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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)

Reactions to reservations and declarations to international treaties previously examined by the CAHDI

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TABLE OF CONTENTS

FORWORD	3
TABLE OF OBJECTIONS	4
APPENDICES	8
RESERVATIONS AND DECLARATIONS TO TREATIES CONCLUDED OUTSIDE THE COUNCIL OF EUROPE	8
A. CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (2006)	8
1. <i>MONACO</i>	8
2. <i>SURINAME</i>	9
B. INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF ACTS OF NUCLEAR TERRORISM (2005)	11
3. <i>SINGAPORE</i>	11
C. UNITED NATIONS CONVENTION AGAINST CORRUPTION (2003)	12
4. <i>BHUTAN</i>	12
D. UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (2000)	13
5. <i>FIJI</i>	13
E. PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (2000)	13
6. <i>FIJI</i>	13
F. PROTOCOL AGAINST THE SMUGGLING OF MIGRANTS BY LAND, SEA AND AIR, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (2000)	14
7. <i>FIJI</i>	14
G. PROTOCOL AGAINST THE ILLICIT MANUFACTURING OF AND TRAFFICKING IN FIREARMS, THEIR PARTS AND COMPONENTS AND AMMUNITION, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (2001) 14	
8. <i>FIJI</i>	14
RESERVATIONS AND DECLARATIONS TO TREATIES CONCLUDED WITHIN THE COUNCIL OF EUROPE	15
H. COUNCIL OF EUROPE CONVENTION ON LAUNDERING, SEARCH, SEIZURE AND CONFISCATION OF THE PROCEEDS FROM CRIME AND ON THE FINANCING OF TERRORISM (2005) – CETS No. 198	15
9. <i>AZERBAIJAN</i>	15
I. CONVENTION ON CYBERCRIME (2001) – ETS No. 185	18
10. <i>CHILE</i>	18

FORWORD

Since 1998, the CAHDI operates as European Observatory of Reservations to International Treaties and regularly considers a list of reservations subject to objection.

This document presents the reactions of member and observer States of the CAHDI to reservations and declarations subject to objection, examined by the Committee and for which the deadline for objection has expired. To this end, a table of objections to the reservations and declarations examined at the 54th (Strasbourg, France, 21-22 September 2017) and 55th (Strasbourg, France, 22-23 March 2018) meetings of the CAHDI is set out.

Appendix I contains the text of the reservations and declarations to treaties concluded outside the Council of Europe. Appendix II presents the text of a partial withdrawal of a reservation. The format of the information contained in these appendices is the following:



TABLE OF OBJECTIONS

LEGEND

Sign. : Made upon signature

- State has objected
- ◆ State has made a declaration
- ◀ State has objected to the original reservation(s), in case of a (partial) withdrawal
- State considers the reservation to have been formulated belatedly

TREATIES

RESERVATIONS AND DECLARATIONS TO TREATIES CONCLUDED OUTSIDE THE COUNCIL OF EUROPE

- A. Convention on the Rights of Persons with Disabilities (2006)
- B. International Convention for the Suppression of Acts of Nuclear Terrorism (2005)
- C. United Nations Convention Against Corruption (2003)
- D. United Nations Convention Against Transnational Organized Crime (2000)
- E. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (2000)
- F. Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime (2000)
- G. Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, Supplementing the United Nations Convention Against Transnational Organized Crime (2001)

RESERVATIONS AND DECLARATIONS TO TREATIES CONCLUDED OUTSIDE THE COUNCIL OF EUROPE

- H. Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005) – CETS No. 198
- I. Convention on Cybercrime (2001) – ETS No.185

APPENDICES

APPENDIX I RESERVATIONS AND DECLARATIONS TO TREATIES CONCLUDED OUTSIDE THE COUNCIL OF EUROPE

A. CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (2006)

1. MONACO

19 September 2017, 19 September 2017, 19 September 2018

Reservation:

“The Government of His Serene Highness the Prince of Monaco, taking into account the specific geographical and demographic features of the Principality of Monaco, which only has a limited number of persons with disabilities having identified needs, implements individual measures benefitting each person with disabilities in order to allow that person to seek, receive and impart information in an accessible and suitable format depending on the administrative procedures being undertaken and with personalized support. These measures constitute the “appropriate measures” referred to in article 21 of the Convention.”

