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

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MODEL FINAL CLAUSES FOR CONVENTIONS, ADDITIONAL  
PROTOCOLS AND AMENDING PROTOCOLS CONCLUDED WITHIN THE  
COUNCIL OF EUROPE

(as adopted by the Ministers' Deputies of the Council of Europe  
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## **INTRODUCTION**

At the 315th meeting of the Ministers' Deputies on 18 February 1980, the Committee of Ministers of the Council of Europe adopted a single set of model final clauses, applicable to both conventions and agreements concluded within the Council of Europe<sup>1</sup>. This document replaced two previous sets of final clauses approved by the Committee of Ministers at the 113th meeting of the Ministers' Deputies on 18 September 1962<sup>2</sup>. One of these sets was designed for agreements that can be signed without reservation in respect of ratification or acceptance, and the other for conventions requiring ratification or acceptance. It should also be underlined that the system of the Council of Europe concerning the means of expressing the consent to be bound by a treaty differs from that of the United Nations. Indeed, in the practice of the Council of Europe, the member States usually express their consent to be bound by a treaty by signature followed by ratification, acceptance or approval, and non-member States which have not participated in the elaboration of treaties accede to these treaties upon invitation. In addition, it is recalled that the 1980 Model Final Clauses were designed as a non-binding tool for the committees charged with drawing up Council of Europe conventions or agreements.

This model of final clauses has been used at least partially in most of the conventions and agreements elaborated within the Council of Europe. Nevertheless, some developments which have taken place since 1980 revealed the need for certain changes to the current model final clauses for future conventions. These developments concern in particular:

- the type of binding legal instrument concluded within the Council of Europe over the last 35 years. Most of these instruments were conventions and protocols. Since February 1980, only three agreements have been concluded;
- the increased participation of non-member States, the European Union and international organisations in the elaboration of conventions and protocols;
- the global reach and transnational character of the recent Council of Europe conventions and protocols, which lead to an increase of requests for accession from non-member States to these instruments. Therefore, in order to treat all Contracting States to conventions and protocols on equal footing, the consultation and invitation procedures have been revised.

Finally, due to an important increase in additional protocols that complement the existing conventions, it appeared also necessary to elaborate specific model final clauses for additional protocols. In addition and in order to provide guidance on the specificities of protocols aiming to amend existing conventions, a third set of model final clauses has also been prepared.

Despite the diversity of terminology, it should be noted that a main difference between both types of protocols is that one aims to amend a convention while the other aims at complementing a convention. Therefore, the terminology cannot determine the content. If a protocol is intended to amend the articles of a convention and to ultimately be absorbed by it, the final clauses for amending protocols should be used.

The three sets of model final clauses appearing hereafter apply respectively to conventions, additional protocols and amending protocols. These model final clauses are intended only to facilitate the task of the drafters and maintain coherence among Council of Europe conventions and protocols. They are not binding and different clauses may be adopted to fit particular cases, depending on the content. Therefore, the wording between square brackets could be adapted accordingly.

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<sup>1</sup> See document CM/Del/DEC(80)315/9E.

<sup>2</sup> See document CM(62)148.

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Lastly, it should be underlined that since 1st April 2005, and following the instructions of the Secretary General to the Legal Service, the words "Council of Europe" appear in the titles of conventions instead of "European". Therefore, the "European Treaty Series" (ETS No. 1 to 193 included) has been continued by the "Council of Europe Treaty Series" (CETS No. 194 and following).

## **I. MODEL FINAL CLAUSES FOR CONVENTIONS**

### **Article A – Signature and entry into force**

1 This Convention shall be open for signature by the member States of the Council of Europe, the non-member States which have participated in its elaboration [and the European Union] [or any regional economic integration organisation].

2 This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which [five] Signatories, including at least [three] member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of the preceding paragraph.

4 In respect of any Signatory which subsequently expresses its consent to be bound by it, 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 the deposit of its instrument of ratification, acceptance or approval.

