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DI-E-RIT (2000) 2

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

**GROUP OF EXPERTS ON RESERVATIONS TO INTERNATIONAL TREATIES
(DI-E-RIT)**

**3rd meeting
Berlin, 10 March 2000**

MEETING REPORT

Secretariat memorandum
Prepared by the Directorate General of Legal Affairs

1. Opening of the meeting by the Chairman

1. The third meeting of the Group of Experts on reservations to International Treaties (DI-E-RIT) was held in Berlin, 10 March 2000. Ambassador Magnuson (Sweden) Chairman of the DI-E-RIT opened the meeting. The list of participants appears in Appendix 1.

2. Adoption of the agenda

2. The Chairman referred to the draft agenda for the meeting.

3. Several delegations referred to future activities of the Group and the possibility of considering new phenomena such as modification of reservations or the UN Secretary General's practice as depositary of multilateral treaties.

4. The Group adopted the agenda as it appears in Appendix 2.

3. Activity of the International Law Commission (ILC) on reservations to normative multilateral treaties including human rights treaties

5. The Group took note of developments concerning the ILC activity on reservations to international treaties and thanked the Secretariat for providing the working documents of the ILC.

4. Key issues concerning the formulation of reservations to international treaties

6. The Chairman referred to document DI-E-RIT (99) 5 rev entitled *Key issues concerning the formulation of reservations to international treaties*, submitted by the delegation of the Netherlands, and thanked Ms Lijnzaad for the preparation of the draft.

7. The Group considered the above-mentioned document and concentrated on some sections.

Section 8 the role of the depositary in the ratification phase

8. The delegate of Turkey expressed doubts regarding the use in paragraph 2 of this section of the term "to take action" because the depositary has limited powers.

New sections 8 bis and 8 ter

9. The delegate of the Netherlands referred to items 8 *bis* and 8 *ter* regarding the role of the depositary in the ratification phase in particular in respect of *modification of reservations* and *denunciation and re-ratification with reservations* which are very relevant phenomena. She called upon the members of the Group to provide her with further guidance about how to deal with them.

10. The delegates of Turkey and Ireland supported dealing with these phenomena given their importance. The delegate of Ireland further noted that in the context of the European Union, the Working Group on Public International Law (COJUR) of the Council also dealt with them but did not reach consensus.

11. Regarding 8 *bis* modifications of reservations, the Chairman called the attention of the Group to the previous meeting report and noted that a dialogue was underway with the UN Secretariat General regarding the UN Secretary General's (UN SG) practice as depositary of multilateral treaties. This dialogue had not yet come to a conclusion.

12. The delegate of Germany noted that the Group had already held significant discussions on this item.

13. The delegate of Finland proposed that the Group should not refer to the UN SG

practice but hold the position that modifications are possible if they restrict the original reservation and that they should not result in an expansion of the prior reservation.

14. The delegate of France supported this position, but he further noted that the practice of the UN Secretary General should be referred to as not yet having been justified nor explained. In particular the 90-day deadline unilaterally set by the UN SG is already a concession to the UN SG which is not grounded in the Vienna Convention on the Law of Treaties (VCLT). Moreover, the delay of UN SG in sending the reservations should be a burden on the UN SG not on the parties.

15. The Chairman noted that the crucial problem in this connection is the legal effects of the modification because the single objection to a modification would make the whole reservation null and void something which may not be desirable where human rights are concerned.

16. The Secretariat explained the practice of the Council of Europe Secretary General as depositary and noted that this practice goes along the lines defined by the delegation of Finland.

17. In this connection, the delegate of Finland asked the Secretariat what would happen if the State does not agree with the comments of the Council of Europe depositary. In his view, the depositary could not refuse to circulate a modification with which it does not agree.

18. The Secretariat replied that fortunately such a case had not yet occurred.

19. The delegate of the Netherlands stressed that the depositary should have a neutral role. It is therefore surprising that the UN SG has taken so much liberty as to the legal effect of withdrawals when a single modification makes the reservation null and void. She hesitated to say that the depositary should in the end even circulate a modification which is clearly forbidden.

20. The delegate of Germany referred to UN SG practice and in particular to the 90 days deadline for reaction to modifications of prior reservations set by the UN SG. In his view, this deadline was invented for purely practical purposes and there is no ground for it in the VCLT. He observed that moreover, sometimes the communications from the UN SG have arrived even after the 90-day period has lapsed. He noted that this period should be longer.

21. Further to that, the delegate referred to the possibility of modifying reservations (8 *bis*) and stressed that such modifications should be allowed only if they do not result in a new reservation or the expansion of the prior one and he called upon the UN SG to take a different attitude in this respect.

22. Regarding the legal effects of modifications and objections thereto, he observed that the UN SG understands that a single objection to a modification causes the reservation to be null and void. This can be acceptable when the modification entails a new reservation or the expansion of the pre-existing one but not when the modification goes in a desirable sense and effectively amounts to a partial withdrawal of a reservation.

23. In view of the above, at the proposal of the delegation of Finland, the Group agreed to invite a representative of UN SG Treaty section at the next meeting of the Group or possibly of the CAHDI with a view to discussing these issues in view of the fact that the member States of the Council of Europe are increasingly confronted with problems resulting from the UN SG practice as depositary and that other international organizations, such as the Council of Europe, have different depositary practices.

24. Regarding 8 *ter* denunciation and re-ratification with reservations, the delegate of Finland noted that this question is controversial and it would be difficult to find common agreement.

25. Further to that, the Secretariat noted that with regard to such a practice in respect of

the European Convention on Human Rights, the European Court of Human Rights has stated in an obiter dictum that it would be an abuse of rights.

