



Strasbourg, 22/07/02

CAHDI (2002) 10

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

**24th meeting  
Bratislava, 9-10 September 2002**

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

Secretariat memorandum  
Prepared by the Directorate General of Legal Affairs

## **Foreword**

1. At its second meeting (Paris, 14-16 September 1998) the Group of Specialists on Reservations to International Treaties (DI-S-RIT) agreed to propose to the CAHDI to operate as an European observatory of reservations to international treaties (see meeting report, document DI-S-RIT (98) 10).
2. In this context, the CAHDI regularly considers a list of outstanding reservations.
3. The following list includes two parts. Part I concerns reservations and declarations to treaties concluded outside the Council of Europe. The information contained therein can be consulted at the United Nations Treaty Collection site <http://untreaty.un.org/>.
4. Part II concerns reservations and declarations to Council of Europe treaties. Information was provided by the Treaty Office of the Directorate General of Legal Affairs of the Council of Europe and can be accessed via internet at the new URL <http://conventions.coe.int/>.
5. The format of the information is CONVENTION: State reserving, date of notification to the depository, date of notification by the depository, 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 an European observatory of reservations to international treaties.

**List of outstanding reservations and declarations**

**PART I: RESERVATIONS AND DECLARATIONS TO NON-COUNCIL OF EUROPE TREATIES**

1. OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT, NEW YORK, 25 MAY 2000<sup>1</sup>

**Democratic Republic of the Congo**, 11 November 2001, 29 November 2001, 28 November 2002

Declaration

“Pursuant to Article 3, paragraph 2, of the protocol , the democratic Republic of the Congo undertakes to implement the principle of prohibiting the recruitment of children into the armed forces, in accordance with Decree-law No. 066 of 9 June 2000 on the demobilization and rehabilitation of vulnerable groups on active service in the armed forces, and to take all feasible measures to ensure that persons who have not yet attained the age of 18 years are not recruited in any way into the Congolese armed forces or into any other public or private armed group throughout the territory of the democratic republic of the Congo.”

**Austria**, 1 February 2002, 19 February 2002, 18 February 2003

Declaration

Under Austrian law the minimum age for the voluntary recruitment of Austrian citizens into the Austrian army (Bundesheer) is 17 years.

According to paragraph 15, in conjunction with paragraph 65 (c) of the Austrian National Defence Act 1990 (Wehrgesetz 1990), the explicit consent of parents or other legal guardians is required for the voluntary recruitment of a person between 17 and 18 years.

The provisions of the Austrian National Defence Act 1990, together with the subjective legal remedies guaranteed by the Austrian Federal Constitution, ensure that legal protection in the context of such a decision is afforded to volunteers under the age of 18. A further guarantee derives from the strict application of the principles of rule of law, good governance and effective legal protection.

**Kenya**, 28 January 2002, 19 February 2002, 18 February 2003

Declaration:

"The Government of the Republic of Kenya declares that the minimum age for the recruitment of persons into the armed forces is by law set at eighteen years. Recruitment is entirely and genuinely voluntary and is carried out with the full informed consent of the persons being recruited. There is no conscription in Kenya.

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

Article 3.2

Each State Party shall deposit a binding declaration upon ratification of or accession to this Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced.

The Government of the Republic of Kenya reserves the right at any time by means of a notification addressed to the Secretary-General of the United Nations, to add, amend or strengthen the present declaration. Such notifications shall take effect from the date of their receipt by the Secretary General of the United Nations."

