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

**28th meeting
Lausanne, 13-14 September 2004**

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 (where those dates coincide they are indicated only once), deadline for objections. In as far as possible, the text of the reservation and declaration is included.

Action required

Members of the CAHDI are called upon to consider the following outstanding reservations and declarations in the context of its operation as a European observatory of reservations to international treaties.

List of outstanding reservations and declarations

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

1. INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE FINANCING OF TERRORISM, NEW YORK, 9 DECEMBER 1999¹

Belgium, 17 May 2004, 21 May 2004, 20 May 2005

Reservation:

As for article 14 of the Convention, the Government of Belgium makes the following reservation:

1. In exceptional circumstances, the Government of Belgium reserves the right to refuse extradition or mutual legal assistance in respect of any offence set forth in article 2 which it considers to be a political offence or as an offence connected with a political offence or as an offence inspired by political motives.

2. In cases where the preceding paragraph is applicable, Belgium recalls that it is bound by the general legal principle *aut dedere aut judicare*, pursuant to the rules governing the competence of its courts.

Jordan, 28 August 2003, 27 September 2003, 26 September 2004

¹ *Relevant provisions:*

Article 2:

1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, 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.

2 (a) On depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the annex may declare that, in the application of this Convention to the State Party, the treaty shall be deemed not to be included in the annex referred to in paragraph 1, subparagraph (a). The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the depositary of this fact;

(b) When a State Party ceases to be a party to a treaty listed in the annex, it may make a declaration as provided for in this article, with respect to that treaty.

3. For an act to constitute an offence set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offence referred to in paragraph 1, subparagraphs (a) or (b).

4. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.

5. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1 or 4 of this article;

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 4 of this article;

(c) Contributes to the commission of one or more offences as set forth in paragraphs 1 or 4 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or

(ii) Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article.

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.

Declarations:

1. The Government of the Hashemite Kingdom of Jordan does not consider acts of national armed struggle and fighting foreign occupation in the exercise of people's right to self-determination as terrorist acts within the context of paragraph 1(b) of article 2 of the Convention.

2. Jordan is not a party to the following treaties:

A. Convention on the Physical Protection of Nuclear Material, adopted in Vienna on 3 March 1980.

B. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.

C. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988.

D. International Convention for the Suppression of Terrorist Bombings, adopted in New York on 15 December 1997.

Accordingly Jordan is not bound to include, in the application of the International Convention for the Suppression of the Financing of Terrorism, the offences within the scope and as defined in such Treaties.

2. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, NEW YORK, 16 DECEMBER 1966²

Luxembourg, 6 November 2003³, 1 December 2003, 1 December 2004

The Government of Luxembourg declares that it is implementing article 14, paragraph 5, since that paragraph does not conflict with the relevant Luxembourg legal statutes, which provide that, following an acquittal or a conviction by a court of first instance, a higher tribunal may deliver a sentence, confirm the sentence passed or impose a harsher penalty for the same crime. However, the tribunal's decision does not give the person declared guilty on appeal the right to appeal that conviction to a higher appellate jurisdiction.

The Government of Luxembourg further declares that article 14, paragraph 5, shall not apply to persons who, under Luxembourg law, are remanded directly to a higher court.

Turkey, 23 September 2003, 14 October 2003, 13 October 2004

Declarations and reservation:

² *Relevant provisions:*

Article 14 :

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

Article 27: In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

³ In keeping with the depositary practice followed in similar cases, the Secretary-General proposes to receive the modification in question for deposit in the absence of any objection on the part of any of the Contracting States, either to the deposit itself or to the procedure envisaged, within a period of 12 months from the date of the present depositary notification. In the absence of any such objection, the above modification will be accepted for deposit upon the expiration of the above-stipulated 12-month period that is on 1 December 2004.

The Republic of Turkey declares that; it will implement its obligations under the Covenant in accordance to the obligations under the Charter of the United Nations (especially Article 1 and 2 thereof).

The Republic of Turkey declares that it will implement the provisions of this Covenant only to the States with which it has diplomatic relations.

The Republic of Turkey declares that this Convention is ratified exclusively with regard to the national territory where the Constitution and the legal and administrative order of the Republic of Turkey are applied.

The Republic of Turkey reserves the right to interpret and apply the provisions of Article 27 of the International Covenant on Civil and Political Rights in accordance with the related provisions and rules of the Constitution of the Republic of Turkey and the Treaty of Lausanne of 24 July 1923 and its Appendices.

3. INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, NEW YORK, 16 DECEMBER 1966⁴

Turkey, 23 September 2003, 14 October 2003, 13 October 2004

Declarations and reservations:

The Republic of Turkey declares that; it will implement its obligations under the Covenant in accordance to the obligations under the Charter of the United Nations (especially Article 1 and 2 thereof).

