

Strasbourg, 01/10/08

CAHDI (2008) 20 rev

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

**36<sup>th</sup> meeting  
London, 7-8 October 2008**

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

Document prepared by the Secretariat of the CAHDI

**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/>. Part II concerns reservations and declarations to Council of Europe treaties. Information contained therein can be consulted via internet at the URL <http://conventions.coe.int/>.
4. The format of the information is CONVENTION: **State reserving**, date of notification to the depositary, date of notification by the depositary (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 a European observatory of reservations to international treaties. A table of objections to these reservations and declarations is circulated as an Addendum to this document.

## PART I : LIST OF OUTSTANDING RESERVATIONS AND DECLARATIONS TO INTERNATIONAL TREATIES CONCLUDED OUTSIDE THE COUNCIL OF EUROPE

### A. CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES AND OPTIONAL PROTOCOL THERETO, NEW YORK, 13 DECEMBER 2006<sup>1</sup>

#### 1. EL SALVADOR, 30 March 2007, 18 April 2007

##### *Reservation made upon signature*

The Government of the Republic of El Salvador signs the present Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, adopted by the United Nations General Assembly on 13 December 2006, to the extent that its provisions do not prejudice or violate the provisions of any of the precepts, principles and norms enshrined in the Constitution of the Republic of El Salvador, particularly in its enumeration of principles.

#### 2. MAURITIUS, 25 September 2007, 28 September 2007

##### *Reservation made upon signature*

The Government of the Republic of Mauritius makes the following reservations in relation to Article 11 of the United Nations Convention on the Rights of Persons with Disabilities which pertains to situations of risk and humanitarian emergencies.

The Government of Mauritius signs the present Convention subject to the reservation that it does not consider itself bound to take measures specified in article 11 unless permitted by domestic legislation expressly providing for the taking of such measures.

#### 3. THAILAND, 29 July 2008, 28 July 2009

##### *Interpretative declaration*

The kingdom of Thailand hereby declares that the application of Article 18 of the Convention shall be subject to the national laws, regulations and practices in Thailand.

---

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

##### **Article 11 Situations of risk and humanitarian emergencies :**

States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.

##### **Article 18 Liberty of movement and nationality :**

1. States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:

- a. Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;
- b. Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;
- c. Are free to leave any country, including their own;
- d. Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.

2. Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

**B. INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, NEW YORK, 16 DECEMBER 1966<sup>2</sup>**

**4. BAHRAIN**, 27 September 2007, 4 October 2007, 3 October 2008

***Declaration***

The obligation of the Kingdom of Bahrain to implement article 8, paragraph 1 (d), of the Covenant shall not prejudice its right to prohibit strikes at essential utilities.

**5. PAKISTAN**, 17 April 2008, 18 April 2008, 17 April 2009

***Reservation***

Pakistan, with a view to achieving progressively the full realization of the rights recognized in the present Covenant, shall use all appropriate means to the maximum of its available resources.

**C. UNITED NATIONS CONVENTION AGAINST CORRUPTION, NEW YORK, 31 OCTOBER 2003<sup>3</sup>**

---

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

**Article 8 :**

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

<sup>3</sup> *Relevant provisions:*

**Article 42 :**

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

**Article 66:**

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.

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

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties

**6. BAHAMAS**, 10 January 2008, 31 January 2008, 30 January 2009

***Reservation***

Pursuant to Article 66, paragraph 3 of the United Nations Convention Against Corruption, the Government of the Commonwealth of The Bahamas declares that it does not consider itself bound by the provisions of Article 66, paragraph 2 of the Convention. The Government of the Bahamas asserts that the consent of all parties to such a dispute is necessary, in each individual case, before the dispute is submitted to arbitration or to the International Court of Justice.

**D. PROTOCOL ADDITIONAL TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, AND RELATING TO THE ADOPTION OF AN ADDITIONAL DISTINCTIVE EMBLEM (PROTOCOL III), 8 DECEMBER 2005**

**7. ISRAEL**, 22 November 2007, 21 November 2008

***Declaration***

The Government of Israel declares that while respecting the inviolability of the additional distinctive emblem provided for in the "Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III)", it is understanding of the Government of Israel that the ratification or the implementation of this protocol does not affect any rights acquired pursuant to reservations made by Israel to the Geneva Conventions of 12 August 1949.