Declaration:

“The Government of His Serene Highness the Prince of Monaco declares that implementation of the Convention must take into account the unique features of the Principality of Monaco, particularly the small size of its territory and the needs of its people.

The Government of His Serene Highness the Prince of Monaco considers that articles 23 and 25 of the Convention must not be interpreted as recognizing an individual right to abortion except where expressly provided for under national law.

The Government of His Serene Highness the Prince of Monaco considers that the purpose of the Convention is to eliminate all discrimination on the basis of disability and to ensure that persons with disabilities have full enjoyment of all human rights and fundamental freedoms on an equal basis with others, but that the Convention does not imply that persons with disabilities should be afforded rights superior to those afforded to persons without disabilities, especially in terms of employment, accommodation and nationality.”

Article 21 – Freedom of expression and opinion, and access to information

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

- (a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;*
- (b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;*
- (c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;*
- (d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;*
- (e) Recognizing and promoting the use of sign languages.*

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.

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.

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;”

2. SURINAME

29 March 2017, 29 March 2017, 29 March 2018

Declarations and reservations:

“... the Government of the Republic of Suriname makes the following reservation/declaration in relation to articles 9 paragraph 2 (d) and (e); 19 paragraph b; 20 paragraph (a); 24 paragraph 2 (b) and 26 of the Convention on the Rights of Persons with Disabilities that was adopted on 13 December 2006:

the Government of the Republic of Suriname declares that it shall not for the time being take any of the measures provided for in Article 9 paragraph 2 (d) and (e) in view of their heavy financial implication;

the Government of the Republic of Suriname declares that it ratifies the Convention with a reservation in respect of Article 19 paragraph (a) of the Convention, to the extent that the nature of the provisions in respect to the right of a place of residence thereof are stipulated in Article 71 of the Civil Code of the Republic of Suriname;

the Government of the Republic of Suriname declares that it shall not for the time being take some of the measures in respect to Article 20 to the extent that Suriname is recently in an undue financial burden;

the Government of the Republic of Suriname recognizes the right of persons with disabilities to education and determines to guarantee free primary education for every person.

Accordingly, it declares that it shall not for the time being guarantee the application of the provision 24 paragraph 2 (b) on the condition that the educational system is still far from inclusive education;

the Government of Suriname recognizes the rights of persons with disabilities to attain and maintain maximum independence, full physical, mental, social and full inclusion and participation in all aspects of life, however declares that it shall not be able to take some of the measures provided in Article 26 at the earliest possible stage due to the non-existence of the production of mobility devices and/or limited access to the materials and equipment needed to produce mobility devices...”

Article 9 – Accessibility

[...]

2. States Parties shall also take appropriate measures:

[...]

(d) To provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;

(e) To provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;

[...]

Article 19 – Living independently and being included in the community

States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

[...]

(b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;

[...]

Article 20 – Personal mobility

States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by:

(a) Facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost;

[...]

Article 24 – Education

2. In realizing this right, States Parties shall ensure that:

[...]

(b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;

Article 26 – Habilitation and rehabilitation

1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes:

(a) Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;

(b) Support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.

2. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.

3. States Parties shall promote the availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation.

B. INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF ACTS OF NUCLEAR TERRORISM (2005)

3. SINGAPORE

2 August 2017, 2 August 2017, 2 August 2018

Reservation

“Pursuant to Article 23, paragraph 2, of the Convention, the Republic of Singapore declares that it does not consider itself bound by the provisions of Article 23, paragraph 1 of the Convention.”

Declarations

“1. The Republic of Singapore understands that the term 'armed conflict' in Article 4, paragraph 2, of the Convention does not include internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature.

2. The Republic of Singapore understands that, under Article 4 and Article 1, paragraph 6, the Convention does not apply to:

- a. the military forces of a state in the exercise of their official duties;
- b. civilians who direct or organise the official activities of military forces of a state; or
- c. civilians acting in support of the official activities of the military forces of a state, if the civilians are under the formal command, control, and responsibility of those forces.