26. The delegate of the United Kingdom noted that there have been some cases where this has been done and stressed that the validity of this procedure is controversial.

27. In this connection, the delegate of Croatia referred to the problem of interpretative declaration which should be possible after ratification particularly in the case of State succession (for instance in Yugoslavia). In her view there is a key distinction in this respect between States and *Successor States*. She noted that this possibility and the distinction between reservations and interpretative declarations does not appear in the document.

Section 12 Establishing a domestic mechanism for monitoring subsequent reservations (formulated by other States)

28. The observer of Israel noted that it was difficult to create a standard domestic mechanism for dealing with reservations when every treaty has its own basic requirements. He therefore questioned the usefulness of 12.

29. The delegate of the Russian Federation supported this position given that this section deals with internal procedures and these fall clearly within member States powers.

30. However, the Chairman stressed that this section would be useful particularly in helping new administrations in tackling reservations.

31. The delegate of Finland agreed with the Chairman and noted that this section did not state what the internal policy or procedure should be but simply draws the attention of member States to this matter. However, given that the legal or *quasi* legal nature of the draft text, he proposed reviewing the last paragraph in this section which refers to political relations with the reserving State.

32. The delegate of Germany further agreed with the Chairman and stressed that practice shows that few states bother to react to reservations to multilateral treaties. This paper under discussion should foster more objections and section 12 meets the point regardless of whether for political reasons a State may wish not to object. A consistent policy in this respect is crucial.

33. The observer of the United States referred to paragraph 2 and noted that there are some general categories of treaties where a common policy should be possible. The Council of Europe does it with reference to human rights for instance, but there are also other categories where a domestic policy is established and whenever a reservation is made to a treaty in that category the general policy applies. This is a helpful practice and he therefore supports maintaining it.

34. The delegate of Switzerland also supported keeping this section and asked delegations to briefly describe how they deal internally with reservations to international treaties including bodies concerned, level of involvement, etc.

35. The information provided by delegations is summarized in the following table¹:

¹ Comprehensive information on this subject is available in the context of the CAHDI activity on "Expression by States of consent to be bound by a treaty". National reports provided by members and observer States in the CAHDI are included in document CAHDI (2000) 13 as well as an analytical report prepared on the basis of these reports by the British Institute of International and Comparative Law. This report will be considered by the CAHDI at its 20th meeting, Strasbourg, 12-13 September 2000.

Domestic procedures for dealing with reservations to international treaties

Country	Internal bodies responsible for dealing with reservations to international treaties and objections thereto
Belgium	Ministry of Foreign affairs possibly in consultation with other ministries
Bulgaria	Depends on the treaty and how the State has expressed its consent: It can be either the Government or the Parliament
Croatia	Ministry of Foreign affairs possibly in consultation with other ministries If the reservation in any way affects the national interest the Government will be consulted
Finland	Ministry of Foreign affairs possibly in consultation with other ministries Level of decision-making is civil servant unless political considerations come into play
France	Ministry of Foreign affairs possibly in consultation with other ministries
Germany	Ministry of Foreign affairs possibly in consultation with other ministries
Ireland	Ministry of Foreign affairs in consultation with other ministries The actual reservation will determine the level of involvement
The Netherlands	Standard reservation: Ministry of Foreign affairs Complicated reservation: Ministry of Foreign affairs in consultation with other ministries
Russian Federation	Ministry of Foreign affairs in consultation with relevant ministries The Parliament is responsible in the case of objections
Spain	Ministry of Foreign affairs in consultation with relevant ministries
Sweden	Ministry of Foreign affairs in consultation with relevant ministries
Turkey	Ministry of Foreign affairs in consultation with relevant ministries The level depends on the nature of the objection and the relations with the country concerned It will be done in the form of a Governmental or Parliament Decree depending on whether the Government or the Parliament intervenes
United Kingdom	Ministry of Foreign affairs in consultation with relevant ministries The level depends on the nature of the objection and the relations with the country concerned
United States of America	State Department (most often the Treaty Division). The Senate would never intervene for reservations.
Israel	Treaty Division of the Ministry of Foreign Affairs

36. In this connection, the observer of Israel noted that in the past there have been significant problems with statements of recognition of the State of Israel. He noted that the ILC does not know how to deal with this problem and such statements were not considered reservations, however this is a thing of the past.

37. On the basis of discussions, the delegate of the Netherlands submitted a proposal for new sections 8 *bis* and 8 *Ter* as follows:

8 bis Modification of reservations

Modification of a reservation is acceptable when it restricts the scope of the original reservation. A modification that expands the scope of the original reservation is

contrary to the rule that reservations may only be made when expressing consent to be bound (art. 21 d VCLT).

Article 20 para. 5 (the 12-month time limit would be applicable to the (non)acceptance of such modified reservations.

8 ter Denunciation of a treaty and re-ratification....

The validity of this procedure is controversial.