**E. INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF ACTS OF NUCLEAR TERRORISM, NEW YORK, 13 APRIL 2005<sup>4</sup>**

---

shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

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

**Article 4 :**

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

2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

3. The provisions of paragraph 2 of the present article shall not be interpreted as condoning or making lawful otherwise unlawful acts, or precluding prosecution under other laws.

4. This Convention, does not address, nor can it be interpreted as addressing, in any way, the issue of the legality of the use or threat of use of nuclear weapons by States.

**Article 16 :**

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

**Article 23 :**

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 of the date of the request for 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.

**8. EGYPT**, 20 September 2005, 3 November 2005***Reservation made upon signature***

The Arab Republic of Egypt declares its commitment to article 4 of the Convention provided that the armed forces of a State do not violate the rules and principles of international law in the exercise of their duties under that article, and also provided that the article is not interpreted as excluding the activities of armed forces during an armed conflict from the scope of application of this Convention on the grounds that the activities of States - under certain legal circumstances - are not considered terrorist activities.

The Arab Republic of Egypt declares that it does not consider itself bound by paragraph 1 of article 23 of the Convention.

**9. UZBEKISTAN**, 29 April 2008, 8 May 2008, 7 May 2009***Declarations***

To Article 16 of the Convention: The Republic of Uzbekistan proceeds from the fact that the provisions of Article 16 of the Convention should be applied in such a way as to ensure the inevitability of responsibility for the crimes falling within the scope of the Convention, without prejudice to the effectiveness of international cooperation on extradition and legal assistance;

To Article paragraph 2 of Article 23 of the Convention: The Republic of Uzbekistan declares that it does not consider itself bound by the provisions of paragraph 1 of article 23 of the Convention.

**10. TURKEY**, 14 September 2005, 31 October 2005***Declaration upon signature***

It is the understanding of the Republic of Turkey that the term international humanitarian law in Article 4 (2) of the International Convention for the Suppression of Acts of Nuclear Terrorism, refers to the legal instruments to which Turkey is already party to. The Article should 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 creating new obligations for the Republic of Turkey.

---

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 on the present article. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 of the present article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

**F. CONVENTION ON THE PREVENTION AND PUNISHMENT OF CRIMES AGAINST INTERNATIONALLY PROTECTED PERSONS, INCLUDING DIPLOMATIC AGENTS, NEW-YORK, 14 DECEMBER 1973<sup>5</sup>**

**11. SINGAPORE**, 2 May 2008, 14 May 2008, 13 May 2009

***Declaration***

The Republic of Singapore understands Article 7, paragraph 1, of the Convention to include the right of competent authorities to decide not to submit any particular case for prosecution before the judicial authorities if the alleged offender is dealt with under national security and preventive detention laws.

**G. COMPREHENSIVE NUCLEAR TEST-BAN TREATY, NEW-YORK, 10 SEPTEMBER 1996**

**12. COLOMBIA**, 29 January 2008, 12 February 2008, 11 February 2009

***Declaration***

The Government of Colombia declares that the financial obligations arising from the present instrument shall not become payable until the Treaty has entered into force and shall not have retroactive effect.

---

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

**Article 7 :**

The State Party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

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

### A. EUROPEAN CONVENTION ON THE TRANSFER OF PROCEEDINGS IN CRIMINAL MATTERS, ETS n° 73, 15 MAY 1972<sup>6</sup>

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

#### **Article 8 :**

1. A Contracting State may request another Contracting State to take proceedings in any one or more of the following cases:

- a. if the suspected person is ordinarily resident in the requested State;
- b. if the suspected person is a national of the requested State or if that State is his State of origin;
- c. if the suspected person is undergoing or is to undergo a sentence involving deprivation of liberty in the requested State;
- d. if proceedings for the same or other offences are being taken against the suspected person in the requested State;
- e. if it considers that transfer of the proceedings is warranted in the interests of arriving at the truth and in particular that the most important items of evidence are located in the requested State;
- f. if it considers that the enforcement in the requested State of a sentence if one were passed is likely to improve the prospects for the social rehabilitation of the person sentenced;
- g. if it considers that the presence of the suspected person cannot be ensured at the hearing of proceedings in the requesting State and that his presence in person at the hearing of proceedings in the requested State can be ensured;
- h. if it considers that it could not itself enforce a sentence if one were passed, even by having recourse to extradition, and that the requested State could do so;

2. Where the suspected person has been finally sentenced in a Contracting State, that State may request the transfer of proceedings in one or more of the cases referred to in paragraph 1 of this article only if it cannot itself enforce the sentence, even by having recourse to extradition, and if the other Contracting State does not accept enforcement of a foreign judgment as a matter of principle or refuses to enforce such sentence.

#### **Article 11 :**

Save as provided for in Article 10 the requested State may not refuse acceptance of the request in whole or in part, except in any one or more of the following cases:

- a. if it considers that the grounds on which the request is based under Article 8 are not justified;
- b. if the suspected person is not ordinarily resident in the requested State;
- c. if the suspected person is not a national of the requested State and was not ordinarily resident in the territory of that State at the time of the offence;
- d. if it considers that the offence for which proceedings are requested is an offence of a political nature or a purely military or fiscal one;
- e. if it considers that there are substantial grounds for believing that the request for proceedings was motivated by considerations of race, religion, nationality or political opinion;
- f. if its own law is already applicable to the offence and if at the time of the receipt of the request proceedings were precluded by lapse of time according to that law; Article 26, paragraph 2, shall not apply in such a case;
- g. if its competence is exclusively grounded on Article 2 and if at the time of the receipt of the request proceedings would be precluded by lapse of time according to its law, the prolongation of the time-limit by six months under the terms of Article 23 being taken into consideration;
- h. if the offence was committed outside the territory of the requesting State;
- i. if proceedings would be contrary to the international undertakings of the requested State;
- j. if proceedings would be contrary to the fundamental principles of the legal system of the requested State;
- k. if the requesting State has violated a rule of procedure laid down in this Convention.

#### **Article 13 :**

3. Any Contracting State may, by declaration addressed to the Secretary General of the Council of Europe, give notice of its intention to adopt in so far as it itself is concerned rules of transmission other than those laid down in paragraph 1 of this article.

#### **Article 18 :**

2. Any Contracting State may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, by declaration addressed to the Secretary General of the Council of Europe, reserve the right to require that, with the exception of the copy of the written decision referred to in Article 16, paragraph 2, the said documents be accompanied by a translation. The other Contracting States shall send the translations in either the national language of the receiving State or such one of the official languages of the Council of Europe as the receiving State shall indicate. However, such an indication is not obligatory. The other Contracting States may claim reciprocity.

#### **Article 30 :**

1. Any Contracting State which, before the institution or in the course of proceedings for an offence which it considers to be neither of a political nature nor a purely military one, is aware of proceedings pending in another

## **1. RUSSIAN FEDERATION, 26 June 2008, 11 July 2008, 10 July 2009**

### ***Reservations***

The Russian Federation, in accordance with paragraph (g) of Appendix I to the Convention, reserves the right not to apply Articles 30 and 31 of the Convention in respect of an act for which the sanctions, in accordance with the law of another Contracting State, can be imposed only by an administrative authority ;

The Russian Federation declares, in accordance with paragraph (h) of Appendix I to the Convention, that it will apply Part V of the Convention to the extent that this does not conflict with the principle of inadmissibility of a double conviction for the same crime.