**Mexico**, 15 March 2002, 1 April 2002, 31 March 2003

Declaration:

In accordance with article 3, paragraph 2 of the Optional Protocol, the United Mexican States declares:

(i) That the minimum age for voluntary recruitment of its nationals into the armed forces is 18 years;

ii) That article 24 of the Military Service Act provides that only volunteers will be accepted into the armed forces for active service until the figure set annually by the Ministry of Defence has been met and provided that the following conditions are fulfilled:

I. They must submit an application;

II. They must be Mexican nationals who are over 18 but not over 30, and must be under 40 in the case of personnel enlisted as specialists in the army;

Those over 16 and under 18 shall be accepted into signals units for training as technicians under contracts with the State not exceeding five years in duration. Moreover, under article 25 of the Military Service Act, only the following persons may be accepted for early enlistment in the armed forces:

I. Those who wish to leave the country at the time when they would be required by law to undertake military service if they are over 16 at the time of requesting enlistment;

II. Those who are obliged to request early enlistment because of their studies.

The maximum number of individuals who may be allowed to enlist early shall be set every year by the Ministry of Defence; and

Interpretative declaration:

In ratifying the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, adopted by the General Assembly of the United Nations on 25 May 2000, the Government of the United Mexican States considers that any responsibility deriving therefrom for non-governmental armed groups for the recruitment of children under 18 years or their use in hostilities lies solely with such groups and shall not be applicable to the Mexican State as such. The latter shall have a duty to apply at all times the principles governing international humanitarian law."

**Bulgaria**, 12 February 2002, 5 March 2002, 4 March 2003

Declaration:

The Republic of Bulgaria declares hereby that all men, Bulgarian citizens who have attained 18 years of age shall be subject to a compulsory military service.

Bulgarian citizens who have been sworn in and done their military service or have done two thirds of the mandatory term of their military service shall be admitted, voluntarily, to regular duty.

Persons who have not come of age shall be trained at military schools subject to the conclusion of a training agreement to be signed by them with the consent of their

parents or guardians. Having come of age, the trainees shall sign a training agreement on a regular military duty.

2. INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF TERRORIST BOMBINGS, NEW YORK, 15 DECEMBER 1997<sup>2</sup>

**Cuba**, 15 November 2001, 4 December 2001, 3 December 2002

Reservation

The Republic of Cuba declares, pursuant to Article 20, paragraph 2, that it does not consider itself bound by paragraph 1 of the said article, concerning the settlement of disputes arising between States parties, inasmuch as it considers that such disputes must be settled through amicable negotiation. In consequence, it declares that it does not recognise the compulsory jurisdiction of the international court of justice.

Declaration:

"The republic of Cuba declares that none of the provisions contained in Article 19, paragraph 2, shall constitute an encouragement or condemnation of the threat or use of force in international relations, which must under all circumstances be governed strictly by the principles of international law and the purposes and principles enshrined in the charter of the United Nations.

Cuba also considers that relations between states must be based strictly on the provisions contained in Resolution 2625 (XXV) of the United Nations general assembly.

In addition, the exercise of state terrorism has historically been a fundamental concern for Cuba, which considers that the complete eradication thereof through mutual respect, friendship and cooperation between states, full respect for sovereignty and territorial integrity, self-determination and non-interference in internal affairs must constitute a priority of the international community.

Cuba is therefore firmly of the opinion that the undue use of the armed forces of one state for the purpose of aggression against another cannot be condoned under the present convention, whose purpose is precisely to combat, in accordance with the principles of the international law, one of the most noxious forms of crime faced by the modern world.

To condemn acts of aggression would amount, in fact, to condoning violations of international law and of the charter and provoking conflicts with unforeseeable

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

Article 19.2

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.

Article 20

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 from 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 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 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

consequences that would undermine the necessary cohesion of the international community in the fight against the scourges that truly afflict it.

The Republic of Cuba also interprets the provisions of the present convention as applying with full rigor to activities carried out by armed forces of one state against another state in cases in which no armed conflict exists between the two".

**Canada**, 3 April 2002, 4 April 2002, 3 April 2003

Declaration

"Canada declares that it considers the application of article 2 (3) (c) of the Terrorist Bombing Convention to be limited to acts committed in furthering a conspiracy of two or more persons to commit a specific criminal offence contemplated in paragraph 1 or 2 of article 2 of that Convention."

**Ukraine**, 26 March 2002, 3 April 2002, 2 April 2003

Reservation:

The provisions of article 19, paragraph 2, do not preclude Ukraine from exercising its jurisdiction over the members of military forces of a state and their prosecution, should their actions be illegal. The Convention will be applied to the extent that such activities are not governed by other rules of international law.