The view has been expressed that this procedure is circumventing the rule that reservations may only be made when expressing consent to be bound. The view has also been expressed that, although highly undesirable, there are no formal rules against such a procedure

38. The Group focused on new draft section 8 *bis*.
39. The delegate of the United Kingdom referred to paragraph 2 of Section 8 *bis* and noted that Article 20 para. 5 of the VCLR could only apply by analogy.
40. The delegate of Germany agreed with this position but he stressed that this is not the UN SG view which understands that it is preferable that the question be settled more quickly when a withdrawal of a pre-existing reservation and not of a reservation itself is concerned.
41. The delegate of France agreed with the United Kingdom position and stressed that as far as withdrawal of pre-existing reservations is concerned, a 12-month delay for reaction thereto was warranted as a result of the VCLR and that such deadline should not be shorter regardless of UN SG considerations.
42. The Group therefore agreed to draft section 8 *bis* paragraph 2 as follows: "By analogy with 20 § 5, a 12-month time limit should be applicable to the (non) acceptance of such modified reservations."
43. The Group focused on new draft section 8 *ter*.
44. The delegate of France noted that the scope of this section was too broad and that the procedure referred therein is only controversial in the case where a State is trying to circumvent the obligations resulting from the treaty and the rule of international law regarding the formulation of reservations. He stressed that it is the very fact of denouncing to ratify again that is problematic and that this has been done only by a limited number of States and he suggested that both aspect be reflected in the paper.
45. The delegate of the United Kingdom noted that last paragraph of Section 14 seems to be in contradiction with the draft section 8 *ter*.
46. The delegate of the Netherlands replied that the original draft explains the attached chart. She further noted that Section 14 deals with a different stage (post-ratification) of the process.
47. The Group agreed to a new formulation of Section 8 *ter* as follows:

Denunciation of a treaty and re-ratification with reservations

Recently, there have been instances where States have denounced a treaty to which they had not made reservations with a view to re-accessing to the treaty with reservations. The VCLT has no specific rules covering this situation. The validity of this action is controversial.

The view has been expressed that this procedure is circumventing the rule that

reservations may only be made when expressing consent to be bound. The view has also been expressed that, although highly undesirable, there are no formal rules against such a procedure.

48. The Group decided to rename the document as “Practical issues regarding reservations to international treaties” and adopted the text as it appears in Appendix 3 to this report². Further to that, the Group thanked the delegate of the Netherlands for presenting a clear picture of the problems connected with reservations and for the thought-provoking document and its suggestions. The Group considered it an extremely lucid and practical piece of work, very clearly distinct to the results produced by the ILC. Moreover, it welcomed the inclusion of the relevant provisions of the VCLT.

5. European Observatory of reservations to International Treaties (EORIT)

49. The Group considered a list of outstanding reservations and declarations to international treaties prepared by the Secretariat in co-operation with the Chairman of the DI-E-RIT and the CAHDI³.

Part I – Reservations and declarations to non-Council of Europe treaties

Regarding the reservation of 10 December 1998 by Liechtenstein to the International Covenant on Civil and Political Rights (New York, 16 December 1966)⁴, the delegate of Finland noted that they had been advised that Liechtenstein would submit a report as they have only recently acceded to this convention. He observed that this report may provide clarification as to the reservation made by Liechtenstein.

50. Regarding the reservation of 5 January 1999 by Guyana to the Optional Protocol to the International Covenant on Civil and Political Rights (New York, 16 December 1966)⁵, the

² Sections 8 *bis* and 8 *ter* became respectively sections 9 and 10.

³ See documents DI-E-RIT (99) 7, DI-E-RIT (2000) 1 and DI-E-RIT (2000) 1 addendum.

⁴ Notified on 15 January 1999. Deadline for reaction expired on 14 January 2000. Original text:

Reservation concerning article 14 (1):

The Principality of Liechtenstein reserves the right to apply the provisions of article 14, paragraph 1 of the Covenant, concerning the principle that hearings must be held and judgments pronounced in public, only within the limits deriving from the principles at present embodied in the Liechtenstein legislation on legal proceedings.

Reservation concerning article 17 (1):

The Principality of Liechtenstein makes the reservation that the right to respect for family life, as guaranteed by article 17, paragraph 1 of the Covenant, shall be exercised, with regard to aliens, in accordance with the principles at present embodied in the legislation on aliens.

Reservation concerning article 20:

The Principality of Liechtenstein reserves the right not to adopt further measures to ban propaganda for war, which is prohibited by article 20, paragraph 1 of the Covenant. The Principality of Liechtenstein reserves the right to adopt a criminal provision which will take into account the requirements of article 20, paragraph 2, on the occasion of its possible accession to the Convention of 21 December 1965 on the Elimination of All Forms of Racial Discrimination.

Reservation concerning article 24 (3):

The Principality of Liechtenstein reserves the right to apply the Liechtenstein legislation according to which Liechtenstein nationality is granted under certain conditions.

Reservation concerning article 26:

The Principality of Liechtenstein reserves the right to guarantee the rights contained in article 26 of the Covenant concerning the equality of all persons before the law and their entitlement without any discrimination to the equal protection of the law only in connection with other rights contained in the present Covenant.

⁵ Notified on 16 February 1999. Deadline for reaction expired on 15 February 2000. Original text:

Having regard to the provisions of the Constitution of the Republic of Guyana, including the right of the State to enforce judicial executions as recognised by the aforementioned Covenant and wishing to uphold its domestic law to subject no one to, inter alia, cruel, inhuman or degrading treatment or

delegation of the Netherlands informed the Group that the Netherlands had objected to it and explicitly called their reaction an “objection” while the Government of Sweden called their reaction a “communication”.

51. In this connection, the delegate of France noted that they had also used an expression other than “objection” in the past particularly in cases where the deadline for objection had lapsed, for instance, a similar reservation by Trinidad and Tobago, although that was not the case for the present reservation by Guyana and therefore they called it “objection”.

52. Also in this connection, the delegate of Sweden noted that they had used the expression “communication” because they doubted whether an objection should be possible in any case.

53. The Chairman concluded that this reservation raised fundamental problems and should be brought to the attention of the CAHDI.

54. Regarding the reservation of 22 January 1999 by Azerbaijan to the Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty (New York, 15 December 1989)⁶, the delegate of France informed the Group that the Government of France has objected to it beyond the 12-month period and stressed that the UN SG should not have communicated this reservation at all because it is forbidden by the treaty to which it refers.