3. The Republic of Singapore understands Article 11, 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.”

Article 1

For the purposes of this Convention:

1. “Radioactive material” means nuclear material and other radioactive substances which contain nuclides which undergo spontaneous disintegration (a process accompanied by emission of one or more types of ionizing radiation, such as alpha-, beta-, neutron particles and gamma rays) and which may, owing to their radiological or fissile properties, cause death, serious bodily injury or substantial damage to property or to the environment.

2. “Nuclear material” means plutonium, except that with isotopic concentration exceeding 80 per cent in plutonium-238; uranium-233; uranium enriched in the isotope 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore residue; or any material containing one or more of the foregoing; Whereby “uranium enriched in the isotope 235 or 233” means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature.

3. “Nuclear facility” means:

- (a) Any nuclear reactor, including reactors installed on vessels, vehicles, aircraft or space objects for use as an energy source in order to propel such vessels, vehicles, aircraft or space objects or for any other purpose;
- (b) Any plant or conveyance being used for the production, storage, processing or transport of radioactive material.

4. “Device” means:

- (a) Any nuclear explosive device; or
- (b) Any radioactive material dispersal or radiation-emitting device which may, owing to its radiological properties, cause death, serious bodily injury or substantial damage to property or to the environment.

5. “State or government facility” includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of a Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.

6. “Military forces of a State” means the armed forces of a State which are organized, trained and equipped under its internal law for the primary purpose of national defence or security and persons acting in support of those armed forces who are under their formal command, control and responsibility.

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 11

1. *The State Party in the territory of which the alleged offender is present shall, in cases to which article 9 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.*

2. *Whenever a State Party is permitted under its national law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1 of the present article.*

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, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.*

2. *Each State may, at the time of signature, ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of 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.*

C. UNITED NATIONS CONVENTION AGAINST CORRUPTION (2003)**4. BHUTAN**

25 April 2017, 25 April 2017, 25 April 2018

Late reservation*

“The Kingdom of Bhutan does not consider itself bound by Article 66, paragraph 2 of the Convention.”

Article 66 - Settlement of disputes

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

* **Note of the Secretariat:** In keeping with the depositary practice followed in similar cases, the UN Secretary-General proposed to receive the reservation in question for deposit in the absence of any objection on the part of one of the Contracting States, either to the deposit itself or to the procedure envisaged, within a period of one year from the date of the present notification. In the absence of any such objection, the said reservation will be accepted for deposit upon the expiration of the above stipulated one year period, that is on 26 April 2018. The Kingdom of Bhutan ratified the United Nations Convention against Corruption on 21 September 2016.

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 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.

D. UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (2000)

5. FIJI

19 September 2017, 19 September 2017, 19 September 2018

Reservation

“Fiji reserves waiving its sovereign rights and declares that it does not consider itself bound by the provisions of paragraph 2 of article 35.”

Article 35

[...]

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol 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.

E. PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (2000)

6. FIJI

19 September 2017, 19 September 2017, 19 September 2018

Reservation

“Fiji reserves waiving its sovereign rights and declares that it does not consider itself bound by the provisions of paragraph 2 of article 15.”

Article 15

[...]

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol 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.

F. PROTOCOL AGAINST THE SMUGGLING OF MIGRANTS BY LAND, SEA AND AIR, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (2000)

7. FIJI

19 September 2017, 19 September 2017, 19 September 2018

Reservation

“Fiji reserves waiving its sovereign rights and declares that it does not consider itself bound by the provisions of paragraph 2 of article 20.”

Article 20

[...]

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol 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.

G. PROTOCOL AGAINST THE ILLICIT MANUFACTURING OF AND TRAFFICKING IN FIREARMS, THEIR PARTS AND COMPONENTS AND AMMUNITION, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (2001)

8. FIJI

19 September 2017, 19 September 2017, 19 September 2018

Reservation

“Fiji reserves waiving its sovereign rights and declares that it does not consider itself bound by the provisions of paragraph 2 of article 16.”

Article 16

[...]

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol 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.

