



Strasbourg, 04/03/09

CAHDI (2009) 4 Part I

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

**37th meeting
Strasbourg, 19-20 March 2009**

**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 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://treaties.un.org/>.
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.

A. CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES AND OPTIONAL PROTOCOL THERETO, NEW YORK, 13 DECEMBER 2006

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 Disabilities¹ 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 Convention² shall be subject to the national laws, regulations and practices in Thailand.

¹ **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.

² **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.

4. NETHERLANDS, 20 March 2007, 18 April 2007

Declarations made upon signature

The Kingdom of the Netherlands hereby expresses its intention to ratify the Convention on the Rights of Persons with Disabilities, subject to the following declarations and such further declarations and reservations as it may deem necessary upon ratification of the Convention.

Article 10³

The Kingdom of the Netherlands acknowledges that unborn human life is worthy of protection. The Kingdom interprets the scope of Article 10 to the effect that such protection - and thereby the term 'human being' - is a matter for national legislation.

Article 15⁴

The Netherlands declares that it will interpret the term 'consent' in Article 15 in conformity with international instruments, such as the Council of Europe Convention on Human Rights and Biomedicine and the Additional Protocol concerning Biomedical Research, and with national legislation which is in line with these instruments. This means that, as far as biomedical research is concerned, the term 'consent' applies to two different situations:

1. consent given by a person who is able to consent, and
2. in the case of persons who are not able to give their consent, permission given by their representative or an authority or body provided for by law.

The Netherlands considers it important that persons who are unable to give their free and informed consent receive specific protection. In addition to the permission referred to under 2. above, other protective measures as included in the above-mentioned international instruments are considered to be part of this protection.

Article 23⁵

³ **Article 10 Right to life:**

States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

⁴ **Article 15 Freedom from torture or cruel, inhuman or degrading treatment or punishment:**

1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.
2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

⁵ **Article 23 Respect for home and the family:**

1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that:

(a) The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized;

(b) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided;

(c) Persons with disabilities, including Children, retain their fertility on an equal basis with others.

2. States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.

3. States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.

With regard to Article 23 paragraph 1 (b), the Netherlands declares that the best interests of the child shall be paramount.

Article 25⁶

The individual autonomy of the person is an important principle laid down in Article 3 (a) of the Convention. The Netherlands understands Article 25 (f) in the light of this autonomy. This provision is interpreted to mean that good care involves respecting a person with regard to medical treatment, food and fluids.

5. MALTA, 30 March 2007, 18 April 2007

Interpretative statement and reservation made upon signature

(a) Pursuant to Article 25 of the Convention, Malta makes the following Interpretative Statement - Malta understands that the phrase "sexual and reproductive health" in Art 25 (a) of the Convention does not constitute recognition of any new international law obligation, does not create any abortion rights, and cannot be interpreted to constitute support, endorsement, or promotion of abortion. Malta further understands that the use of this phrase is intended exclusively to underline the point that where health services are provided, they are provided without discrimination on the basis of disability.

Malta's national legislation, considers the termination of pregnancy through induced abortion as illegal.

4. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

5. States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.

⁶ **Article 25 Health:**

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

- (a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;
- (b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;
- (c) Provide these health services as close as possible to people's own communities, including in rural areas;
- (d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;
- (e) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner; ⁷
- (f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

(b) Pursuant to Article 29)a) (i) and (iii) of the Convention⁷, while the Government of Malta is fully committed to ensure the effective and full participation of persons with disabilities in political and public life, including the exercise of their right to vote by secret ballot in elections and referenda, and to stand for elections, Malta makes the following reservations:

With regard to (a) (i)

At this stage, Malta reserves the right to continue to apply its current electoral legislation in so far as voting procedures, facilities and materials are concerned.

With regard to (a) (iii)

Malta reserves the right to continue to apply its current electoral legislation in so far as assistance in voting procedures is concerned.

6. POLAND, 30 March 2007, 24 April 2007

Reservation made upon signature:

The Republic of Poland understands that Articles 23.1 (b) and 25 (a) shall not be interpreted in a way conferring an individual right to abortion or mandating state party to provide access thereto.

⁷ Article 29 Participation in political and public life:

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake:

(a) To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:

(i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;

(ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;

(iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;

(b) To promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:

(i) Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;

(ii) Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

B. INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, NEW YORK, 16 DECEMBER 1966⁸

7. 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. INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF ACTS OF NUCLEAR TERRORISM, NEW YORK, 13 APRIL 2005

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 Convention⁹ 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.

⁸ **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.

⁹ **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.

The Arab Republic of Egypt declares that it does not consider itself bound by paragraph 1 of article 23 of the Convention¹⁰.

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

Declarations

To Article 16 of the Convention¹¹: 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.

¹⁰ **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.
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.

¹¹ **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.

D. **CONVENTION ON THE PREVENTION AND PUNISHMENT OF CRIMES AGAINST INTERNATIONALLY PROTECTED PERSONS, INCLUDING DIPLOMATIC AGENTS, NEW-YORK, 14 DECEMBER 1973**¹²

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.

¹² **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.