55. The delegate of Germany informed the Group that after entering into a dialogue with the Government of Azerbaijan, the latter gave signs that they would be changing their reservation. However he stressed that the dialogue process should not take so long that the 12-month deadline for reservation should lapse. Therefore, the government of Germany had decided to enter an objection to this reservation.

56. The delegate of the Netherlands informed the Group that likewise they intended to object to this reservation and raise the issue of the date of notification given that the reservation was made on 22 January 1999 and only notified on 11 February 1999.

57. The delegate of Sweden noted that his government also intended to object and stressed that the notification issue is crucial.

punishment and hereby to observe its obligations under Article 7 of the International Covenant on Civil and Political Rights, the Government of Guyana feels compelled to denounce the optional Protocol. Before doing so, however, it held public discussions and obtained Parliamentary approval for the denunciation of the aforesaid Protocol.

Notwithstanding this it is the desire of the Government of Guyana to recognise the competence of the Human Rights Committee to receive and consider communications from individuals, in terms of that Instrument, to the extent that no constraints upon its constitutional authority set out above would arise. To this end, Guyana re-accedes to the Optional Protocol to the International Covenant on Civil and Political Rights with a Reservation to Article 6 thereof with the result that the Human Rights Committee shall not be competent to receive and consider communications from any person who is under sentence of death for the offences of murder and treason in respect of any matter relating to his prosecution, detention, trial, conviction, sentence or the execution of the death sentence and any matter connected herewith.

Accepting the principle that States cannot generally use the Optional Protocol as a vehicle to enter reservations to the International Covenant on Civil and Political Rights itself, the Government of Guyana stresses that its Reservation to the Optional Protocol in no way detracts from its obligations and engagements under the Covenant, including its undertaking to respect and ensure to all individuals within the territory of Guyana and subject to its jurisdiction the rights recognised in the Covenant (in so far as not already reserved against) as set out in Article 2 thereof, as well as its undertaking to report to the Human Rights Committee under the monitoring mechanism established by Article 40 thereof.

⁶ Notified on 11 February 1999. Deadline for reaction expired on 10 February 2000. Original text:

The Republic of Azerbaijan, adopting the Second Optional Protocol to the International Covenant on Civil and Political Rights, in exceptional cases, adopting the special law, allows the application of death penalty for the grave crimes, committed during the war or in condition of the threat of war.

In this connection, see also previous meeting report, document DI-E-RIT (99) 9, para. 79.

58. Regarding the reservation of 5 November 1999 by Latvia to the Convention relating to the status of stateless persons, New York, 28 September 1954⁷, the delegate of Sweden observed that this reservation was admissible under Art. 38 of the Convention.

59. Regarding the reservation of 11 January 2000 by Qatar to the Convention against torture and other cruel, inhuman or degrading treatment or punishment, New York, 10 December 1984⁸, the Chairman noted that this is the kind of statement that his government would normally object to.

60. Further to that, the delegate of France stressed that the first paragraph of the reservation was clearly against object and purpose while 2 is admissible

61. The delegates of Germany, Finland, Sweden and the Netherlands informed the Group that their respective Governments also intend to object to this reservation.

62. The Chairman referred to the various communications made by China in respect of a number of international treaties resulting from the transfer of sovereignty over Macao⁹ and noted that these communications required further study. Further to that he observed that the delegation of Portugal may be able to provide some enlightenment at the next CAHDI meeting.

63. Regarding the reservation of 14 December 1999 by Egypt to the International convention for the suppression of terrorist bombings, New York, 15 December 1997¹⁰, the delegate of Germany observed that this Convention is not yet in force and that there are grounds to believe that Egypt is making the point that they are unable to implement the treaty. He suggested that a dialogue may prove useful in this context although acknowledging that because Egypt has signed but not ratified the convention, such a dialogue would not be entirely pertinent.

64. Further to that, the Chairman observed that it is not clear what the statement by Egypt really means. Moreover, the delegate of Sweden noted that at the last COJUR meeting many delegations were under the impression that the reservation was not intended to weaken the treaty.

65. The delegate of the United Kingdom noted that this convention is partly a matter of EU competence and therefore there is a Council decision that EU member States and the European Commission will accede to it at the same time. Since such accession has not yet

⁷ Notified on 17 November 1999. Deadline for reaction expires on 16 November 2000. Original text:

In accordance with Article 38 of the Convention Relating to the Status of Stateless Persons of 1954, the Republic of Latvia reserves the right to apply the provisions of paragraph 1 (b) of article 24 subject to limitations provided for by the national legislation.

In accordance with Article 38 of the Convention Relating to the Status of Stateless Persons of 1954, the Republic of Latvia reserves the right to apply the provisions of Article 27 subject to limitations provided for by the national legislation.

⁸ Notified on 25 January 2000. Deadline for reaction expires on 24 January 2001. Original text:

... with reservation as to:

Any interpretation on the provisions of the Convention that is incompatible with the precepts of Islamic law and the Islamic religion;

And

The competence of the Committee as the indicated in articles 21 and 22 of the Convention.

⁹ See document DI-E-RIT (2000) 1 addendum, 3-15.

¹⁰ Notified on 10 January 2000. Deadline for reaction expires 9 January 2001. Original text:

The Government of the Arab Republic of Egypt declares that it is bound by Article 6, paragraph 5, of the Convention insofar as the domestic laws of States Parties do not contradict the relevant rules and principles of international law.

The Government of the Arab Republic of Egypt declares that it is bound by Article 19, paragraph 2, of the Convention insofar as the military forces of the State, in exercise of their duties do not violate the rules and principles of international law.

taken place, the United Kingdom government has already decided to extend the benefits of the Convention to some overseas territories in accordance with the above-mentioned Council decision.