### 3. INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE FINANCING OF TERRORISM, NEW YORK, 9 DECEMBER 1999<sup>3</sup>

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

Article 2.1

1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

(a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or

(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

Article 7.3

Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

Article 14

None of the offences set forth in article 2 shall be regarded for the purposes of extradition or mutual legal assistance as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 24

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

**Chile**, 10 November 2001, 28 November 2001, 27 November 2002

Declaration

“In accordance with article 7, paragraph 3, of the international convention for the suppression of the financing of terrorism, the government of Chile declares that, in accordance with article 6, paragraph 8, of the courts organization code of the Republic of Chile, crimes and ordinary offences committed outside the territory of the republic which are covered in treaties concluded with other powers remain under Chilean jurisdiction”.

**Democratic people’s Republic of Korea**, 12 November 2001, 4 December 2001, 3 December 2002

Reservations:

1. “The democratic people’s Republic of Korea does not consider itself bound by the provisions of article 2, paragraph 1, sub-paragraph (a) of the convention.
2. The democratic people’s Republic of Korea does not consider itself bound by the provisions of article 14 of the convention.
3. The democratic people’s Republic of Korea does not consider itself bound by the provisions of article 24, paragraph 1 of the convention”.

**Cuba**, 15 November 2001, 4 December 2001, 3 December 2002

Reservation

“The Republic of Cuba declares, pursuant to Article 24, paragraph 2, that it does not consider itself bound by paragraph 1 of the said article, concerning the settlement of disputes arising between states parties, inasmuch as it considers that such disputes must be settled through amicable negotiation. in consequence, it declares that it does not recognize the compulsory jurisdiction of the international court of justice”.

4. INTERNATIONAL CONVENTION AGAINST THE TAKING OF HOSTAGES, NEW YORK, 17 DECEMBER 1979<sup>4</sup>

**Cuba**, 15 November 2001, 4 December 2001, 3 December 2002

Reservation

“The Republic of Cuba declares, pursuant to Article 16, paragraph 2, that it does not consider itself bound by paragraph 1 of the said article, concerning the settlement of disputes arising between States parties, inasmuch as it considers that such disputes must be settled through amicable negotiation. In consequence, it reiterates that it does not recognise the compulsory jurisdiction of the international court of justice”.

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

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

Article 16

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from 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 request in conformity with the Statute of the Court.

2. Each State may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.

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

5. OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY, NEW YORK, 25 MAY 2000<sup>5</sup>

**Qatar**, 14 December 2001 , 3 January 2002 , 2 January 2003

Reservation:

.....subject to a general reservation concerning any provisions in the protocol that are in conflict with the Islamic Shariah.

6. CONVENTION RELATING TO THE STATUS OF REFUGEES , GENEVA, 28 JULY 1951<sup>6</sup>

**Republic of Moldova**, 31 January 2002, 20 February 2002, 19 February 2003

Declarations and reservations:

" ... with the following declarations and reservations:

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<sup>5</sup> Note by the Secretariat : the Optional Protocol contains no provisions relating to reservations or declarations.

<sup>6</sup> Relevant provisions:

*Article 40. - Territorial application clause*

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

*Article 41. - Federal clause*

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of parties which are not Federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

*Article 42. - Reservations*

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16 (1), 33, 36-46 inclusive.