The Republic of Turkey declares that it will implement the provisions of this Covenant only to the States with which it has diplomatic relations.

The Republic of Turkey declares that this Convention is ratified exclusively with regard to the national territory where the Constitution and the legal and administrative order of the Republic of Turkey are applied.

The Republic of Turkey reserves the right to interpret and apply the provisions of the paragraph (3) and (4) of the Article 13 of the Covenant on Economic, Social and Cultural Rights in accordance to the provisions under the Article 3, 14 and 42 of the Constitution of the Republic of Turkey.

4. CONVENTION ON THE PREVENTION AND PUNISHMENT OF CRIMES AGAINST INTERNATIONALLY PROTECTED PERSONS, INCLUDING DIPLOMATIC AGENTS, NEW YORK, 14 DECEMBER 1973⁵

⁴ *Relevant provision:*

Article 13 :

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

⁵ *Relevant provisions:*

Article 1 :

Malaysia, 24 September 2003, 23 September 2004

Declarations:

1. The Government of Malaysia understands the phrase "alleged offender" in Article 1(2) of the Convention to mean the accused.
2. The Government of Malaysia understands the phrase "or other attack" in Article 2(1) (a) of the Convention to mean acts that are recognized as offences under its domestic laws.
3. The Government of Malaysia understands Article 7 of the Convention to include the right of the 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.
4. (a) Pursuant to Article 13(2) of the Convention, the Government of Malaysia declares that it does not consider itself bound by Article 13(1) of the Convention; and

(b) the Government of Malaysia reserves the right specifically to agree in a particular case to follow the arbitration procedure set forth in Article 13(1) of the Convention or any other procedure for arbitration.

5. INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF TERRORIST BOMBINGS, NEW YORK, 15 DECEMBER 1997⁶

2. "Alleged offender" means a person as to whom there is sufficient evidence to determine *prima facie* that he has committed or participated in one or more of the crimes set forth in article 2.

Article 2 :

1. The intentional commission of :

- (a) a murder, kidnapping or other attack upon the person or liberty of an internationally protected person;
- (b) a violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty;
- (c) a threat to commit any such attack;
- (d) an attempt to commit any such attack; and
- (e) an act constituting participation as an accomplice in any such attack;

shall be made by each State Party a crime under its internal law.

2. Each State Party shall make these crimes punishable by appropriate penalties which take into account their grave nature.

3. Paragraphs 1 and 2 of this article in no way derogate from the obligations of State Parties under international law to take all appropriate measures to prevent other attacks on the person, freedom or dignity of an internationally protected person.

Article 7: The State Party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

Article 13 :

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

⁶ *Relevant provisions:*

Article 1 :

4. "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

Malaysia, 24 September 2003, 23 September 2004

Declarations:

1. The Government of Malaysia understands the phrase "Military forces of a State" in Article 1 (4) of the Convention to include the national contingents of Malaysia operating as part of United Nations forces.

2.

3. The Government of Malaysia understands Article 8 (1) of the Convention to include the right of the 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.

4. (a) Pursuant to Article 20 (2) of the Convention, the Government of Malaysia declares that it does not consider itself bound by Article 20 (1) of the Convention; and

(b) the Government of Malaysia reserves the right specifically to agree in a particular case to follow the arbitration procedure set forth in Article 20 (1) of the Convention or any other procedure for arbitration.

6. OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT, NEW YORK, 25 MAY 2000

Syrian Arab Republic, 17 October 2003, 29 October 2003, 28 October 2004

Declaration:

Ratification of the two Optional Protocols by the Syrian Arab Republic shall not in any event imply recognition of Israel and shall not lead to entry into any dealings with Israel in the matters governed by the provisions of the Protocols.

The Syrian Arab Republic declares that the statutes in force and the legislation applicable to the Ministry of Defence of the Syrian Arab Republic do not permit any person under 18 years of age to join the active armed forces or the reserve bodies or formations and do not permit the enlistment of any person under that age.

armed forces who are under their formal command, control and responsibility.

Article 8 :

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 6 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 proceeding 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.

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

PART II: RESERVATIONS AND DECLARATIONS TO COUNCIL OF EUROPE TREATIES

1. CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS (ETS NO. 5), 4 NOVEMBER 1950⁷

United Kingdom, 1 April 2004, 5 May 2004, 6 May 2005

The Government of the United Kingdom declares that it extends the Convention to the Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus, being a territory of whose international relations the United Kingdom is responsible.

The Government of the United Kingdom declares on behalf of the above territory that the Government accepts the competence of the Court to receive applications as provided by Article 34 of the Convention.

Note by the Secretariat: The declarations have been formulated in accordance with Article 56 of the Convention.