### **Article B – Accession to the Convention**

1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consulting the Contracting States to this Convention<sup>3</sup> and obtaining their unanimous consent, invite any non-member State of the Council of Europe [or any regional economic integration organisation] which has not participated in the elaboration of the Convention to accede to this Convention by a decision<sup>4</sup> taken by the majority provided for in Article 20 d. of the Statute of the Council of Europe, and by unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.

2 In respect of any acceding State, 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 deposit of the instrument of accession with the Secretary General of the Council of Europe.

### **Article C – 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<sup>5</sup>.

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<sup>3</sup> In accordance with the Council of Europe's practice as revised in March 2015, the Secretariat of the Treaty Office consults simultaneously the member States and the non-member States which have expressed their consent to be bound by the Convention, on the request for accession, prior formal inscription of the item on the agenda of the Committee of Ministers.

<sup>4</sup> Formal requests for accession are examined by the Committee of Ministers which takes the decision to invite the non-member State to accede. The Committee of Ministers decided, on 10 April 2013, to limit the validity of invitations of non-member States to accede to conventions to a period of five years (see CM/Del/Dec(2013)1168).

<sup>5</sup> Territorial application clauses have never been applied to allow federal States to limit the application of the treaty only to certain constituent entities.

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 and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. 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 such declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in any 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 D – Reservations

### Option 1

No reservation may be made in respect of the provisions of this Convention.

### Option 2

1 Any State [or the European Union] [or any regional economic integration organisation] may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of one or more of the reservations provided for in Articles  
....

No other reservation may be made in respect of any provision of this Convention.

2 Each Party which has made a reservation may, at any time, withdraw it entirely or partially by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect from the date of the receipt of such notification by the Secretary General.

[3 A Party which has made a reservation in respect of a provision of this Convention may not claim the application of that provision by any other Party; it may, however, if the reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it<sup>6</sup>.]

## Article E – Denunciation

1 Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of [*three, six, twelve,...*] months after the date of receipt of the notification by the Secretary General<sup>7</sup>.

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<sup>6</sup> Only few Council of Europe conventions contain this provision, which is subject to the applicability of the principle of reciprocity.

<sup>7</sup> When a revised convention requires the denunciation of a former one, the period of time for the entry into force of the new convention must be the same as the period of time for the denunciation of the former one to become effective. For example, three months for both legal instruments.

## Article F – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the non-member States which have participated in its elaboration, [the European Union,] [any regional economic integration organisation,] any Signatory, any Contracting State<sup>8</sup> [Party] and any other State which has been invited to accede to this Convention of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Articles ...;
- d any amendment adopted in accordance with Article ... and the date on which such an amendment enters into force;
- e any reservation and withdrawal of reservation made in pursuance of Article ...;<sup>9</sup>
- f any denunciation made in pursuance of Article ...;
- g any other act, declaration, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at xxx, this xxx day of xxx, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, [to the European Union] [to any regional economic integration organisation] and to any State invited to accede to this Convention.

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<sup>8</sup> The term "Contracting State" is used here instead of "Party" to avoid excluding from the notification process States which have consented to be bound by the treaty and for which the treaty has not yet entered into force.

<sup>9</sup> Applies to Article D, Option 2.

## **II. MODEL FINAL CLAUSES FOR ADDITIONAL PROTOCOLS**

### **Article A – Signature and entry into force**

1 This Protocol shall be open for signature by Signatories [and Parties] to the Convention. It shall be subject to ratification, acceptance or approval. A Signatory may not ratify, accept or approve this Protocol unless it has previously or simultaneously expressed its consent to be bound by the provisions of the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2 This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which [*five*] Signatories, including at least [*three*] member States of the Council of Europe, have expressed their consent to be bound by the Protocol in accordance with the provisions of the preceding paragraph.

3 In respect of any Signatory which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

### **Article B – Accession**

1 After the entry into force of this Protocol, any State Party to the Convention may also accede to this Protocol. A State that has the right to become a Party to the Convention according to its provisions may accede to this Protocol while expressing its consent to be bound by the Convention.