**APPENDIX II
RESERVATIONS AND DECLARATIONS TO TREATIES CONCLUDED WITHIN THE COUNCIL
OF EUROPE**

**H. COUNCIL OF EUROPE CONVENTION ON LAUNDERING, SEARCH, SEIZURE AND
CONFISCATION OF THE PROCEEDS FROM CRIME AND ON THE FINANCING OF
TERRORISM (2005) – CETS No. 198**

9. AZERBAIJAN

9 August 2017, 11 August 2017, 11 August 2018

Reservations and declarations

“In accordance with Article 53, paragraph 2, of the Convention, the Republic of Azerbaijan declares that it reserves the right not to apply, in whole, the provisions of Article 46, paragraph 5, of the Convention.

In accordance with Article 53, paragraph 4, of the Convention, the Republic of Azerbaijan declares that it will not apply Article 3, paragraph 4, of this Convention.

The Republic of Azerbaijan declares that it is unable to guarantee the implementation of the provisions of the Convention in its territories occupied by the Republic of Armenia (the Nagorno-Karabakh region of the Republic of Azerbaijan and its seven districts surrounding that region), until the liberation of these territories from the occupation and the complete elimination of the consequences of that occupation (the schematic map of the occupied territories of the Republic of Azerbaijan is enclosed).

In accordance with Article 17, paragraph 5, of the Convention, the Republic of Azerbaijan declares that it will apply Article 17 of the Convention only to the categories of offences specified in the list contained in the Appendix to the Convention.

In accordance with Article 24, paragraph 3, of the Convention, the Republic of Azerbaijan declares that Article 24, paragraph 2, of the Convention, applies only subject to constitutional principles of the Republic of Azerbaijan and the basic concepts of its legal system.

In accordance with Article 33, paragraph 2, of the Convention, the Republic of Azerbaijan declares that its central authorities, designated in pursuance of paragraph 1 of Article 33 of the Convention, shall be:
[addresses]

In accordance with Article 35, paragraph 1, of the Convention, the Republic of Azerbaijan declares that it will accept and execute requests, transmitted electronically or by any other means of communication, provided that the requesting Party simultaneously shall send the original of such requests by post or by courier. The information concerning execution of requests transmitted electronically or by any other means of communication, will be sent to the requesting Party after the receipt of the original.

In accordance with Article 35, paragraph 3, of the Convention, the Republic of Azerbaijan declares that requests and documents supporting such requests shall be accompanied by a translation into Azerbaijani or English.

In accordance with Article 42, paragraph 2, of the Convention, the Republic of Azerbaijan declares that information or evidence provided by the Republic of Azerbaijan under Chapter IV may not, without its prior consent, be used or transmitted by the authorities of the requesting Party for investigations or proceedings other than those specified in the request.

In accordance with Article 46, paragraph 13, of the Convention, the Republic of Azerbaijan declares that the Financial Markets Supervision Authority of the Republic of Azerbaijan is indicated as the financial intelligence unit within the meaning of Article 46.”

Article 17 – Requests for information on bank accounts

1. Each Party shall, under the conditions set out in this article, take the measures necessary to determine, in answer to a request sent by another Party, whether a natural or legal person that is the subject of a criminal investigation holds or controls one or more accounts, of whatever nature, in any bank located in its territory and, if so, provide the particulars of the identified accounts.
2. The obligation set out in this article shall apply only to the extent that the information is in the possession of the bank keeping the account.
3. In addition to the requirements of Article 37, the requesting party shall, in the request:
 - a. state why it considers that the requested information is likely to be of substantial value for the purpose of the criminal investigation into the offence;
 - b. state on what grounds it presumes that banks in the requested Party hold the account and specify, to the widest extent possible, which banks and/or accounts may be involved; and
 - c. include any additional information available which may facilitate the execution of the request.
4. The requested Party may make the execution of such a request dependant on the same conditions as it applies in respect of requests for search and seizure.
5. Each State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that this article applies only to the categories of offences specified in the list contained in the appendix to this Convention.
6. Parties may extend this provision to accounts held in non-bank financial institutions. Such extension may be made subject to the principle of reciprocity.