2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

1. According to paragraph 1, article 40 of the Convention, the Republic of Moldova declares that, until the full restoration of the territorial integrity of the Republic of Moldova, the provisions of this Convention are applicable only in the territory where the jurisdiction of the Republic of Moldova is exercised.
2. The Republic of Moldova shall apply the provisions of this convention with no discrimination generally not only as to race, religion or country of origin as stipulated in Article 3 of the Convention.
3. For the purposes of this Convention by the notion "residence" shall be understood the permanent and lawful domicile.
4. According to paragraph 1 of Article 42 of the Convention, the Republic of Moldova reserves the right that the provisions of the Convention, according to which refugees shall be accorded treatment not less favourable than that accorded aliens generally, are not interpreted as an obligation to offer refugees a regime similar to that accorded to the citizens of the states with which the Republic of Moldova has signed regional customs, economic, political and social security treaties.
5. According to paragraph 1 of Article 42 of the Convention, the Republic of Moldova reserves the right to consider the provisions of Article 13 as recommendations and not as obligations.
6. According to paragraph 1 of Article 42 of the Convention, the Republic of Moldova reserves the right to consider the provisions of Article 17 (2) as recommendations and not as obligations.
7. According to paragraph 1 of Article 42 of the Convention, the Republic of Moldova interprets the provisions of Article 21 of the Convention as not obliged to accord housing to refugees.
8. The Government of the Republic of Moldova reserves the right to apply the provisions of Article 24 so that they do not infringe upon the constitutional and domestic legislation provisions regarding the right to labor and social protection.
9. According to paragraph 1 of Article 42 of the Convention, in implementing Article 26 of this Convention, the Republic of Moldova reserves the right to establish the place of residence for certain refugees or groups of refugees in the interest of the state and society.
10. The Republic of Moldova shall apply the provisions of Article 31 of the Convention as of the date of the entry into force of the Law on Refugee Status

7. CONVENTION ON THE SAFETY OF UNITED NATIONS AND ASSOCIATED PERSONNEL , NEW YORK , 9 DECEMBER 1994<sup>7</sup>

**Belgium**, 19 February 2002, 13 March 2002, 12 March 2003

Interpretative declaration:

The Belgian Government declares the following: article 9, paragraph 1 (c), only covers cases where the threat is credible.

8. ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT ,ROME , 17 JULY 1998<sup>8</sup>

**Jordan**, 11 April 2002, 22 April 2002, 21 April 2003

Interpretative Declaration

The government of the Hashemite Kingdom of Jordan hereby declares that nothing under its national law including the Constitution, is inconsistent with the Rome Statute of the International Criminal Court . As such , it interprets such national law as giving effect to the full application of the Rome Statute and the exercise of relevant jurisdiction thereunder .”

9. VIENNA CONVENTION ON THE LAW OF TREATIES , VIENNA , 23 MAY 1969

**Viet Nam**, 10 October 2001, 17 October 2001, 16 October 2002

Reservation:

"Acceding to this Convention, the Socialist Republic of Vietnam makes its reservation to article 66 of the said Convention."

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<sup>7</sup> Relevant provisions:

Article 22

Dispute settlement

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from 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 Party 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 all or part of paragraph 1. The other States Parties shall not be bound by paragraph 1 or the relevant part thereof with respect to any State Party which has made such a reservation.

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

<sup>8</sup> Relevant provisions:

Article 120 - Reservations

No reservations may be made to this Statute.

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

### 1. CONVENTION ON THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS (ETS NO. 5), 4 NOVEMBER 1950<sup>9</sup>

**Turkey**, 29 January 2002, not notified as of 01/02/2002

"The Government of Turkey withdraws its notification of derogation made on 5 May 1992, in accordance with Article 15, paragraph 3, of the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning Article 5 of the said Convention, the recent constitutional amendments having fixed to four days the maximum duration of the detention in the whole national territory."

**Note by the Secretariat** : The withdrawal of derogation has been formulated with respect to the relevant provisions.

**United Kingdom**, 18 December 2001, 19 December 2001, 18 December 2002

"The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and has the honour to convey the following information in order to ensure compliance with the obligations of Her Majesty's Government in the United Kingdom under Article 15(3) of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 5 November 1950.

#### *Public emergency in the United Kingdom*

The terrorist attacks in New York, Washington, D.C. and Pennsylvania on 11<sup>th</sup> September 2001 resulted in several thousand deaths, including many British victims and others from 70 different countries. In its resolutions 1368 (2001) and 1373 (2001), the United Nations Council recognised the attacks as a threat to international peace and security.