Part II - Reservations and declarations to Council of Europe treaties

66. Regarding the partial withdrawal of 1 April 1999 of the reservation by Finland to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS n° 005), 4 November 1950¹¹, the delegate of Finland noted that the withdrawal amounts to a restriction of a prior reservation and that this was done in close co-operation with the Treaty Division of Council of Europe. He further referred to the prior meeting report which provided the explanation of this reservation¹². The Group welcome the partial withdrawal.

67. Further to that, the delegate of Ireland suggested that in the future a distinction should be made in the list of outstanding reservations and declarations considered by the CAHDI and the DI-E-RIT between declarations and interpretative declarations.

68. Regarding the reservation of 20 May 1999 by the United Kingdom to Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms

¹¹ Notified on 30 April 1999. Deadline for reaction expires on 29 April 2000. Original text:

Partial withdrawal of reservation:

Whereas the instrument of ratification contained inter alia a reservation to Article 6, paragraph 1, of the Convention, whereas after partial withdrawal of the reservation on 12 December 1996 as well as on 24 April 1998, paragraphs 1, 3 and 4 of the reservation read as follows:

"For the time being, Finland cannot guarantee a right to an oral hearing insofar as the current Finnish laws do not provide such a right. This applies to:

1. proceedings before the Supreme Court in accordance with Chapter 30, Section 20, of the Code of Judicial Procedure; proceedings before Water Courts when conducted in accordance with Chapter 16, Section 14, of the Water Act; proceedings before the Courts of Appeal as regards the consideration of petition, civil and criminal cases to which Chapter 26 (661/1978), Sections 7 and 8, of the Code of Judicial Procedure are applied; and the consideration of criminal cases which have been pending before a District Court at the time of entry into force of the Criminal Proceedings Act on 1 October 1997 and to which existing provisions have been applied by the District Court; and proceedings before the Water Court of Appeal as regards the consideration of criminal and civil cases in accordance with Chapter 15, Section 23, of the Water Act, if the decision of the Water Court has been given before the entry into force of the Act Amending the Code of Judicial Procedure on 1 May 1998; and the consideration of petition, appeal and executive assistance cases, in accordance with Chapter 15, Section 23, of the Water Act, if the decision of the Water Court has been given before the entry into force of the Act on Administrative Judicial Procedure on 1 December 1996;

3. proceedings, which are held before the Insurance Court as the Court of First Instance, in accordance with Section 9 of the Insurance Court Act;

4. proceedings before the Appellate Board for Social Insurance in accordance with Section 8 of the Decree on the Appellate Board for Social Insurance;"

Whereas, due to the amendments made to the provisions concerning the procedure before the Courts of Appeal, neither the provisions concerning the procedure before the Courts of Appeal nor the provisions concerning the procedure before the Supreme Court any longer set obstacles for holding an oral hearing before the Supreme Court in accordance with Article 6, paragraph 1, of the Convention, as interpreted by the European Court of Human Rights; and whereas the relevant provisions of the Finnish legislation have been amended so as to better correspond to Article 6, paragraph 1, of the Convention as far as proceedings before the Insurance Court and the Appellate Board for Social Insurance are concerned;

Now therefore Finland withdraws the reservation in paragraph 1 above, as far as it concerns proceedings before the Supreme Court, with the exception of consideration of cases in which the decision of a District Court has been made before 1 May 1998, when the amendments made to the provisions concerning proceedings before Courts of Appeal entered into force. Finland also withdraws the reservations in paragraphs 3 and 4 above, with the exception of consideration of cases which have become pending before the entry into force of the Acts amending the Insurance Court Act and the Health Insurance Act on 1 April 1999.

¹² Document DI-E-RIT (99) 9 rev, para. 84: "The delegate of Finland observed that when Finland acceded to this Convention they could not provide for an oral procedure in some judicial instances, as required by the convention. They are now in a position to do so and withdraw the reservation except in some specific cases. The Chairman stated that any withdrawal would be welcomed."

concerning the Abolition of the Death Penalty (ETS No. 114) (28 April 1983)¹³, the delegate of the United Kingdom observed that Protocol itself provided for this reservation. He informed the Group that certain overseas territories of the United Kingdom have in their law a provision of death penalty in case of piracy or treason yet no such punishment has been applied in the last 50 years at least but they accepted they had to make the declaration when acceding.

69. Regarding the declaration of 7 May 1999 by France to the European Charter for Regional or Minority Languages (ETS n° 148), 5 December 1992¹⁴, the delegate of France

¹³ Notified on 28 May 1999. Deadline for reaction expires on 27 May 2000. Original text:

The United Kingdom accepts the said Convention for the United Kingdom of Great Britain and Northern Ireland, the Bailiwick of Guernsey, the Bailiwick of Jersey and the Isle of Man, being territories for whose international relations the United Kingdom is responsible.