### ***Declarations***

The Russian Federation proceeds from the understanding that the provisions of Article 8 of the Convention will be applied with due regard to the terminology used in the criminal procedure legislation of the Russian Federation in respect of suspected and accused persons;

The Russian Federation proceeds from the understanding that the provisions of Article 11 of the Convention and paragraph (a) of Appendix I to the Convention must be applied so as to ensure the inevitability of responsibility for commitment of the offences under the Convention;

The Russian Federation declares in accordance with Article 13, paragraph 3, of the Convention that as regards the transfer of proceedings in criminal matters the Prosecutor General's Office of the Russian Federation communicates with the designated authorities of Contracting States;

The Russian Federation declares in accordance with Article 18, paragraph 2, of the Convention that requests sent to the Russian Federation for transfer of proceedings in criminal matters, and supporting documents must be accompanied by translation into the Russian language;

---

Contracting State against the same person in respect of the same offence shall consider whether it can either waive or suspend its own proceedings, or transfer them to the other State.

2. If it deems it advisable in the circumstances not to waive or suspend its own proceedings it shall so notify the other State in good time and in any event before judgment is given on the merits.

### **Article 31 :**

1. In the eventuality referred to in Article 30, paragraph 2, the States concerned shall endeavor as far as possible to determine, after evaluation in each of the circumstances mentioned in Article 8, which of them alone shall continue to conduct proceedings. During this consultative procedure the States concerned shall postpone judgment on the merits without however being obliged to prolong such postponement beyond a period of 30 days as from the dispatch of the notification provided for in Article 30, paragraph 2.

2. The provisions of paragraph 1 shall not be binding:

- a. on the State dispatching the notification provided for in Article 30, paragraph 2, if the main trial has been declared open there in the presence of the accused before dispatch of the notification;
- b. on the State to which the notification is addressed, if the main trial has been declared open there in the presence of the accused before receipt of the notification.

### ***Appendix I***

Each Contracting State may declare that it reserves the right:

- a. to refuse a request for proceedings, if it considers that the offence is a purely religious offence;
- b. to refuse a request for proceedings for an act the sanctions for which, in accordance with its own law, can be imposed only by an administrative authority;
- c. not to accept Article 22;
- d. not to accept Article 23;
- e. not to accept the provisions contained in the second sentence of Article 25 for constitutional reasons;
- f. not to accept the provisions laid down in Article 26, paragraph 2, where it is competent by virtue of its own law;
- g. not to apply Articles 30 and 31 in respect of an act for which the sanctions, in accordance with its own law or that of the other State concerned, can be imposed only by an administrative authority;
- h. not to accept Part V.



The Russian Federation proceeds from the fact that Russian Federation legislation does not contain the notion "offence of a political nature" as used in Article 11, paragraph (d) and Article 30, paragraph 1 of the Convention. In all cases when deciding on the transfer of proceedings in criminal matters the Russian Federation on the basis of reciprocity with the requesting State will not regard as offences of a political nature, inter alia, the following acts:

- (a) crimes against humanity specified in Articles II and III of the Convention on the Prevention and Punishment of the Crime of Genocide, of 9 December 1948, in Articles II and III of the International Convention on the Suppression and Punishment of the Crime of Apartheid, of 30 November 1973, and in Articles 1 and 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, of 10 December 1984;
- (b) crimes specified in Article 50 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of 12 August 1949, in Article 51 of the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, of 12 August 1949, in Article 130 of the Geneva Convention Relative to the Treatment of Prisoners of War, of 12 August 1949, in Article 147 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in Article 85 of Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977, and in Articles 1 and 4 of Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), of 8 June 1977;
- (c) offences specified in the Convention for the Suppression of Unlawful Seizure of Aircraft, of 16 December 1970, in the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, of 23 September 1971, and in the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, of 24 February 1988, supplementary to the Convention for the Suppression of Unlawful Acts against the safety of Civil Aviation, of 23 September 1971;
- (d) crimes specified in the Convention for the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 14 December 1973;
- (e) crimes specified in the European Convention on the Suppression of Terrorism, of 27 January 1977;
- (f) crimes specified in the International Convention against the Taking of Hostages, of 17 December 1979;
- (g) offences specified in the Convention on the Physical Protection of Nuclear Material, of 3 March 1980;
- (h) crimes specified in the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, of 10 March 1988, and its Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, of 10 March 1988;
- (i) offences specified in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, of 20 December 1988;
- (j) crimes specified in the Convention on the Safety of United Nations and Associated Personnel, of 9 December 1994;