The threat from international terrorism is a continuing one. In its resolution 1373 (2001), the Security Council, acting under Chapter VII of the United Nations Charter, required all States to take measures to prevent the commission of terrorist attacks, including by denying safe haven to those who finance, plan, support or commit terrorist attacks.

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<sup>9</sup> *Relevant provisions:*

#### Article 15 – Derogation in time of emergency

- 1 In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
- 2 No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
- 3 Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefore. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

#### Article 57 – Reservations

- 1 Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article.
- 2 Any reservation made under this article shall contain a brief statement of the law concerned.

There exists a terrorist threat to the United Kingdom from persons suspected of involvement in international terrorism. In particular, there are foreign nationals present in the United Kingdom who are suspected of being concerned in the commission, preparation or instigation of acts of international terrorism, of being members of organisations or groups which are so concerned or of having links with members of such organisations or groups, and who are a threat to the national security of the United Kingdom.

As a result, a public emergency, within the meaning of Article 15 (1) of the Convention, exists in the United Kingdom.

*The Anti-terrorism, Crime and Security Act 2001*

As a result of the public emergency, provision is made in the Anti-terrorism, Crime and Security Act 2001, *inter alia*, for an extended power to arrest and detain a foreign national which will apply where it is intended to remove or deport the person from the United Kingdom but where removal or deportation is not for the time being possible, with the consequence that the detention would be unlawful under existing domestic law powers. The extended power to arrest and detain will apply where the Secretary of State issues a certificate indicating his belief that the person's presence in the United Kingdom is a risk to national security and that he suspects the person of being an international terrorist. That certificate will be subject to an appeal to the Special Immigration Appeals Commission ("SIAC"), established under the Special Immigration Appeals Commission Act 1997, which will have power to cancel it if it considers that the certificate should not have been issued. There will be an appeal on a point of law from a ruling by SIAC. In addition, the certificate will be reviewed by SIAC at regular intervals. SIAC will also be able to grant bail, where appropriate, subject to conditions. It will be open to a detainee to end his detention at any time by agreeing to leave the United Kingdom.

The extended power of arrest and detention in the Anti-terrorism, Crime and Security Act 2001 is a measure which is strictly required by the exigencies of the situation. It is a temporary provision which comes into force for an initial period of 15 months and then expires unless renewed by the Parliament. Thereafter, it is subject to annual renewal by Parliament. If, at any time, in the Governments' assessment, the public emergency no longer exists or the extended power is no longer strictly required by the exigencies of the situation, then the Secretary of State will, by Order, repeal the provision.

*Domestic law powers of detention (other than under the Anti-terrorism, Crime and Security Act 2001)*

The Government has powers under the Immigration Act 1971 ("the 1971 Act") to remove or deport persons on the ground that their presence in the United Kingdom is not conducive to the public good on national security grounds. Persons can also be arrested and detained under Schedules 2 and 3 to the 1971 Act pending their removal or deportation. The courts in the United Kingdom have ruled that this power of detention can only be exercised during the period necessary, in all the circumstances of the particular case, to effect removal and that, if it becomes clear that removal is not going to be possible within a reasonable time, detention will be unlawful (R. v Governor of Durham Prison, ex parte Singh [1984] All ER 983).

*Article 5(1)(f) of the Convention*

It is well established that Article 5(1)(f) permits the detention of a person with a view to deportation only in circumstances where "action is being taken with a view to deportation" (Chahal v United Kingdom (1996) 23 EHRR 413 at paragraph 112). In that case the European Court of Human Rights indicated that detention will cease to be permissible under Article 5(1)(f) if deportation proceedings are not prosecuted with due diligence and that it was necessary in such cases to determine whether the duration of the deportation proceedings was excessive (paragraph 113).

In some cases, where the intention remains to remove or deport a person on national security grounds, continued detention may not be consistent with Article 5(1)(f) as interpreted by the Court in the *Chahal* case. This may be the case, for example, if the person has established that removal to their own country might result in treatment contrary to Article 3 of the Convention. In such circumstances, irrespective of the gravity of the threat to national security posed by the person concerned, it is well established that Article 3 prevents removal or deportation to a place where there is a real risk that the person will suffer treatment contrary to that article. If no alternative destination is immediately available then removal or deportation may not, for the time being, be possible even though the ultimate intention remains to remove or deport the person once satisfactory arrangements can be made. In addition, it may not be possible to prosecute the person for a criminal offence given the strict rules on the admissibility of evidence in the criminal justice system of the United Kingdom and the high standard of proof required.