¹⁴ Notified on 28 May 1999. Deadline for reaction expires on 27 May 2000. Original text:

France intends to make the following declaration in its instrument of ratification of the European Charter for Regional or Minority Languages:

1. *In so far as the aim of the Charter is not to recognise or protect minorities but to promote the European language heritage, and as the use of the term "groups" of speakers does not grant collective rights to speakers of regional or minority languages, the French Government interprets this instrument in a manner compatible with the Preamble to the Constitution, which ensures the equality of all citizens before the law and recognises only the French people, composed of all citizens, without distinction as to origin, race or religion.*

2. *The French Government interprets Article 7-1, paragraph d, and Articles 9 and 10 as posing a general principle which is not in conflict with Article 2 of the Constitution, pursuant to which the use of the French language is mandatory on all public-law corporations and private individuals in the exercise of a public service function, as well as on individuals in their relations with public administrations and services.*

3. *The French Government interprets Article 7-1, paragraph f, and Article 8 to mean that they preserve the optional nature of the teaching and study of regional or minority languages, as well as of the history and culture which is reflected by them, and that the purpose of this teaching is not to remove from pupils enrolled in schools on the national territory the rights and obligations applicable to all those attending establishments providing the public education service or associated therewith.*

4. *The French Government interprets Article 9-3 as not opposing the possible use only of the official French version, which is legally authoritative, of statutory texts made available in the regional or minority languages, by public-law corporations and private individuals in the exercise of a public service function, as well as by individuals in their relations with public administrations and services.*

France will specify in its instrument of ratification of the European Charter for Regional or Minority Languages, pursuant to Article 3-1 thereof, the regional or minority languages to which the measures to be selected in accordance with Article 2-2 shall apply. In conformity with Article 2-2, France intends to undertake to apply some or all of the following paragraphs or sub-paragraphs of Part III of the Charter:

Article 8:

Sub-paragraphs 1.a.iii, 1.b.iv, 1.c.iv, 1.d.iv, 1.e.i, 1.e.ii, 1.f.ii, 1.g, 1.h, 1.i

Paragraph 2

Article 9:

Paragraph 3

Article 10:

Sub-paragraphs 2.c, 2.d, 2.g

Article 11:

Sub-paragraphs 1.a.iii, 1.b.ii, 1.c.ii, 1.d, 1.e.ii, 1.f.ii, 1.g

Paragraph 2

Paragraph 3

Article 12:

Sub-paragraphs 1.a, 1.b, 1.c, 1.d, 1.e, 1.g

Paragraph 2

Paragraph 3

Article 13:

Sub-paragraphs 1.b, 1.c, 1.d

Sub-paragraphs 2.b, 2.e

referred to the last meeting report¹⁵. He stressed that the declaration was made at the time of signature due to a significant constitutional problem, which has blocked the ratification procedure. The Constitution does not recognise the concept of minority languages because the Republic is defined as being one and French. Furthermore the opinion of the Constitutional Council has been requested and they have decided that this Convention is not compatible with the French Constitution. He further observed that the declaration was made at signature but not confirmed at ratification and that the Constitutional Council decision has completely blocked the ratification possibilities.

70. Regarding the declaration of 7 May 1999 by Bulgaria to the Framework Convention for the Protection of National Minorities (ETS No. 157) (1 February 1995)¹⁶, the delegate of Bulgaria explained that this declaration was required by the Constitution. She further noted that the Bulgarian Parliament had ratified the convention together with the explanatory report in order to ensure the right interpretation.

71. The Secretariat informed the Group that that the relevant advisory committee for this convention held an exchange of views on the issue of reservations and that an expert report had been prepared by Professor Frowein and Dr Bank of the Max Planck Institute for Comparative Public Law and International Law. These experts concluded that this type of reservation and declaration should be dealt with in a pragmatic way and that the focus should be the end result of accepting such reservations and declarations in terms of rights of minorities.

72. In this connection, the delegate of Ireland observed that the protection of minorities is not incompatible with the principle of equality and that the International Court of Justice has recognised it on many occasions, as early as in 1930 (cf. case of the Albanian schools). Therefore they do not see them as incompatible if these declarations are made on the assumption that minorities' rights are against the principle.

73. The Group concluded consideration of outstanding reservations and declarations to international treaties and asked the Chairman to bring those reservations and declarations raising doubts as to their admissibility to the attention of the CAHDI.

5. Other business

74. The Chairman referred to the continuation of the DI-E-RIT work given that the Group had completed the tasks assigned to it, namely the preparation of a draft recommendation of the Committee of Ministers on responses to inadmissible reservations to international treaties and a paper on practical issues regarding the formulation of reservations to international treaties, and that the screening of outstanding reservations and declarations to international treaties should be transferred to CAHDI in the context of its operation as European observatory of reservations to international treaties as a regular feature of its agenda.

75. The delegate of Germany noted that the Group had proven very useful and that it could

Article 14:
Paragraph a
Paragraph b

¹⁵ See 19th CAHDI meeting report, document DI-E-RIT (99) 9 rev, para. 86.

¹⁶ Notified on 28 May 1999. Deadline for reaction expires on 27 May 2000. Original text:

Confirming its adherence to the values of the Council of Europe and the desire for the integration of Bulgaria into the European structures, committed to the policy of protection of human rights and tolerance to persons belonging to minorities, and their full integration into Bulgarian society, the National Assembly of the Republic of Bulgaria declares that the ratification and implementation of the Framework Convention for the Protection of National Minorities do not imply any right to engage in any activity violating the territorial integrity and sovereignty of the unitary Bulgarian State, its internal and international security.

be used for other purposes in addition to reservations to international treaties.

76. The delegate of the United Kingdom agreed with the previous statements and stressed that given that the Group had successfully completed the tasks assigned to it, it should not continue in its present form. He suggested that there may be room for a subordinate group of the CAHDI but on other matters.

77. The Secretariat informed the Group that any new tasks for the DI-E-RIT beyond the field of reservations to international treaties would require new specific terms of reference for the Group and observed that this issue would be considered by the CAHDI at its next meeting, 12-13 September 2000.

7. Date and place of the next meeting

78. The delegate of Finland suggested inviting Mr Corell or his representative to the next meeting of the DI-E-RIT or possibly of the CAHDI in order to hold an exchange of views regarding the UN SG practice as depositary of multilateral treaties.