2 In respect of any State acceding to the Protocol under paragraph 1 above, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of accession with the Secretary General of the Council of Europe.

### **Article C – 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 Protocol shall apply<sup>10</sup>.

2 Any State may, at any later time, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory, the Protocol 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.

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<sup>10</sup> Territorial application clauses have never been applied to allow federal States to limit the application of the treaty only to certain constituent entities.

## Article D – Denunciation

1 Any Party may, at any time, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of [*three, six, twelve,...*] months after the date of receipt of the notification by the Secretary General<sup>11</sup>.

3 Denunciation of the Convention automatically entails denunciation of this Protocol.

## Article E – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the non-member States which have participated in its elaboration, [the European Union,] [any regional economic integration organisation,] any Signatory, any Contracting State<sup>12</sup> [Party] and any other State which has been invited to accede to this Protocol of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Protocol in accordance with Articles ...;
- d any denunciation made in pursuance of Article ...;
- e any other act, declaration, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at xxx, this xxx day of xxx, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Protocol, [to the European Union], [to any regional economic integration organisation] and to any State invited to accede to it.

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<sup>11</sup> When a revised convention requires the denunciation of a former one, the period of time for the entry into force of the new convention should be the same as the period of time for the denunciation of the former one to become effective. For example, three months for both legal instruments.

<sup>12</sup> The term "Contracting State" is used here instead of "Party" to avoid excluding from the notification process States which have consented to be bound by the treaty and for which the treaty has not yet entered into force.



### **III. MODEL FINAL CLAUSES FOR AMENDING PROTOCOLS**

Amendment of a convention is governed by the provisions therein. Article 39 of the 1969 Vienna Convention on the Law of Treaties applies should the convention not contain any provisions governing its amendment.

Within the Council of Europe's practice, conventions are amended through the adoption of protocols, usually entering into force after ratification by all the Parties to the convention, where additional protocols only need a set number of ratifications.

Two types of amending protocols exist within the Council of Europe's treaty law practice. The first type consists of protocols which amend a convention upon entering into force and, the amending provisions having been absorbed by the convention, can no longer be signed or ratified by new Parties to the convention. The second type consists of protocols which amend some provisions of a convention while at the same time adding additional provisions to it and which can still be signed or ratified by new Parties to the convention after their entry into force. Elaboration of these protocols with a dual aim should be avoided, as their different legal natures cannot be reflected in the modalities of their entry into force.

Finally, it should also be pointed out that, in principle, an amending protocol relates to a convention rather than to an additional protocol. Indeed, an amending protocol to an additional protocol raises uncertainties about whether the amending protocol should be ratified by all Parties to the convention or only by all Parties to the additional protocol.

#### **Article A – Signature and entry into force**

1 This Protocol shall be open for signature by Signatories and Parties to the Convention. It shall be subject to ratification, acceptance or approval. A Signatory may not ratify, accept or approve this Protocol unless it has previously or simultaneously ratified, accepted, approved or acceded to the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2 This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which all Parties to the Convention have expressed their consent to be bound by the Protocol, in accordance with the provisions of the preceding paragraph.

3. From the date of its entry into force, this Protocol of amendment shall form an integral part of the Convention.

#### **Article B – Notifications**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the non-member States which have participated in its elaboration, [the European Union,] [any regional economic integration organisation,] any Signatory and any Contracting State<sup>13</sup> [Party] of:

a any signature;

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<sup>13</sup> The term "Contracting State" is used here instead of "Party" to avoid excluding from the notification process States which have consented to be bound by the treaty and for which the treaty has not yet entered into force.

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- b the deposit of any instrument of ratification, acceptance, approval or accession;
  - c the date of entry into force of this Protocol of amendment in accordance with Article ...;
  - d any other act, declaration, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at xxx, this xxx day of xxx, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Protocol [and to the European Union] [and to any regional economic integration organisation].