Article 24 – Execution of confiscation

1. The procedures for obtaining and enforcing the confiscation under Article 23 shall be governed by the law of the requested Party.
2. The requested Party shall be bound by the findings as to the facts in so far as they are stated in a conviction or judicial decision of the requesting Party or in so far as such conviction or judicial decision is implicitly based on them.
3. Each State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraph 2 of this article applies only subject to its constitutional principles and the basic concepts of its legal system.
4. If the confiscation consists in the requirement to pay a sum of money, the competent authority of the requested Party shall convert the amount thereof into the currency of that Party at the rate of exchange ruling at the time when the decision to enforce the confiscation is taken.
5. In the case of Article 23, paragraph 1.a, the requesting Party alone shall have the right to decide on any application for review of the confiscation order.

Article 33 – Central authority

1. The Parties shall designate a central authority or, if necessary, authorities, which shall be responsible for sending and answering requests made under this chapter, the execution of such requests or the transmission of them to the authorities competent for their execution.
2. 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 paragraph 1 of this article.

Article 35 – Form of request and languages

1. All requests under this chapter shall be made in writing. They may be transmitted electronically, or by any other means of telecommunication, provided that the requesting Party is prepared, upon request, to produce at any time a written record of such communication and the original. However each Party may, at any time, by a declaration addressed to the Secretary General of the Council of Europe, indicate the conditions in which it is ready to accept and execute requests received electronically or by any other means of communication.
2. Subject to the provisions of paragraph 3 of this article, translations of the requests or supporting documents shall not be required.
3. At the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, any State or the European Community may communicate to the Secretary General of the Council of Europe a declaration that it reserves the right to require that requests made to it and documents supporting such requests be accompanied by a translation into its own language or into one of the official languages of the Council of Europe or into such one of these languages as it shall indicate. It may on that occasion declare its readiness to accept translations in any other language as it may specify. The other Parties may apply the reciprocity rule.

Article 42 – Restriction of use

1. The requested Party may make the execution of a request dependent on the condition that the information or evidence obtained will not, without its prior consent, be used or transmitted by the authorities of the requesting Party for investigations or proceedings other than those specified in the request.

2. Each State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by declaration addressed to the Secretary General of the Council of Europe, declare that, without its prior consent, information or evidence provided by it under this chapter may not be used or transmitted by the authorities of the requesting Party in investigations or proceedings other than those specified in the request.

Article 46 – Co-operation between FIUs

1. Parties shall ensure that FIUs, as defined in this Convention, shall cooperate for the purpose of combating money laundering, to assemble and analyse, or, if appropriate, investigate within the FIU relevant information on any fact which might be an indication of money laundering in accordance with their national powers.

2. For the purposes of paragraph 1, each Party shall ensure that FIUs exchange, spontaneously or on request and either in accordance with this Convention or in accordance with existing or future memoranda of understanding compatible with this Convention, any accessible information that may be relevant to the processing or analysis of information or, if appropriate, to investigation by the FIU regarding financial transactions related to money laundering and the natural or legal persons involved.

3. Each Party shall ensure that the performance of the functions of the FIUs under this article shall not be affected by their internal status, regardless of whether they are administrative, law enforcement or judicial authorities.

4. Each request made under this article shall be accompanied by a brief statement of the relevant facts known to the requesting FIU. The FIU shall specify in the request how the information sought will be used.

5. When a request is made in accordance with this article, the requested FIU shall provide all relevant information, including accessible financial information and requested law enforcement data, sought in the request, without the need for a formal letter of request under applicable conventions or agreements between the Parties.

6. An FIU may refuse to divulge information which could lead to impairment of a criminal investigation being conducted in the requested Party or, in exceptional circumstances, where divulging the information would be clearly disproportionate to the legitimate interests of a natural or legal person or the Party concerned or would otherwise not be in accordance with fundamental principles of national law of the requested Party. Any such refusal shall be appropriately explained to the FIU requesting the information.

7. Information or documents obtained under this article shall only be used for the purposes laid down in paragraph 1. Information supplied by a counterpart FIU shall not be disseminated to a third party, nor be used by the receiving FIU for purposes other than analysis, without prior consent of the supplying FIU.

8. When transmitting information or documents pursuant to this article, the transmitting FIU may impose restrictions and conditions on the use of information for purposes other than those stipulated in paragraph 7. The receiving FIU shall comply with any such restrictions and conditions.

