not consider itself bound by paragraph 2 of Article 2, as it regards the question of domestic use, storage and transport of nuclear material beyond the scope of the said Convention.	<b>UK:</b> Reservation, which purports to exclude the effect of paragraph 2 of Article 2, appears to be contrary to object and purpose of the Convention.
	France  6 September 1991	The French Government declares that the jurisdiction referred to in Article 8, paragraph 4 may not be invoked against it, since the criterion of jurisdiction based on involvement in international nuclear transport as the exporting or importing State is not expressly recognized in international law and is not provided for in French national legislation  (Original in French)	<b>Gr:</b> Concerning the declaration by France with regard to article 8 paragraph 4 we doubt whether a jurisdiction established by another State Party on the basis of that paragraph may be rebutted by the State against which it is invoked, unless such jurisdiction is not consistent with international law in the particular case.  However, the Greek delegation doubts whether the declarations made by France are of such fundamental importance as to run contrary to the object and purpose of the Convention.
	Oman  11 June 2003	1. Reservation with respect to Article 8; paragraph 4; the text of which states that "each State Party may, consistent with international law, establish its jurisdiction over the offences set forth in Article 7 when it is involved in international nuclear transport as the exporting or importing State".  2. In accordance with Article 17; paragraph 3 of the Convention; the Sultanate does not consider itself bound by the dispute settlement procedure provided for in Article 17; paragraph 2 of the Convention"  (Original in Arabic)	<b>Gr:</b> regards the reservation by Oman, it is clear that Oman does not accept the ground of jurisdiction which is enshrined, although in a facultative way, in paragraph 4 of article 8.  However, the Greek delegation doubts whether the declarations / reservations made by Oman are of such fundamental importance as to run contrary to the object and purpose of the Convention.

		<p>Upon a request by the Secretariat, the following specification of the nature of the reservation made with respect to Article 8, paragraph 4; was received from the Sultanate of Oman.</p> <p>“The reservation to Article 8, paragraph 4, made by the Sultanate of Oman is due to the fact that it is inconsistent with the principle of sovereignty of national jurisdiction; as well as with the principles of international law. This is because it establishes jurisdiction by importing and exporting States over offences committed outside their territories when they are involved in international nuclear transport”</p> <p>(Original in Arabic)</p>	
<b>International Convention for the Suppression of Terrorist Bombings, New York, 15 December 1997</b>	<p>Israel</p> <p>10 February 2003</p>	<p>Declaration:</p> <p>The Government of the State of Israel understands that the term "international humanitarian law" referred to in Article 19, of the Convention has the same substantive meaning as the term "the laws of war"( "jus in bello"). This body of laws does not include the provisions of the protocols additional to the Geneva Conventions of 1977 to which the State of Israel is not a Party.</p> <p>The Government of the State of Israel understands that under Article 1 paragraph 4 and Article 19 the Convention does not apply to civilians who direct or organize the official activities of military forces of a state.</p>	<p><b>Gr:</b> The declaration by Israel concerning reference to article 19 is problematic insofar as it considers that the provisions of the Protocols Additional to the Geneva Conventions do not form part of international humanitarian law. As such and to the extent that such Protocols reflect customary international law, this declaration/reservation is contrary to the object and purpose of the Convention.</p>
	Malaysia	Declaration:	<p><b>Gr:</b> Same considerations as in the case of the Malaysian reservation to the Convention on the</p>

[illegible]

		not be interpreted as giving a different status to the armed forces and groups other than the armed forces of a state as currently understood and applied in international law and thereby as creating new obligations for Turkey.	
	<p>Pakistan</p> <p>13 August 2002</p>	<p>Declaration:</p> <p>The Government of the Islamic Republic of Pakistan declares that nothing in this Convention shall be applicable to struggles, including armed struggle, for the realization of right of self-determination launched against any alien or foreign occupation or domination, in accordance with the rules of international law. This interpretation is consistent with Article 53 of the Vienna Convention on the Law of Treaties 1969 which provides that an agreement or treaty concluded in conflict with existing jus cogen or peremptory norm of international law is void and, the right of self-determination is universally recognized as a jus cogen.</p> <p>Note of the UN Secretariat:</p> <p>With regard to the declaration made by the Government of Pakistan upon accession, the UN Secretary-General received the following communication from Russian Federation:</p> <p>“The Russian Federation has considered the declaration made by the Islamic Republic of Pakistan upon accession to the International Convention for the Suppression of Terrorist Bombings, of 1997.</p>	<p><b>Gr:</b> Pakistan’s reservation is of a general nature and its application would lead to inoperativeness of the Convention. As such it runs counter to the object and purpose of the Convention.</p> <p><b>UK:</b> Reservation purporting not to apply the Convention in respect of “struggles, including armed struggles, for the realization of the right of self-determination launched against any alien of foreign occupation or domination” is incompatible with the object and purpose of the Convention.</p> <p><b>Russian Federation (RU):</b></p> <p>1. In the Russian Federation the procedure of making objections to reservations under the Federal Law of 1995 “On International Treaties of the Russian Federation” is set as follows. An objection to, as well as acceptance of a reservation to a treaty, can be made by a State organ that expressed consent of a State to be bound by that treaty. Such organs are the President, the Government and the Parliament. The last one decides upon the question when the treaty concerned has been ratified (or the Russian Federation has acceded to it by adopting a federal legislative act – Federal Law).</p> <p>2. Human rights treaties as well as anti-terrorist conventions under Russian legislation are subject to ratification by the Parliament of the Russian Federation. Objections to reservations to such treaties, therefore, require the same procedure as treaties themselves. As</p>