- (k) crimes specified in the International Convention against Bomb Terrorism, of 15 December 1997;
- (l) crimes specified in the International Convention for the Suppression of the Financing of Terrorism, of 9 December 1999;
- (m) offences specified in the United Nations Convention against Transnational Organized Crimes, of 15 November 2000, and in its supplementary Protocols: the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;
- (n) other comparable crimes specified in multilateral international treaties to which the Russian Federation is a Party.

**Note by the Secretariat:** The reservations concern Articles 30 and 31 of the Convention. The reservation clause is contained in Appendix I of the Convention. The declarations concerning Articles 8, 11, 30 and paragraph (a) of Appendix I are interpretative declarations.

**B. EUROPEAN AGREEMENT RELATING TO PERSONS PARTICIPATING IN PROCEEDINGS OF THE EUROPEAN COURT OF HUMAN RIGHTS (ETS No. 161), 5 MARCH 1996<sup>7</sup>**

**2. POLAND, 2 April 2008, 18 April 2008**

---

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

**Article 3 :**

1 The Contracting Parties shall respect the right of the persons referred to in paragraph 1 of Article 1 of this Agreement to correspond freely with the Court.

2 As regards persons under detention, the exercise of this right shall in particular imply that:

- a their correspondence shall be despatched and delivered without undue delay and without alteration;
- b such persons shall not be subject to disciplinary measures in any form on account of any communication sent through the proper channels to the Court;
- c such persons shall have the right to correspond, and consult out of hearing of other persons, with a lawyer qualified to appear before the courts of the country where they are detained in regard to an application to the Court, or any proceedings resulting therefrom.

**Article 4 :**

1.

a. The Contracting Parties undertake not to hinder the free movement and travel, for the purpose of attending and returning from proceedings before the Court, of persons referred to in paragraph 1 of Article 1 of this Agreement.

b. No restrictions shall be placed on their movement and travel other than such as are in accordance with the law and necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

2.

a. Such persons shall not, in countries of transit and in the country where the proceedings take place, be prosecuted or detained or be subjected to any other restriction of their personal liberty in respect of acts or convictions prior to the commencement of the journey.

b. Any Contracting Party may, at the time of signature, ratification, acceptance or approval of this Agreement, declare that the provisions of this paragraph will not apply to its own nationals. Such a declaration may be withdrawn at any time by means of a notification addressed to the Secretary General of the Council of Europe.

3. The Contracting Parties undertake to re-admit on his return to their territory any such person who commenced his journey in the said territory.

4. The provisions of paragraphs 1 and 2 of this Article shall cease to apply when the person concerned has had, for a period of fifteen consecutive days from the date when his presence is no longer required by the Court, the opportunity of returning to the country from which his journey commenced.

5. Where there is any conflict between the obligations of a Contracting Party resulting from paragraph 2 of this Article and those resulting from a Council of Europe convention or from an extradition treaty or other treaty concerning mutual assistance in criminal matters with other Contracting Parties, the provisions of paragraph 2 of this Article shall prevail.

The Republic of Poland reserves the right to interpret paragraph 2 (c) of Article 3 of the European Agreement as not applying within 14 days from the day of the actual application of detention in preparatory proceedings.

The Republic of Poland reserves the right to interpret paragraph 1 (a) of Article 4 of the European Agreement as not applying to detained persons, people placed in psychiatric hospitals following a decision of a court and persons placed in a guarded center for aliens or in an arrest for the purpose of expulsion.

In respect of the application of paragraph 1 of Article 4, the foreign nationals referred to in paragraph 1 of Article 1 of the Agreement, must be in possession of the circulation documents required for entry into the Republic of Poland and obtain, if appropriate, the necessary visa. Those visas will be issued within the briefest period by the competent Polish consular representatives, subject to the provisions of paragraph 1b of Article 4 of the Agreement.