9. Where a Party wishes to use transmitted information or documents for criminal investigations or prosecutions for the purposes laid down in paragraph 7, the transmitting FIU may not refuse its consent to such use unless it does so on the basis of restrictions under its national law or conditions referred to in paragraph 6. Any refusal to grant consent shall be appropriately explained.

10. FIUs shall undertake all necessary measures, including security measures, to ensure that information submitted under this article is not accessible by any other authorities, agencies or departments.

11. The information submitted shall be protected, in conformity with the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and taking account of Recommendation No R(87)15 of 15 September 1987 of the Committee of Ministers of the Council of Europe Regulating the Use of Personal Data in the Police Sector, by at least the same rules of confidentiality and protection of personal data as those that apply under the national legislation applicable to the requesting FIU.

12. The transmitting FIU may make reasonable enquiries as to the use made of information provided and the receiving FIU shall, whenever practicable, provide such feedback.

13. Parties shall indicate the unit which is an FIU within the meaning of this article.

Article 53 – Declarations and reservations

1. Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, make one or more of the declaration provided for in Article 3, paragraph 2, Article 9, paragraph 4, Article 17, paragraph 5, Article 24, paragraph 3, Article 31, paragraph 2, Article 35, paragraphs 1 and 3 and Article 42, paragraph 2.

2. Any State or the European Community may also, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General, reserve its right not to apply, in part or in whole, the provisions of Article 7, paragraph 2, sub-paragraph c; Article 9, paragraph 6; Article 46, paragraph 5; and Article 47.

3. Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare the manner in which it intends to apply Articles 17 and 19 of this Convention, particularly taking into account applicable international agreements in the field of international co-operation in criminal matters. It shall notify any changes in this information to the Secretary General of the Council of Europe.

4. Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare:

- a. that it will not apply Article 3, paragraph 4 of this Convention; or
- b. that it will apply Article 3, paragraph 4 of this Convention only partly; or
- c. the manner in which it intends to apply Article 3, paragraph 4 of this Convention.

It shall notify any changes in this information to the Secretary General of the Council of Europe.

5. No other reservation may be made.

6. Any Party which has made a reservation under this article may wholly or partly withdraw it by means of a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect on the date of receipt of such notification by the Secretary General.

7. A Party which has made a reservation in respect of a provision of the Convention may not claim the application of that provision by any other Party; it may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

I. CONVENTION ON CYBERCRIME (2001) – ETS No. 185

10. CHILE

20 April 2017, 21 April 2017, 21 April 2018

Reservations and declarations

“The Republic of Chile declares that it will require that the offense be committed with a specified dishonest intent, to punish the actions described in Articles 2 and 3 of the Convention on Cybercrime, in accordance with the provisions of Article 2 of Law No. 19.223 on computer-related offenses.

The Republic of Chile declares that it will require that the offense be committed with fraudulent intent and that it causes harm to third parties, to punish the actions described in Article 7 of the Convention on Cybercrime in accordance with the provisions of Article 197 of the Criminal Code.

The Republic of Chile declares that, in accordance with Article 4, paragraph 2, of the Convention on Cybercrime, it will establish as criminal offences under its domestic law, any deliberate and illegitimate act causing the damaging, deletion, deterioration, alteration or suppression of computer data without right, providing that this conduct results in serious harm.

The Republic of Chile declares that, in accordance with Article 6, paragraph 3, of the Convention on Cybercrime, it will not apply paragraph 1 of the same Article inasmuch as it does not affect the sale, distribution or otherwise making available of the items referred to in paragraph 1 a) ii) of said Article 6.*

The Republic of Chile declares that, in accordance with Article 9, paragraph 4, of the Convention on Cybercrime, it will not apply paragraph 2, sub-paragraphs b and c of the same article.

The Republic of Chile declares that, in accordance with Article 22, paragraph 2, of the Convention on Cybercrime, it will not apply the jurisdiction rules laid down in paragraph 1.d of the same article.

The Republic of Chile, in respect of Article 29, paragraph 4, of the Convention on Cybercrime, reserves the right to refuse the request for international assistance in cases where the conduct is not defined under Chilean law at the time of the request.