		<p>The Russian Federation takes the position that every State which has agreed to the binding nature of the provisions of the Convention must adopt such measures as may be necessary, pursuant to article 5, to ensure that criminal acts which, in accordance with article 2, are within the scope of the Convention, in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature and are punished by penalties consistent with their grave nature.</p> <p>The Russian Federation notes that the realization of the right of peoples to self-determination must not conflict with other fundamental principles of international law, such as the principle of the settlement of international disputes by peaceful means, the principle of the territorial integrity of States, and the principle of respect for human rights and fundamental freedoms.</p> <p>The Russian Federation believes that the declaration made by the Islamic Republic of Pakistan upon accession to the International Convention for the Suppression of Terrorist Bombings is incompatible with the object and purpose of the Convention. In the view of the Russian Federation, the declaration made by the Islamic Republic of Pakistan may jeopardize the fulfilment of the provisions of the Convention in relations between the Islamic Republic of Pakistan and other States Parties and thereby impede cooperation in combating acts of terrorist bombing.</p>	<p>usual this process takes much time. This was the main consideration taken into account when it was decided to make not an objection to the declaration made by Pakistan to the International Convention for the Suppression of Terrorist Bombings but rather a declaration of political nature. Russian declaration of 22 September 2003 in response to the Pakistan's declaration unlike an objection does not entail any legal effects; its aim was to persuade Pakistan to reconsider its declaration.</p>
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<b>International Convention for the Suppression of Financing of Terrorism, New York, 9 December 1999</b>	<p>Democratic People's Republic of Korea</p> <p>12 November 2001</p>	<p>Reservation upon signature:</p> <ol style="list-style-type: none"> <li>1. The Democratic People's Republic of Korea does not consider itself bound by the provisions of article 2, paragraph 1, sub-paragraph (a) of the Convention.</li> <li>2. The Democratic People's Republic of Korea does not consider itself bound by the provisions of article 14 of the Convention.</li> <li>3. The Democratic People's Republic of Korea does not consider itself bound by the provisions of article 24, paragraph 1 of the Convention.</li> </ol>	<p><b>UK:</b> Reservations purporting to exclude Articles 2(1) (a) and 14 of the Convention are contrary to the object and purpose of the Convention and to UNSCR 1371(2001).</p> <p><b>Gr:</b> Article 14 of the Convention is a fundamental provision of the Convention and the reservation of Democratic People's Republic of Korea to it runs counter to the object and purpose of the Convention.</p>
	<p>Jordan</p> <p>28 August 2003</p>	<p>Declarations:</p> <ol style="list-style-type: none"> <li>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.</li> </ol>	<p><b>UK:</b> Reservation, which 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, is contrary to the object and purpose of the Convention.</p> <p><b>Gr:</b> Same commentary as regards to the Pakistani reservation to the International Convention for the Suppression of Terrorist Bombings.</p>

		<p>2. Jordan is not a party to the following treaties:</p> <p>A. Convention on the Physical Protection of Nuclear Material, adopted in Vienna on 3 March 1980.</p> <p>B. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.</p> <p>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.</p> <p>D. International Convention for the Suppression of Terrorist Bombings, adopted in New York on 15 December 1997.</p> <p>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.</p>	
<p><b>Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Rome 10 March 1988 / Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms</b></p>	<p>Egypt</p> <p>8 January 1993</p>	<p>The instrument of ratification was accompanied by the following reservations:</p> <p>1. A reservation is made to article 16 on the peaceful settlement of disputes because it provides for the binding jurisdiction of the International Court of Justice, and also with regard to the application of the Convention to seagoing ships in internal waters which are scheduled to navigate beyond territorial waters.</p>	<p><b>Gr:</b> The reservation of Egypt insofar as it refers to seagoing vessels in internal waters which are scheduled to navigate beyond territorial waters, seems to restrict the scope of application of the Convention as defined in article 4 although such article is not explicitly referred to in the text of the reservation. The reservation of Egypt to article 6 paragraph 2 of the Convention and article 3 paragraph 2 of the Protocol could be problematic in accordance with what was said concerning the reservation of Oman although the Egyptian</p>

<p><b>Located on the Continental Shelf, Rome 10 March 1988</b></p>		<p>2. A reservation is made to article 6, paragraph 2, of the Convention and article 3, paragraph 2, of the Protocol because those articles permit the optional jurisdiction of blackmailed States (which are asked by the perpetrator of an act of terrorism to do or abstain from doing any act).</p> <p>This is in compliance with the provision of paragraph 4 of each of the two articles.</p>	<p>reservation is less explicit.</p>
<p><b>International Convention against the taking of Hostages, New York, 17 December 1979</b></p>	<p>Lebanon</p> <p>4 December 1997</p>	<p>Declaration:</p> <p>1. The accession of the Lebanese Republic to the Convention shall not constitute recognition of Israel, just as the application of the Convention shall not give rise to relations or cooperation of any kind with it.</p> <p>2. The provisions of the Convention, and in particular those of its article 13, shall not affect the Lebanese Republic's stance of supporting the right of States and peoples to oppose and resist foreign occupation of their territories.</p>	<p><b>Gr:</b> The declaration made by Lebanon although seemingly of political nature may nonetheless in our view indicate an understanding by Lebanon that the Convention may not apply even when there is an international element to the offence.</p>