The Republic of Poland declares that the provisions of Article 4, paragraph 2 (a), of the European Agreement shall not apply in respect of citizens of the Republic of Poland.

**Note by the Secretariat:** The reservations and the declaration concern Articles 3 and 4.

### **C. CONVENTION ON CYBERCRIME (ETS No. 185), 23 NOVEMBER 2001<sup>8</sup>**

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

#### **Article 4 – Data interference**

1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.

2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.

#### **Article 6 – Misuse of devices**

1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right:

a the production, sale, procurement for use, import, distribution or otherwise making available of:

i a device, including a computer program, designed or adapted primarily for the purpose of committing any of the offences established in accordance with the above Articles 2 through 5;

ii a computer password, access code, or similar data by which the whole or any part of a computer system is capable of being accessed, with intent that it be used for the purpose of committing any of the offences established in Articles 2 through 5; and

b the possession of an item referred to in paragraphs a.i or ii above, with intent that it be used for the purpose of committing any of the offences established in Articles 2 through 5. A Party may require by law that a number of such items be possessed before criminal liability attaches.

2 This article shall not be interpreted as imposing criminal liability where the production, sale, procurement for use, import, distribution or otherwise making available or possession referred to in paragraph 1 of this article is not for the purpose of committing an offence established in accordance with Articles 2 through 5 of this Convention, such as for the authorised testing or protection of a computer system.

3 Each Party may reserve the right not to apply paragraph 1 of this article, provided that the reservation does not concern the sale, distribution or otherwise making available of the items referred to in paragraph 1 a.ii of this article.

#### **Article 24 – Extradition**

1

a This article applies to extradition between Parties for the criminal offences established in accordance with Articles 2 through 11 of this Convention, provided that they are punishable under the laws of both Parties concerned by deprivation of liberty for a maximum period of at least one year, or by a more severe penalty.

b Where a different minimum penalty is to be applied under an arrangement agreed on the basis of uniform or reciprocal legislation or an extradition treaty, including the European Convention on Extradition (ETS No. 24), applicable between two or more parties, the minimum penalty provided for under such arrangement or treaty shall apply.

2 The criminal offences described in paragraph 1 of this article shall be deemed to be included as extraditable offences in any extradition treaty existing between or among the Parties. The Parties undertake to include such offences as extraditable offences in any extradition treaty to be concluded between or among them.

3 If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it does not have an extradition treaty, it may consider this Convention as the legal basis for extradition with respect to any criminal offence referred to in paragraph 1 of this article.

4 Parties that do not make extradition conditional on the existence of a treaty shall recognise the criminal offences referred to in paragraph 1 of this article as extraditable offences between themselves.

5 Extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties, including the grounds on which the requested Party may refuse extradition.

6 If extradition for a criminal offence referred to in paragraph 1 of this article is refused solely on the basis of the nationality of the person sought, or because the requested Party deems that it has jurisdiction over the offence, the requested Party shall submit the case at the request of the requesting Party to its competent authorities for the purpose of prosecution and shall report the final outcome to the requesting Party in due course. Those authorities shall take their decision and conduct their investigations and proceedings in the same manner as for any other offence of a comparable nature under the law of that Party.

7

a Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the name and address of each authority responsible for making or receiving requests for extradition or provisional arrest in the absence of a treaty.

b The Secretary General of the Council of Europe shall set up and keep updated a register of authorities so designated by the Parties. Each Party shall ensure that the details held on the register are correct at all times.

**Article 27 – Procedures pertaining to mutual assistance requests in the absence of applicable international agreements**

1 Where there is no mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the requesting and requested Parties, the provisions of paragraphs 2 through 9 of this article shall apply. The provisions of this article shall not apply where such treaty, arrangement or legislation exists, unless the Parties concerned agree to apply any or all of the remainder of this article in lieu thereof.