79. Further to that, the delegate of Spain suggested inviting Mr Guillaume, President of the ICJ for an exchange of views with the members of the DI-E-RIT or possibly of the CAHDI.

80. The DI-E-RIT decided to refer this issue to the CAHDI.

8. Statement of the Chairman concerning the 2nd meeting of the DI-E-RIT

81. The Chairman informed the Group that he would be reporting to the next CAHDI meeting in accordance with the Group's decisions¹⁷.

9. Closing

82. The Chairman thanked participants for their contribution to the success of the activity on reservations to international treaties and closed the meeting.

¹⁷ See 19th CAHDI meeting report, item 6.a, document CAHDI (2000) paras. 66-82.

Appendix 1

LIST OF PARTICIPANTS

Please contact the Secretariat : cahdi@coe.int

Appendix 2**AGENDA****Group of experts on reservations to international treaties (DI-E-RIT)****3rd meeting****Berlin, 10 March 2000**

1. Opening of the meeting by the Chairman, Ambassador Magnuson
2. Adoption of the agenda **DI-E-RIT (2000) OJ 1**
List of documents considered by the DI-S-RIT/DI-E-RIT **DI-E-RIT (99) List docs.**
Specific terms of reference of DI-E-RIT **CAHDI (2000) 1**
Report of the last meeting of the DI-E-RIT (Strasbourg, 6 September 1999) **DI-E-RIT (99) 9**
Recommendation No. R (99) 13 on responses to inadmissible
reservations to international treaties **R. No. (99) 13**
3. Activity of the International Law Commission on reservations to normative multilateral treaties including human rights treaties
Report of the 51st Session of the ILC (Extract) **DI-E-RIT (2000) Inf. 1**
4. Key issues concerning the formulation of reservations to international treaties
Document submitted by the delegation of The Netherlands **DI-E-RIT (99) 5 rev**
5. European Observatory of Reservations to International Treaties
List of outstanding reservations and declarations to international treaties **DI-E-RIT (2000) 1**
6. Other business
7. Date and place of the next meeting
8. Statement of the Chairman concerning the 5th meeting of the DI-E-RIT
9. Closing

Appendix 3**PRACTICAL ISSUES REGARDING RESERVATIONS TO INTERNATIONAL TREATIES****I. Negotiations Phase****1. Formulate an appropriate reservations clause**

A reservations clause, although it is normally put in the “Final Clauses” section of a Convention, deals with substantive issues. Parties need to consider formulating an appropriate reservations-clause during negotiations. This implies choosing between the options offered by Article 19.a or 19.b VCLT, and formulating a reservations provision accordingly. Article 19.c is basically a residual rule, applicable when no specific rule on reservations has been agreed.

In considering what rule on reservations to formulate, States may wish to take into account the substance of the treaty, and in particular, the core elements of an international instrument. States may wish to prohibit general reservations, for example, by requiring clarification of the reason for formulating a reservation (cf. Article 64.1 European Convention of Human Rights). A reservation clause takes into account issues that may, in future, become the subject of the reservations made.

States may need to consider the implications of a reservations clause on the future role of the depositary, and the future role of the other States Parties with respect to reservations.

A State’s position on reservation will obviously be inspired by its domestic (constitutional) rules on making reservations.

Depending on the substance of a treaty, States may wish to consider whether a “sunset” reservations clause would be appropriate. Such a provision contains a time limit for the validity of a reservation. This means that, unless a reserving State takes a particular step (such as renewing its reservation), the reservation will “disappear” after a certain period of time. From the point of view of limiting the impact of reservations, a “sunset” provision may have important advantages.

2. Establish a position on a future reservations regime before starting negotiations

It is wise for delegations to establish their position on a reservations clause prior to starting negotiations, on the basis of their views on the core obligations of an international instrument. However, the development of the negotiations may necessitate further choices with respect to reservations clauses.

II. Signature Phase**3. Consider whether to make reservations on signature**

Once negotiations are concluded, States need to decide on an individual basis whether a reservation on signature needs to be made. Reservations made at signature have to be repeated on expressing consent to be bound if they are to enter into force (Article 23.2 VCLT).

4. Consider whether to react to reservations made on signature

If reservations have been made on signature, other Parties may need to consider, individually or in a co-ordinated manner, whether there is a need to object to such a reservation (Article 23.3 VCLT).

5. Functions of the depositary

The role of the depositary in the signature phase is to receive reservations and declarations, and to execute the administrative functions related thereto.

The depositary will notify the reservations made on signature to other potential Parties and to States that have already expressed consent to be bound.

The depositary will receive and notify the objections made by other signatory States to reservations made on signature to the other States expressing consent to be bound.

III. **Ratification Phase**

6. Internal considerations with respect to reservations

Prior to expressing consent to be bound, States may wish to consider the need to adapt national legislation in order to prevent the formulation of reservations.

States may consider the possibility of making a “proper” interpretative declaration (for the distinction see Article 2.1.d VCLT), instead of making a reservation.

Prior to submitting a reservation, a State needs to establish that the intended reservation will comply with the convention’s rules or with the general law of treaties (Art. 19).

7. Raising an objection to a reservation

When considering raising an objection to a reservation, States may wish to establish, individually or in a co-ordinated manner, a dialogue with a State that has made a reservation, in order to suggest its reconsideration of that reservation with a view to withdrawing it, within the time limit set by Article 20.5 VCLT.

On expressing consent to be bound, a State needs to consider whether there is a need to object to a reservation previously made by other Parties (art. 20.5 VCLT). They may also consider whether it is desirable to raise an objection in co-ordination with other States (through COJUR or CAHDI, for example).

States that are parties need to consider whether there is a need to object to a reservation being made by a new State Party (Article 20.5 VCLT).