Serbia and Montenegro, 3 March 2004, 19 March 2004, 20 March 2005

Reservations:

The provisions of Article 5, paragraphs 1[c] and 3, of the Convention shall be without prejudice to the application of rules on mandatory detention. This reservation concerns Article 142, paragraph 1, of the Code of Criminal Procedure (Službeni list Savezne Republike Jugoslavije, Nos. 70/01, 68/02) of the Republic of Serbia, which provides that detention shall be mandatory if a person is under reasonable suspicion of having committed an offence for which the punishment is 40 years imprisonment.

While affirming its willingness fully to guarantee the rights enshrined in Articles 5 and 6 of the Convention, Serbia and Montenegro declares that the provisions of Article 5, paragraph 1[c]

⁷ *Relevant provisions ETS No.005 :*

Article 34

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

Article 56

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

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.

and Article 6, paragraphs 1 and 3, shall be without prejudice to the application of Articles 75 to 321 of the Law on Minor Offences of the Republic of Serbia (Službeni glasnik Socijalističke Republike Srbije, No. 44/89; Službeni glasnik Republike Srbije, Nos. 21/90, 11/92, 6/93, 20/93, 53/93, 67/93, 28/94, 16/97, 37/97, 36/98, 44/98, 65/2001) and Articles 61 to 225 of the Law on Minor Offences of the Republic of Montenegro (Službeni list Republike Crne Gore, Nos. 25/94, 29/94, 38/96, 48/99) that regulate proceedings before magistrates' courts.

The right to a public hearing enshrined in Article 6, paragraph 1, of the Convention shall be without prejudice to the application of the principle that courts in Serbia do not, as a rule, hold public hearings when deciding in administrative disputes. The said rule is contained in Article 32 of the Law on Administrative Disputes (Službeni list Savezne Republike Jugoslavije, No. 46/96) of the Republic of Serbia.

The provisions of Article 13 shall not apply in relation to the legal remedies within the jurisdiction of the Court of Serbia and Montenegro, until the said Court becomes operational in accordance with Articles 46 to 50 of the Constitutional Charter of the State Union of Serbia and Montenegro (Službeni list Srbije i Crne Gore, No. 1/03).

Brief Statement:

The Ministry of Foreign Affairs of Serbia and Montenegro makes the following statement in accordance with Article 57, paragraph 2, of the Convention, to supplement the information contained in the instrument of ratification deposited by Serbia and Montenegro on 3 March 2004.

The Ministry of Foreign Affairs of Serbia Montenegro has the honour to refer to the following reservation contained in the instrument of ratification:

"While affirming its willingness fully to guarantee the rights enshrined in Articles 5 and 6 of the Convention, Serbia and Montenegro declares that the provisions of Article 5, paragraph 1[c] and Article 6, paragraphs 1 and 3, shall be without prejudice to the application of Articles 75 to 321 of the Law on Minor Offences of the Republic of Serbia (Službeni glasnik Socijalističke Republike Srbije, No. 44/89; Službeni glasnik Republike Srbije, Nos. 21/90, 11/92, 6/93, 20/93, 53/93, 67/93, 28/94, 16/97, 37/97, 36/98, 44/98, 65/2001) and Articles 61 to 225 of the Law on Minor Offences of the Republic of Montenegro (Službeni list Republike Crne Gore, Nos. 25/94, 29/94, 38/96, 48/99) that regulate proceedings before magistrates' courts."

The relevant provisions of the laws referred to in this reservation regulate the following matters:

- proceedings before the magistrates' courts, including rights of the accused, rules of evidence and legal remedies (Articles 75 to 89 and 118 to 321 of the Law on Minor Offences of the Republic of Serbia and Articles 61 to 67 and 97 to 225 of the Law on Minor Offences of the Republic of Montenegro);
- establishment and organization of the magistrates' courts (Articles 68 to 96 of the Law on Minor Offences of the Republic of Montenegro and Articles 89a to 115 of the Law on Minor Offences of the Republic of Serbia); and
- measures for securing the presence of the accused (Articles 183 to 192 of the Law on Minor Offences of the Republic of Serbia).

The Ministry of Foreign Affairs of Serbia and Montenegro wishes to inform the Secretary General of the Council of Europe that Serbia and Montenegro shall withdraw the reservations contained in its instrument of ratification as soon as the legislation mentioned

therein has been brought into conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Note by the Secretariat: In accordance with Article 57, paragraph 2, of the Convention, the reservations are accompanied by a brief statement of the law. The second reservation states that an important number of legislative provisions are currently not in conformity with the Convention. It does not, however, indicate which aspects of the procedure before the magistrates' courts are not in conformity with which Convention provisions. It will be ultimately for the European Court of Human Rights to decide upon the validity of the reservations.