2

a Each Party shall designate a central authority or authorities responsible for sending and answering requests for mutual assistance, the execution of such requests or their transmission to the authorities competent for their execution.

b The central authorities shall communicate directly with each other;

c Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the names and addresses of the authorities designated in pursuance of this paragraph;

d The Secretary General of the Council of Europe shall set up and keep updated a register of central authorities designated by the Parties. Each Party shall ensure that the details held on the register are correct at all times.

3 Mutual assistance requests under this article shall be executed in accordance with the procedures specified by the requesting Party, except where incompatible with the law of the requested Party.

4 The requested Party may, in addition to the grounds for refusal established in Article 25, paragraph 4, refuse assistance if:

a the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence, or

b it considers that execution of the request is likely to prejudice its sovereignty, security, public order or other essential interests.

5 The requested Party may postpone action on a request if such action would prejudice criminal investigations or proceedings conducted by its authorities.

6 Before refusing or postponing assistance, the requested Party shall, where appropriate after having consulted with the requesting Party, consider whether the request may be granted partially or subject to such conditions as it deems necessary.

7 The requested Party shall promptly inform the requesting Party of the outcome of the execution of a request for assistance. Reasons shall be given for any refusal or postponement of the request. The requested Party shall also inform the requesting Party of any reasons that render impossible the execution of the request or are likely to delay it significantly.

8 The requesting Party may request that the requested Party keep confidential the fact of any request made under this chapter as well as its subject, except to the extent necessary for its execution. If the requested Party cannot comply with the request for confidentiality, it shall promptly inform the requesting Party, which shall then determine whether the request should nevertheless be executed.

9

a In the event of urgency, requests for mutual assistance or communications related thereto may be sent directly by judicial authorities of the requesting Party to such authorities of the requested Party. In any such cases, a copy shall be sent at the same time to the central authority of the requested Party through the central authority of the requesting Party.

b Any request or communication under this paragraph may be made through the International Criminal Police Organisation (Interpol).

c Where a request is made pursuant to sub-paragraph a. of this article and the authority is not competent to deal with the request, it shall refer the request to the competent national authority and inform directly the requesting Party that it has done so.

d Requests or communications made under this paragraph that do not involve coercive action may be directly transmitted by the competent authorities of the requesting Party to the competent authorities of the requested Party.

e Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, inform the Secretary General of the Council of Europe that, for reasons of efficiency, requests made under this paragraph are to be addressed to its central authority.

#### **Article 29 – Expedited preservation of stored computer data**

1 A Party may request another Party to order or otherwise obtain the expeditious preservation of data stored by means of a computer system, located within the territory of that other Party and in respect of which the requesting Party intends to submit a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of the data.

2 A request for preservation made under paragraph 1 shall specify:

- a the authority seeking the preservation;
- b the offence that is the subject of a criminal investigation or proceedings and a brief summary of the related facts;
- c the stored computer data to be preserved and its relationship to the offence;
- d any available information identifying the custodian of the stored computer data or the location of the computer system;
- e the necessity of the preservation; and
- f that the Party intends to submit a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of the stored computer data.

3 Upon receiving the request from another Party, the requested Party shall take all appropriate measures to preserve expeditiously the specified data in accordance with its domestic law. For the purposes of responding to a request, dual criminality shall not be required as a condition to providing such preservation.

4 A Party that requires dual criminality as a condition for responding to a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of stored data may, in respect of offences other than those established in accordance with Articles 2 through 11 of this Convention, reserve the right to refuse the request for preservation under this article in cases where it has reasons to believe that at the time of disclosure the condition of dual criminality cannot be fulfilled.

5 In addition, a request for preservation may only be refused if:

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

6 Where the requested Party believes that preservation will not ensure the future availability of the data or will threaten the confidentiality of or otherwise prejudice the requesting Party's investigation, it shall promptly so inform the requesting Party, which shall then determine whether the request should nevertheless be executed.

7 Any preservation effected in response to the request referred to in paragraph 1 shall be for a period not less than sixty days, in order to enable the requesting Party to submit a request for the search or similar access, seizure or similar securing, or disclosure of the data. Following the receipt of such a request, the data shall continue to be preserved pending a decision on that request.