The Republic of Chile declares that, under Article 24 "Extradition", paragraph 7, of the Convention, the authority responsible for making or receiving requests for extradition or provisional arrest is: [address].

The Republic of Chile declares that, as regards to Article 27 “Procedures pertaining to mutual assistance requests in the absence of applicable international agreements”, paragraph 2.a, the central authority responsible for sending and answering requests for mutual assistance, the execution of such requests or their transmission to the authorities competent for their execution is: [address]

The Republic of Chile declares that, as regards to Article 35 “24/7 Network”, paragraph 1, the point of contact available on a twenty-four hour, seven-day-a-week basis is: [address]”

* **Note by the Secretariat:** The Republic of Chile has corrected a substantive error detected in the Instrument of Accession of the Republic of Chile to the Convention on Cybercrime deposited with the Council of Europe on 20 April 2017, in such a manner that the new text of the reservation to Article 6 of the Convention replaces *ab initio* the erroneous one.

Article 2 – Illegal access

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 access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.

Article 3 – Illegal interception

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 interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.

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 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 7 – Computer-related forgery

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, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.

Article 9 – Offences related to child pornography

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, the following conduct:

a. producing child pornography for the purpose of its distribution through a computer system;

b. offering or making available child pornography through a computer system;

c. distributing or transmitting child pornography through a computer system;

d. procuring child pornography through a computer system for oneself or for another person;

e. possessing child pornography in a computer system or on a computer-data storage medium.

2. For the purpose of paragraph 1 above, the term "child pornography" shall include pornographic material that visually depicts:

a. a minor engaged in sexually explicit conduct;

b. a person appearing to be a minor engaged in sexually explicit conduct;

c. realistic images representing a minor engaged in sexually explicit conduct.

3. For the purpose of paragraph 2 above, the term "minor" shall include all persons under 18 years of age. A Party may, however, require a lower age-limit, which shall be not less than 16 years.

4. Each Party may reserve the right not to apply, in whole or in part, paragraphs 1, sub-paragraphs d and e, and 2, sub-paragraphs b and c.

Article 14 – Scope of procedural provisions

1. Each Party shall adopt such legislative and other measures as may be necessary to establish the powers and procedures provided for in this section for the purpose of specific criminal investigations or proceedings.

2. Except as specifically provided otherwise in Article 21, each Party shall apply the powers and procedures referred to in paragraph 1 of this article to:

a. the criminal offences established in accordance with Articles 2 through 11 of this Convention;

b. other criminal offences committed by means of a computer system; and

c. the collection of evidence in electronic form of a criminal offence.

3. a. Each Party may reserve the right to apply the measures referred to in Article 20 only to offences or categories of offences specified in the reservation, provided that the range of such offences or categories of offences is not more restricted than the range of offences to which it applies the measures referred to in Article 21. Each Party shall consider restricting such a reservation to enable the broadest application of the measure referred to in Article 20.

b. Where a Party, due to limitations in its legislation in force at the time of the adoption of the present Convention, is not able to apply the measures referred to in Articles 20 and 21 to communications being transmitted within a computer system of a service provider, which system:

i. is being operated for the benefit of a closed group of users, and

ii. does not employ public communications networks and is not connected with another computer system, whether public or private,

that Party may reserve the right not to apply these measures to such communications. Each Party shall consider restricting such a reservation to enable the broadest application of the measures referred to in Articles 20 and 21.

Article 22 – Jurisdiction

1. Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence established in accordance with Articles 2 through 11 of this Convention, when the offence is committed:

a. in its territory; or

b. on board a ship flying the flag of that Party; or

c. on board an aircraft registered under the laws of that Party; or

d. by one of its nationals, if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State.

2. Each Party may reserve the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraphs 1.b through 1.d of this article or any part thereof.

3. Each Party shall adopt such measures as may be necessary to establish jurisdiction over the offences referred to in Article 24, paragraph 1, of this Convention, in cases where an alleged offender is present in its territory and it does not extradite him or her to another Party, solely on the basis of his or her nationality, after a request for extradition.

4. This Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with its domestic law.

5. When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult with a view to determining the most appropriate jurisdiction for prosecution.

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, ordre public 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 42 – Reservations

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.