2. PROTOCOL No. 13 TO THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, CONCERNING THE ABOLITION OF THE DEATH PENALTY IN ALL CIRCUMSTANCES (ETS No. 187), 3 MAY 2002⁸

United Kingdom, 1 April 2004, 5 May 2004, 6 May 2005

The Government of the United Kingdom declares that it extends the application of Protocol 13 to the Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus, being a territory of whose international relations the United Kingdom is responsible.

Note by the Secretariat: The declaration has been formulated in accordance with Article 56 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

United Kingdom, 16 April 2004, 5 May 2004, 6 May 2005

The Government of the United Kingdom declares that it extends the application of Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms to the Isle of Man, the Bailiwick of Guernsey and the Bailiwick of Jersey.

Note by the Secretariat: The declaration has been formulated in accordance with Article 56 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

3. EUROPEAN CONVENTION ON EXTRADITION (ETS N° 24), 13 DECEMBER 1957.

Bulgaria, 6 January 2004, 5 February 2004, 4 February 2005⁹

⁸ *Relevant provisions ETS No.005 :*

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.

⁹ *Relevant provisions ETS No. 24 :*

Article 6 – Extradition of nationals

- 1a. A Contracting Party shall have the right to refuse extradition of its nationals.

On 12 November 2003 the National Assembly of the Republic of Bulgaria adopted a Law amending the Law for the Ratification of the European Convention on Mutual Assistance in Criminal Matters and the Additional Protocol thereto, the Convention on the Transfer of Sentenced Persons and the European Convention on Extradition and the two Additional Protocols thereto. The said Law was published in the Official Journal, No. 103/2003, dated 25 November 2003.

Therefore, the text of the declaration made by the Republic of Bulgaria in respect of Article 6, paragraph 1, of the European Convention on Extradition is modified and shall read:

"The Republic of Bulgaria declares that it will recognise as a national for the purposes of the convention any person having Bulgarian nationality at the time of receiving the request for extradition."

Note by the Secretariat: The original declaration formulated at the time of signature, on 30 September 1993, and confirmed at the time of deposit of the instrument of ratification, on 17 June 1994 read as follows: " The Republic of Bulgaria declares that it will recognise as a national for the purposes of the convention any person having Bulgarian nationality at the time of the extradition order."

4. EUROPEAN AGREEMENT ON REGULATIONS GOVERNING THE MOVEMENT OF PERSONS BETWEEN MEMBER STATES OF THE COUNCIL OF EUROPE (ETS NO. 25), 13 DECEMBER 1957¹⁰

Germany, 18 June 2004, 20 July 2004, 21 July 2005

The Federal Republic of Germany and Ukraine are Parties to the European Agreement of December 13th, 1957, on Regulations governing the Movement of Persons between Member States of the Council of Europe. The Federal Republic of Germany has decided to suspend the application of the Agreement with regard to Ukraine with immediate effect on the basis of Article 7 of the Agreement. This step is deemed to be necessary on public grounds. Application of the Agreement with regard to Ukraine is incompatible with Council Regulation (EC) No. 539/2001 of March 15th, 2001, concerning visas, Annex I of which stipulates that Ukraine is one of those States whose nationals must be in possession of visas when crossing

b. Each Contracting Party may, by a declaration made at the time of signature or of deposit of its instrument of ratification or accession, define as far as it is concerned the term "nationals" within the meaning of this Convention.

c. Nationality shall be determined as at the time of the decision concerning extradition. If, however, the person claimed is first recognised as a national of the requested Party during the period between the time of the decision and the time contemplated for the surrender, the requested Party may avail itself of the provision contained in sub-paragraph a of this article.

¹⁰ *Relevant provisions ETS No. 25 :*

Article 7

Each Contracting Party reserves the option, on grounds relating to ordre public, security or public health, to delay the entry into force of this Agreement or order the temporary suspension thereof in respect of all or some of the other Parties, except insofar as the provisions of Article 5 are concerned. This measure shall immediately be notified to the Secretary General of the Council of Europe, who shall inform the other Parties. The same procedure shall apply as soon as this measure ceases to be operative.

Article 8

This Agreement shall be open to the signature of the members of the Council of Europe, who may become Parties to it either by:

- a. signature without reservation in respect of ratification;
- b. signature with reservation in respect of ratification followed by ratification.

Instruments of ratification shall be deposited with the Secretary General of the Council of Europe.

the external borders.

Luxembourg, 20 July 2004, 30 July 2004, 31 July 2005

The Grand Duchy of Luxembourg and Ukraine are Parties to the European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe of December 13th, 1957 (ETS No. 25). The Grand Duchy of Luxembourg has decided, on the basis of Article 7 of the Agreement, to suspend temporarily the application of the Agreement with regard to Ukraine. This step is deemed to be necessary on grounds relating to *ordre public* and to public security. Application of the Agreement with regard to Ukraine is against the Council Regulation UE 539/2001 of March 15th, 2001, concerning visas. Annex I of the said Regulation stipulates that Ukraine is one of those countries whose nationals must be in possession of a visa when crossing the European Union external borders.