#### **Article 35 – 24/7 Network**

1 Each Party shall designate a point of contact available on a twenty-four hour, seven-day-a-week basis, in order to ensure the provision of immediate assistance for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence. Such assistance shall include facilitating, or, if permitted by its domestic law and practice, directly carrying out the following measures:

- a the provision of technical advice;
- b the preservation of data pursuant to Articles 29 and 30;
- c the collection of evidence, the provision of legal information, and locating of suspects.

2

- a. A Party's point of contact shall have the capacity to carry out communications with the point of contact of another Party on an expedited basis.
- b. If the point of contact designated by a Party is not part of that Party's authority or authorities responsible for international mutual assistance or extradition, the point of contact shall ensure that it is able to co-ordinate with such authority or authorities on an expedited basis.

3 Each Party shall ensure that trained and equipped personnel are available, in order to facilitate the operation of the network.

#### **Article 38 – Territorial application**

1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

2 Any State may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of the declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

#### **Article 42 – Reservations**

### 3. AZERBAIJAN, 30 June 2008, 11 July 2008

In relation to subparagraph “b” of paragraph 1 of Article 6 of the Convention, the Republic of Azerbaijan declares that when acts are not considered dangerous crimes for the general public, they will be evaluated not as criminal offences, but as punishable acts regarded as a breach of law. In case the deliberate perpetration of acts subject to the penalty risk which are not treated as dangerous crimes for the general public (action or inaction) generates a serious harm, then they are treated as crime.

In relation to paragraph 3 of Article 6 of the Convention, the Republic of Azerbaijan appraises the acts indicated in paragraph 1 of Article 6 of the Convention not as criminal offences, but as punishable acts regarded as a breach of law in case these acts are not considered dangerous crimes for general public and stipulates that the given acts be subjected to criminal charge only at the event of incurrance of serious harm.

According to subparagraph “a” of paragraph 7 of Article 24 of the Convention, in case of the absence of an extradition treaty, the Republic of Azerbaijan designates the Ministry of Justice as a responsible authority for receiving inquiries regarding extradition and temporary arrest.

According to subparagraph “c” of paragraph 2 of Article 27 of the Convention, the Republic of Azerbaijan designates the Ministry of National Security as a responsible authority for sending and answering requests for mutual assistance and the execution of such requests.

According to subparagraph “e” of paragraph 9 of Article 27 of the Convention, the Republic of Azerbaijan informs the Secretary General that, for reasons of efficiency, requests made under this paragraph are to be addressed to its central authority.

According to paragraph 1 of Article 35 of the Convention, the Republic of Azerbaijan designates the Ministry of National Security as a point of contact available on a twenty-four hour, seven-day-a-week basis, in order to ensure the provision of immediate assistance for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or collection of evidence in electronic form of a criminal offence.

According to Article 38 of the Convention, the Republic of Azerbaijan declares that the application of the provisions of the Convention in the territories of the Republic of Azerbaijan, which have been occupied by the Republic of Armenia, cannot be guaranteed unless these territories are freed from occupation.

In accordance with Article 42 and Article 4, paragraph 2, of the Convention, the Republic of Azerbaijan declares that criminal liability occurs if the acts described in Article 4 of the Convention result in serious harm.

In accordance with Article 42 and Article 29, paragraph 4, of the Convention, the Republic of Azerbaijan reserves the right to refuse the request for preservation under this article in cases where it has reasons to believe that at the time of disclosure the condition of dual criminality cannot be fulfilled.

**Note by the Secretariat:** The reservations and declarations concerning Articles 4, 24, 27, 29, 35 and 38 were made according to the relevant dispositions of the Convention. The declarations made concerning Article 6 explain the applicable national law.

---

By a written notification addressed to the Secretary General of the Council of Europe, 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(s) provided for in Article 4, paragraph 2, Article 6, paragraph 3, Article 9, paragraph 4, Article 10, paragraph 3, Article 11, paragraph 3, Article 14, paragraph 3, Article 22, paragraph 2, Article 29, paragraph 4, and Article 41, paragraph 1. No other reservation may be made.