*Derogation under Article 15 of the Convention*

The Government has considered whether the exercise of the extended power to detain contained in the Anti-terrorism, Crime and Security Act 2001 may be inconsistent with the obligations under Article 5(1) of the Convention. As indicated above, there may be cases where, notwithstanding a continuing intention to remove or deport a person who is being detained, it is not possible to say that "action is being taken with a view to deportation" within the meaning of Article 5(1)(f) as interpreted by the Court in the *Chahal* case. To the extent, therefore, that the exercise of the extended power may be inconsistent with the United Kingdom's obligations under Article 5(1), the Government has decided to avail itself of the right of derogation conferred by Article 15(1) of the Convention and will continue to do so until further notice.

**Note by the Secretariat** : The declaration constitutes a derogation formulated with respect to the relevant provisions.

2. CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE AND NATURAL HABITATS (ETS NO. 104, 19 SEPTEMBER 1979)<sup>10</sup>

**United Kingdom**, 24 October 2001, 26 November 2001, 25 November 2002

"In accordance with Article 21, paragraph 2, of the Convention, the Government of the United Kingdom declares that the Convention shall extend to the Sovereign Base Areas of the United Kingdom in the island of Cyprus, subject to the following reservation made in accordance with Article 22, paragraph 2, of the Convention : the under-mentioned fauna species included in Appendix II will not be considered by the United Kingdom as enjoying the regime of protection provided by the said Convention for the species included in the said Appendix : *Vipera lebetina*."

**Note by the Secretariat** : The declaration and the reservation have been formulated with respect to the relevant provisions.

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<sup>10</sup> *Relevant provisions* :

Article 21.2

Any Contracting Party may, when depositing its instrument of ratification, acceptance, approval or accession or at any later date, by 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.

Article 22.2

Any Contracting Party which extends the application of this Convention to a territory mentioned in the declaration referred to in paragraph 2 of Article 21 may, in respect of the territory concerned, make one or more reservations in accordance with the provisions of the preceding paragraph.

3. CONVENTION FOR THE PROTECTION OF INDIVIDUALS WITH REGARD TO AUTOMATIC PROCESSING OF PERSONAL DATA (ETS NO. 108), 28 JANUARY 1981<sup>11</sup>

**Estonia**, 14 November 2001, 5 December 2001, 4 December 2002

"In accordance with Article 3, paragraph 2, subparagraph a, of the Convention, the Republic of Estonia declares that it will not apply this Convention to the processing of personal data collected by natural persons for private purposes."

**Note by the Secretariat** : The declaration has been formulated with respect to the relevant provisions.

4. EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES (ETS No. 148), 5 NOVEMBER 1992

**Azerbaijan**, 21 December 2001 (signature), 24 January 2002, 23 January 2003

"The Republic of Azerbaijan declares that it is unable to guarantee the application of the provisions of the Charter in the territories occupied by the Republic of Armenia until these territories are liberated from that occupation (the schematic map of the occupied territories of the Republic of Azerbaijan is enclosed)."

**Note by the Secretariat** : Azerbaijan deposited a similar declaration concerning the Framework Convention for the Protection of National Minorities (ETS No. 157).