Austria, 27 July 2004, 30 July 2004, 31 July 2005

The Republic of Austria and Ukraine are Contracting Parties to the European Agreement of December 13th, 1957, on Regulations governing the Movement of Persons between Member States of the Council of Europe. On the basis of Article 7 of the said Agreement, the Republic of Austria has decided to suspend with immediate effect the application of the Agreement with regard to Ukraine. This step is deemed to be necessary on grounds relating to *ordre public*. Application of the Agreement with regard to Ukraine is incompatible with Council Regulation (EC) No. 539/2001 of March 15th, 2001, the Annex I of which stipulates that Ukraine is one of those States whose nationals are bound by the obligation of visa when crossing the Member States external borders.

Belgium, 28 July 2004, 30 July 2004, 31 July 2005

The Kingdom of Belgium and Ukraine are Contracting Parties to the European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe of December 13th, 1957. The Kingdom of Belgium has however decided to suspend temporarily the entry into force of the Agreement with regard to Ukraine, with immediate effect, on the basis of Article 7 of the Agreement, if Ukraine ratifies this Agreement.

This step is deemed to be necessary on grounds relating to *ordre public*. Application of this Agreement with regard to Ukraine is incompatible with Council Regulation (EC) No. 539/2001 of March 15th, 2001, the Annex I of which stipulates that Ukraine is one of those States whose nationals are bound by the obligation of visa when crossing the Member States external borders.

Note by the Secretariat: Ukraine has signed the Agreement on 18 February 2004 with reservation in respect of ratification and has not yet ratified it.

5. EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS (ETS NO. 30), 20 APRIL 1959¹¹

¹¹ *Relevant provisions ETS No. 30 :*

Article 2

Assistance may be refused:

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

Article 23

- 1. Any Contracting Party may, when signing this Convention or when depositing its instrument of ratification or accession, make a reservation in respect of any provision or provisions of the Convention.

Bulgaria, 6 January 2004, 5 February 2004, 4 February 2005

On 12 November 2003 the National Assembly of the Republic of Bulgaria adopted a Law amending the Law for the Ratification of the European Convention on Mutual Assistance in Criminal Matters and the Additional Protocol thereto, the Convention on the Transfer of Sentenced Persons and the European Convention on Extradition and the two Additional Protocols thereto. The said Law was published in the Official Journal, No. 103/2003, dated 25 November 2003.

Therefore, the reservation made by the Republic of Bulgaria in respect of Article 2 of the European Convention on Mutual Assistance in Criminal Matters is partially withdrawn and shall read:

"The Republic of Bulgaria declares that it will refuse legal aid in cases where:

- the offender shall not be held responsible by virtue of amnesty;
- the criminal responsibility is precluded by statutory limitation;
- after having committed the offence, the offender has fallen into a state of lasting mental disturbance precluding criminal responsibility;
- there is a pending penal procedure, an enforceable sentence, an order or an enforceable decision to terminate the case, with respect to the same person for the same offence."

Note by the Secretariat : The original reservation dated 17 June 1994 read as follows:

"The Republic of Bulgaria declares that it will refuse assistance where:

- *the committed act is not incriminated as an offence according to the Bulgarian criminal law;*
- the offender shall not be held responsible by virtue of amnesty;
- the criminal responsibility is precluded by statutory limitation;
- after having committed the offence, the offender has fallen into a state of lasting mental disturbance precluding criminal responsibility;
- there is a pending penal procedure, an enforceable sentence, an order *of the Public Prosecutor* or an enforceable decision *of the court* to terminate the case, with respect to the same person for the same offence."

6. EUROPEAN CONVENTION ON STATE IMMUNITY (ETS NO. 74), 16 MAY 1972¹²**Belgium**, 23 September 2003, 29 October 2003, 28 October 2004

2. Any Contracting Party which has made a reservation shall withdraw it as soon as circumstances permit. Such withdrawal shall be made by notification to the Secretary General of the Council of Europe.

3. A Contracting Party which has made a reservation in respect of a provision of the Convention may not claim application of the said provision by another Party save in so far as it has itself accepted the provision.

¹² *Relevant provisions ETS No. 74 :*

Article 28

1. Without prejudice to the provisions of Article 27, the constituent States of a Federal State do not enjoy immunity.

2. However, a Federal State Party to the present Convention, may, by notification addressed to the Secretary General of the Council of Europe, declare that its constituent States may invoke the provisions of the Convention applicable to Contracting States, and have the same obligations.

3. Where a Federal State has made a declaration in accordance with paragraph 2, service of documents on a constituent State of a Federation shall be made on the Ministry of Foreign Affairs of the Federal State, in conformity with Article 16.

4. The Federal State alone is competent to make the declarations, notifications and communications provided for in the present Convention, and the Federal State alone may be party to proceedings pursuant to Article 34.

In accordance with Article 28, paragraph 2, of the Convention, the Kingdom of Belgium declares that the French Community, the Flemish Community and the German-speaking Community as well as the Walloon Region, the Flemish Region and the Brussels-Capital Region may invoke the provisions of the European Convention on State Immunity applicable to Contracting States, and have the same obligations.

Note by the Secretariat: The declaration has been formulated in accordance with Article 28, paragraph 2, of the Convention.

7. EUROPEAN CONVENTION ON THE SUPPRESSION OF TERRORISM
(ETS No 90), 27 JANUARY 1977

Azerbaijan, 11 February 2004, 19 March 2004, 20 March 2005

The Republic of Azerbaijan declares that it will be unable to guarantee compliance with the provisions of the Convention in its territories occupied by the Republic of Armenia until these territories are liberated from that occupation (the schematic map of the occupied territories is enclosed).

Note by the Secretariat: Azerbaijan formulated a similar declaration to a number of Council of Europe Treaties including the Framework Convention for the Protection of National Minorities (ETS No. 157). The schematic map is reproduced as Appendix 1 to this document.

8. FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONALS
MINORITIES (ETS No 157), 1 FEBRUARY 1995

“The former Yugoslav Republic of Macedonia”, 2 June 2004, 20 July 2004, 21 July 2005

Referring to the Framework Convention, and taking into account the latest amendments to the Constitution of the Republic of Macedonia, the Minister of Foreign Affairs of Macedonia submits the revised declaration to replace the previous two declarations on the aforesaid Convention:

The term “national minorities” used in the Framework Convention and the provisions of the same Convention shall be applied to the citizens of the Republic of Macedonia who live within its borders and who are part of the Albanian people, Turkish people, Vlach people, Serbian people, Roma people and Bosniac people.

Note by the Secretariat: The Framework Convention does not contain a definition of the term “national minority”. The original declaration formulated on 10 April 1997 read as follows:

“The Republic of Macedonia declares that the term “national minorities” used in the Framework Convention for the Protection of National Minorities is considered to be identical to the term “nationalities” which is used in the Constitution and the laws of the Republic of Macedonia.”

“The Republic of Macedonia declares that the provisions of the Framework Convention for the Protection of National Minorities will be applied to the Albanian, Turkish, Vlach, Roma and Serbian national minorities living on the territory of the Republic of Macedonia.”

9. EUROPEAN SOCIAL CHARTER (revised)(No 163), 3 MAY 1996

Romania, 21 April 2004, 5 May 2004, 6 May 2005

The Permanent Representation of Romania informs the Secretariat that the instrument of ratification no. 490 deposited by Romania on 7 May 1999 contains an error. The said instrument of ratification states under item 1 that Romania considers itself bound by Article 26, while the Act no. 74 of 3 May 1999 by which the Parliament of Romania ratified the European Social Charter (revised) made no reference to Article 26.

The Permanent Representation of Romania to the Council of Europe also informs the Secretariat that the said Law stipulates that Romania considers itself bound by Article 25 of the European Social Charter (revised). Article 25 was not notified at the time when the instrument of ratification was deposited.

Given the above, the Permanent Representation of Romania declares that under item 1 of the instrument of ratification no. 490 deposited by Romania, **Article 26 should be read as Article 25**.

The Permanent Representation of Romania attaches the Romanian version of the Act no. 74 of 3 May 1999 and the English translation thereof

Note by the Secretariat: This declaration was made by Romania following the discovery of an error in its instrument of ratification.

10. CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND DIGNITY OF THE HUMAN BEING WITH REGARD TO THE APPLICATION OF BIOLOGY AND MEDICINE: CONVENTION ON HUMAN RIGHTS AND BIOMEDICINE (ETS No. 164), 4 APRIL 1997¹³

Croatia, 28 November 2003, 15 December 2004, 14 December 2004

In accordance with Article 36 of the Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, the Republic of Croatia puts forward a reservation with regard to the conditions regulated in Article 20, paragraph 2, sub-paragraph ii of the Convention.

¹³ *Relevant provisions ETS 164 :*

Article 20 – Protection of persons not able to consent to organ removal

1. No organ or tissue removal may be carried out on a person who does not have the capacity to consent under Article 5.
2. Exceptionally and under the protective conditions prescribed by law, the removal of regenerative tissue from a person who does not have the capacity to consent may be authorised provided the following conditions are met:
 - i. there is no compatible donor available who has the capacity to consent;
 - ii. the recipient is a brother or sister of the donor;
 - iii. the donation must have the potential to be life-saving for the recipient;
 - iv. the authorisation provided for under paragraphs 2 and 3 of Article 6 has been given specifically and in writing, in accordance with the law and with the approval of the competent body;
 - v. the potential donor concerned does not object."