6. EUROPEAN CONVENTION ON NATIONALITY (ETS NO. 166), 6 NOVEMBER 1997<sup>12</sup>

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<sup>11</sup> *Relevant provisions*

Article 3 – Scope

- 1 The Parties undertake to apply this convention to automated personal data files and automatic processing of personal data in the public and private sectors.
- 2 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, or at any later time, give notice by a declaration addressed to the Secretary General of the Council of Europe:
  - a that it will not apply this convention to certain categories of automated personal data files, a list of which will be deposited. In this list it shall not include, however, categories of automated data files subject under its domestic law to data protection provisions. Consequently, it shall amend this list by a new declaration whenever additional categories of automated personal data files are subjected to data protection provisions under its domestic law;

<sup>12</sup> *Relevant provisions* :

Article 7 – Loss of nationality *ex lege* or at the initiative of a State Party

- 2 A State Party may provide for the loss of its nationality by children whose parents lose that nationality except in cases covered by sub-paragraphs c and d of paragraph 1. However, children shall not lose that nationality if one of their parents retains it.
- 3 A State Party may not provide in its internal law for the loss of its nationality under paragraphs 1 and 2 of this article if the person concerned would thereby become stateless, with the exception of the cases mentioned in paragraph 1, sub-paragraph b, of this article.

Article 8 – Loss of nationality at the initiative of the individual

- 1 Each State Party shall permit the renunciation of its nationality provided the persons concerned do not thereby become stateless.
- 2 However, a State Party may provide in its internal law that renunciation may be effected only by nationals who are habitually resident abroad.

Article 11 – Decisions

Each State Party shall ensure that decisions relating to the acquisition, retention, loss, recovery or certification of its nationality contain reasons in writing.

**Hungary, 21 November 2001, 5 December 2001, 4 December 2002**

"With respect to Article 11, the Republic of Hungary declares to retain the right not to apply, in accordance with the Hungarian law in force, the rule that decisions relating to the acquisition of nationality contain reasons in writing.

With respect to Article 12, the Republic of Hungary declares to retain the right not to apply, in accordance with the Hungarian law in force, the rule that decisions relating to the acquisition of nationality be open to an administrative or judicial review.

With respect to Article 21, paragraph 3, sub-paragraph a, the Republic of Hungary declares to retain the right that

- only men living on the territory of the Republic of Hungary shall be considered to be subject to military obligations. Any such person possessing multiple nationality, who

**Article 12 – Right to a review**

Each State Party shall ensure that decisions relating to the acquisition, retention, loss, recovery or certification of its nationality be open to an administrative or judicial review in conformity with its internal law.

**Article 21 – Fulfilment of military obligations**

- 3 Except where a special agreement which has been, or may be, concluded provides otherwise, the following provisions are applicable to persons possessing the nationality of two or more States Parties:
  - a Any such person shall be subject to military obligations in relation to the State Party in whose territory they are habitually resident. Nevertheless, they shall be free to choose, up to the age of 19 years, to submit themselves to military obligations as volunteers in relation to any other State Party of which they are also nationals for a total and effective period at least equal to that of the active military service required by the former State Party;

**Article 22 – Exemption from military obligations or alternative civil service**

Except where a special agreement which has been, or may be, concluded provides otherwise, the following provisions are also applicable to persons possessing the nationality of two or more States Parties:

(...)

- b persons who are nationals of a State Party which does not require obligatory military service shall be considered as having satisfied their military obligations when they have their habitual residence in the territory of that State Party. Nevertheless, they should be deemed not to have satisfied their military obligations in relation to a State Party or States Parties of which they are equally nationals and where military service is required unless the said habitual residence has been maintained up to a certain age, which each State Party concerned shall notify at the time of signature or when depositing its instruments of ratification, acceptance or accession;

**Article 29 – Reservations**

- 1 No reservations may be made to any of the provisions contained in Chapters I, II and VI of this Convention. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, make one or more reservations to other provisions of the Convention so long as they are compatible with the object and purpose of this Convention.
- 2 Any State which makes one or more reservations shall notify the Secretary General of the Council of Europe of the relevant contents of its internal law or of any other relevant information.
- 3 A State which has made one or more reservations in accordance with paragraph 1 shall consider withdrawing them in whole or in part as soon as circumstances permit. Such withdrawal shall be made by means of a notification addressed to the Secretary General of the Council of Europe and shall become effective as from the date of its receipt.
- 4 Any State which extends the application of this Convention to a territory mentioned in the declaration referred to in Article 30, paragraph 2, may, in respect of the territory concerned, make one or more reservations in accordance with the provisions of the preceding paragraphs.
- 5 A State Party which has made reservations in respect of any of the provisions in Chapter VII of the Convention may not claim application of the said provisions by another State Party save in so far as it has itself accepted these provisions.