Article 36 – Reservations

1. Any State and the European Community may, when signing this Convention or when depositing the instrument of ratification, acceptance, approval or accession, 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 relevant law.
3. Any Party which extends the application of this Convention to a territory mentioned in the declaration referred to in Article 35, paragraph 2, may, in respect of the territory concerned, make a reservation in accordance with the provisions of the preceding paragraphs.

The Republic of Croatia excludes the limitation within Article 20, paragraph 2, sub-paragraph ii of the Convention, which exceptionally allows the removal of regenerative tissue from a person who is not able to consent solely when no compatible donor with the ability to consent is available, and the recipient is a brother or a sister of the donor. The limitation does not allow the removal of regenerative tissue (bone marrow) from a minor for the benefit of his/her parent. Such a limitation is not compatible with the Law of the Republic of Croatia in force – the Removal and Transplantation of Human Body Parts Act (Official Gazette No. 53/91), which allows the transplantation of regenerative tissue from a minor for the benefit of his/her parent. The Republic of Croatia hereby protects the vital interests of an underage donor, thereby saving the life of the donor's parent who is of the utmost importance (for the minor). The Republic of Croatia will apply Article 20, paragraph 2, sub-paragraph ii of the Convention, to the effect that the receiver is a parent, a brother or a sister of the donor.

Note by the Secretariat: The reservation has been formulated in accordance with Article 36 of the Convention.

11. CRIMINAL LAW CONVENTION ON CORRUPTION (ETS No. 173), 27 JANUARY 1999

Azerbaijan, 11 February 2004, 19 March 2004, 20 March 2005

The Republic of Azerbaijan declares that it will be unable to guarantee compliance with the provisions of the Convention in its territories occupied by the Republic of Armenia until these territories are liberated from that occupation (the schematic map of the occupied territories is enclosed).

Note by the Secretariat: Azerbaijan formulated a similar declaration to the Framework Convention for the Protection of National Minorities (ETS No. 157). The schematic map is reproduced as Appendix 1 to this document.

Moldova, 14 January 2004, 5 February 2004, 4 February 2005

The provisions of the Convention will not be applicable on the territory effectively controlled by the institutions of the self-proclaimed transnistrian republic until the durable settlement of the conflict in this region.

Note by the Secretariat: Moldova deposited quite similar declarations to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), the European Convention on the Control of the Acquisition and Possession of Firearms by Individuals (ETS No. 101) and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141).

United Kingdom, 9 December 2003, 15 December 2003, 14 December 2004

Section 109 of the Anti-terrorism, Crime and Security Act 2001 (and section 69 of the Criminal Justice (Scotland) Act 2003) extend the normal jurisdiction of the United Kingdom courts over any offence of bribery at common law or under the Public Bodies Corrupt Practices Act 1889 or the Prevention of Corruption Act 1906 ("the 1906 Act") to cover offences by United Kingdom nationals which take place outside the United Kingdom.

The United Kingdom therefore applies the jurisdictional rule laid down in Article 17¹⁴,

¹⁴ Relevant provisions ETS 173 :

paragraph 1 (b), except that United Kingdom jurisdiction is limited to United Kingdom nationals, and accordingly does not cover public officials or members of domestic public assemblies except where they are United Kingdom nationals. The United Kingdom therefore makes a declaration under Article 17, paragraph 2, that it reserves the right to apply the jurisdictional rule laid down in paragraph 1.b only where the offender is a United Kingdom national. In addition, the United Kingdom makes a declaration under Article 17, paragraph 2 that it reserves the right not to apply the jurisdictional rule laid down in paragraph 1.c at all. Since United Kingdom law places no bar on the extradition of United Kingdom nationals, the United Kingdom does not need to change the law to meet the requirements of Article 17, paragraph 3.

The conduct referred to in Article 7 is largely covered by section 1 of the 1906 Act. The 1906 Act does not however cover the case where the undue advantage is not given directly to the agent but is given to a third party. The United Kingdom accepts this aspect of the law is in need of amendment and the draft Corruption Bill published in 2003 would make this change in respect of England, Wales and Northern Ireland. However for the present a reservation is necessary. Accordingly, in accordance with Article 37, paragraph 1, the United Kingdom reserves the right not to establish as a criminal offence all of the conduct referred to in Article 7.

The conduct referred to in Article 12 is covered by United Kingdom law in so far as an agency relationship exists between the person who trades his influence and the person he influences. However not all of the conduct referred to in Article 12 is criminal under United Kingdom law. Accordingly, in accordance with Article 37, paragraph 1, the United Kingdom reserves the right not to establish as a criminal offence all of the conduct referred to in Article 12.

Article 7 – Active bribery in the private sector

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 in the course of business activity, the promising, offering or giving, directly or indirectly, of any undue advantage to any persons who direct or work for, in any capacity, private sector entities, for themselves or for anyone else, for them to act, or refrain from acting, in breach of their duties.