**Article 30 – 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.

does not live on the territory of the country, may not be required to perform military or alternative service, nor may he perform such service as a volunteer;

- any such person possessing multiple nationality, who lives on the territory of the country and is subject to military obligations, shall not be exempted from being called to regular military service or civil service.

The Republic of Hungary declares that a person subject to military service shall be deemed not to have satisfied his military obligations up to the completion of age 30.

The Republic of Hungary shall review the grounds of the reservations made with respect to the European Convention before 30 June 2005."

**Note by the Secretariat** : The reservations and the declaration have been formulated with respect to the relevant provisions.

6. CRIMINAL LAW CONVENTION ON CORRUPTION (ETS NO. 173), 27 JANUARY 1999<sup>13</sup>

**Bulgaria**, 7 November 2001, 26 November 2001, 25 November 2002

"In accordance with Article 37, paragraph 1, of the Convention, the Republic of Bulgaria reserves the right not to establish as criminal offence under its domestic law the conduct referred to in Articles 6, 10 and 12 as well as the passive bribery offences defined in Article 5.

In accordance with Article 37, paragraph 1, of the Convention, the Republic of Bulgaria declares that it shall establish the conduct referred to in Articles 7 and 8 as criminal offence under its domestic law only if it comes under any of the definitions of criminal offences laid down in the Criminal Code of the Republic of Bulgaria."

**Notes by the Secretariat** : The reservations have been formulated with regard to the relevant provisions. The maximum number of reservations is respected if reservations to Articles 6 and 10 are considered as having a similar nature.

7. PROTOCOL NO. 12 TO THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS (ETS NO. 177), 4 NOVEMBER 2000<sup>14</sup>

<sup>13</sup> *Relevant provisions* :

Article 37 – Reservations

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, reserve its right not to establish as a criminal offence under its domestic law, in part or in whole, the conduct referred to in Articles 4, 6 to 8, 10 and 12 or the passive bribery offences defined in Article 5.
- 2 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 provided for in Article 17, paragraph 2.
- 3 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession declare that it may refuse mutual legal assistance under Article 26, paragraph 1, if the request concerns an offence which the requested Party considers a political offence.
4. No State may, by application of paragraphs 1, 2 and 3 of this article, enter reservations to more than five of the provisions mentioned thereon. No other reservation may be made. Reservations of the same nature with respect to Articles 4, 6 and 10 shall be considered as one reservation.

<sup>14</sup> *Relevant provisions* :

Protocol : Article 3 – Relationship to the Convention

As between the States Parties, the provisions of Articles 1 and 2 of this Protocol shall be regarded as additional articles to the Convention, and all the provisions of the Convention shall apply accordingly.

Convention : Articles 56 and 57

**Georgia**, 15 June 2001, 11 September 2001, 10 September 2002

"Georgia declines its responsibility for the violations of the provisions of the Protocol on the territories of Abkhazia and Tskhinvali region until the full jurisdiction of Georgia is restored over these territories."

**Note by the Secretariat** : Georgia has formulated similar declarations with respect to the European Convention on Extradition (ETS No. 24) and its Additional Protocol (ETS No. 86), the European Convention on the Suppression of Terrorism (ETS No. 90) and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126). However, Georgia has not deposited such declaration with respect to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5). An exchange of views has taken place during CAHDI's September 2001 meeting. It was stressed that CAHDI would not prejudge a possible decision from the European Court of Human Rights concerning Georgia's declaration.

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Article 56 – Territorial application

- 1 Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.
- 2 The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.
- 3 The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.
- 4 Any State which has made a declaration in accordance with paragraph 1 of this article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention.

Article 57 – Reservations

- 1 Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article.
- 2 Any reservation made under this article shall contain a brief statement of the law concerned.