Article 12 – Trading in influence

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 promising, giving or offering, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert an improper influence over the decision-making of any person referred to in Articles 2, 4 to 6 and 9 to 11 in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.

¹⁴ *Relevant provisions ETS 173(foll.) :*

Article 17 – Jurisdiction

1. Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over a criminal offence established in accordance with Articles 2 to 14 of this Convention where:

- a. the offence is committed in whole or in part in its territory;
- b. the offender is one of its nationals, one of its public officials, or a member of one of its domestic public assemblies;
- c. the offence involves one of its public officials or members of its domestic public assemblies or any person referred to in Articles 9 to 11 who is at the same time one of its nationals.

2. Each State 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 it reserves the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraphs 1 b and c of this article or any part thereof.

3. If a Party has made use of the reservation possibility provided for in paragraph 2 of this article, it shall adopt such measures as may be necessary to establish jurisdiction over a criminal offence established in accordance with this Convention, in cases where an alleged offender is present in its territory and it does not extradite him to another Party, solely on the basis of his nationality, after a request for extradition.

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

Note by the Secretariat: The reservation has been formulated in accordance with Article 37, paragraphs 1 and 2, of the Convention.

12 CIVIL LAW CONVENTION ON CORRUPTION (ETS No. 174), 4 NOVEMBER 1999

Azerbaijan, 11 February 2004, 19 March 2004, 20 March 2005

The Republic of Azerbaijan declares that it will be unable to guarantee compliance with the provisions of the Convention in its territories occupied by the Republic of Armenia until these territories are liberated from that occupation (the schematic map of the occupied territories is enclosed).

Note by the Secretariat: Azerbaijan formulated a similar declaration to the Framework Convention for the Protection of National Minorities (ETS No. 157). The schematic map is reproduced as Appendix 1 to this document.

13. PROTOCOL AMENDING THE EUROPEAN CONVENTION ON THE SUPPRESSION OF TERRORISM (ETS NO. 190), 15 MAY 2003

Spain, 9 October 2003, 15 December 2003, 14 December 2004

Declaration made at the time of signature of the instrument, on 9 October 2003:

In conformity with the Conclusions of the Council of the European Union of 2 October 2003 on the application of the European arrest warrant and its relationship with Council of Europe legal instruments, and as recognised explicitly by the member States of the European Union, Spain declares that Council of Europe legal instruments allow member States of the European Union to apply between themselves pre-existing agreements or conclude new agreements in order to facilitate or simplify even further their procedures for the surrender of individuals.

In conformity with the aforementioned Conclusions, Spain declares that the instruments adopted within the European Union in matters which affect the European Convention on the Suppression of Terrorism and its amending Protocol, constitute a series of agreements or a uniform law which will take precedence as between the member States of the European Union.

In conformity with the aforementioned Conclusions, Spain declares that the series of European Union instruments will continue to take precedence when the present Protocol enters into force.

In conformity with the aforementioned Conclusions, Spain understands that the said instruments adopted within the European Union, which take precedence as between the member States of the European Union, inter alia:

The Agreement of 26 May 1989 between the Member States of the European Communities on the simplification and modernization of methods of transmitting extradition requests,

The Convention of 10 March 1995 drawn up on the basis of article K.3 of the Treaty on European Union, on simplified extradition procedure between the Member States of the European Union (O.J. C 78-30/03/95 et O.J. C 375-12/12/96),

The Convention of 27 September 1996 drawn up on the basis of article K3 of the Treaty on European Union, relating to extradition between the Members States of the European Union (O.J. C313-23/10/96 et O.J. C191-23/07/97),

The Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism (O.J. L 344-28/12/2001) and its modifications,

The Council Common Position of 27 December 2001 on combating terrorism (O.J. L 344-28/12/2001),

The Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (O.J. L 344-28/12/2001), and its modifications,

The Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering (O.J. L 344-28/12/2001),

The Council Decision 2001/927/EC of 27 December 2001 establishing the list provided for in Article 2(3) of Council Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (O.J. L 344-28/12/2001), the Council Decision 2002/344/EC (O.J. L116-03/05/2002) and its modifications,

The Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (O.J. L190-18/07/2002),

The Council Framework Decision of 13 June 2002 on combating terrorism (O.J. L190-18/07/2002),

As well as those which will be adopted in the future, in the matters affecting the European Convention on the Suppression of Terrorism,

Will not be affected by the entry into force of the present Protocol.

Note by the Secretariat: This declaration which concerns no particular article of the Protocol aims at ensuring the precedence of European Union law.

APPENDIX 1 - Schematic map – Azerbaijan

Schematic map of the territories of the Republic of Azerbaijan occupied by the Republic of Armenia