States may consider co-ordinating the formulation of model objections to particular (types of) reservations. Possibilities to do so will clearly depend on a shared opinion on a particular (type of) reservation.

8. Denunciation of a treaty and re-ratification with reservations

Recently, there have been instances where States have denounced a treaty to which they had not made reservations with a view to re-acceding to the treaty with reservations. The VCLT has no specific rules covering this situation. The validity of this action is controversial.

The view has been expressed that this procedure is circumventing the rule that reservations

may only be made when expressing consent to be bound. The view has also been expressed that, although highly undesirable, there are no formal rules against such a procedure.

9. Role of the depositary in the ratification phase

The depositary is to receive reservations and declarations made by the State Parties on the occasion of expressing consent to be bound.

The depositary has to establish whether a reservation complies with the treaty's rules on reservations (see Articles 19.a and 19.b VCLT). If a reservation is questionable in the light of the treaty's rules on reservations the depositary will have to take action in accordance with the VCLT.

The depositary will notify reservations and declarations made to the State Parties and to States entitled to sign the treaty.

The depositary will receive the objections made to reservations and notify all States Parties of such objections.

IV. Post-Ratification Phase

10. Modification of reservations

Modification of a reservation is acceptable when it restricts the scope of the original reservation. A modification that expands the scope of the original reservation is contrary to the rule that reservations may only be made when expressing consent to be bound (Art. 2.1.d VCLT).

By analogy with Article 20 para. 5 VCLT, a 12 months time limit should be applicable to the (non)acceptance of such modified reservations.

11. Withdrawal of reservations

States may wish to consider the withdrawal of their reservations and interpretative declarations at regular intervals (Article 22.1 VCLT).

12. Withdrawal of objection

In case a reservation (or interpretative declaration) has been withdrawn, States having made an objection to that reservation may withdraw their objection. This may not be required by law, but should be understood as a gesture of courtesy (article 22.2 VCLT).

13. No new reservations may be made after ratification

As reservations may only be made at the time of expressing consent to be bound (Article 2.1.d VCLT states, "When signing, ratifying, accepting, approving or acceding to a treaty.."), consequently, reservations may not be made at a later stage. Presumably, the depositary has a role with respect to alerting other State Parties to such out-of-time reservations.

14. Establish a domestic mechanism for monitoring subsequent reservations (formulated by other States)

States may wish to establish a domestic "early-warning" mechanism with respect to reservations or declarations made by other States, in order to be able to react in time (Article 20.5 VCLT: "period of twelve months") to such reservations or declarations by formulating objections, or by starting consultations with the State concerned.

On the basis of consultations with other sections of the Ministry of Foreign Affairs, or with other

government departments, a general policy on acceptable and unacceptable reservations and declarations may be established for guidance.

15. (Co-ordinated) action with respect to objections made by other States

States may wish to establish, either individually or in a co-ordinated manner, dialogue with a State that has made a reservation, in order to suggest its reconsideration of a reservation with a view to withdrawing it. Such consultation needs to be undertaken at an early stage in order to remain within the time-limit set by the Vienna Convention if objections need to be made (Article 20.5 VCLT).

16. After ratification of an instrument by a Party, no new reservations may be made by that Party

The rule that reservations may not be made at a later stage (see Article 2.1.d VCLT) puts an obligation on the depositary to take the necessary steps once that is the case. The depositary should not accept such “late” reservations, and should return them to the author State. Alternatively, the depositary could notify other State Parties of such a “late” reservation indicating the controversial nature of such a reservation.

Recently a number of States have started to explore ways around this prohibition, by denouncing a treaty and re-ratifying the same treaty while formulating reservations.

KEY ISSUES REGARDING RESERVATIONS AT THE VARIOUS STAGES OF THE PROCESS OF CONCLUDING TREATIES (NEGOTIATION, SIGNATURE AND RATIFICATION) AND POST-RATIFICATION STAGE

	NEGOTIATION	SIGNATURE	RATIFICATION	POST-RATIFICATION
LEGAL EFFECT	<p>1. Individually/Co-ordinated Formulate appropriate reservation clauses (Art. 19.a or 19.b; or 19.c)¹⁸</p> <p>Issues:</p> <ul style="list-style-type: none"> - Substance of the convention - Anticipated motives for making reservations - Future role of depositaries - Future role of the Parties - "Sunset" provision on reservations (?) - Constitutional rules on treaty-making 	<p>3. Individually Decide whether making a reservation on signature is necessary (Art. 23.2)</p> <p>4. Individually/Co-ordinated Consider the need to object to a reservation made on signature (Art. 23.2)</p>	<p>6. Individually</p> <p>A. Decide whether there is a (domestic) need for making a reservation</p> <p>B. Consider the possibility of making a "proper" interpretative declaration instead (Art. 2.1.d)</p> <p>C. Establish that the intended reservation will comply with the convention's rules or with the general law of the treaties (Art. 19)</p> <p>7. Individually/Co-ordinated Consider the need to object to a reservation previously made by other Parties (Art. 20.5)</p> <p>8. Individually Denunciation of a treaty and re-ratification with reservations</p>	<p>10. Individually Modification of reservations</p> <p>11. Individually Withdrawal of reservation (Art. 22.1)</p> <p>12. Individually Withdrawal of objection (Art. 22.2)</p> <p>13. No new reservations may be made after ratification (Art. 2.1.d)</p>
POLITICAL ACTION	<p>2. Individually/Co-ordinated Establish a position on a future reservations regime before negotiations</p>			<p>14. Individually Establish a domestic mechanism for monitoring subsequent reservations</p> <p>Issues:</p> <ul style="list-style-type: none"> - Early warning, time limit in Art. 20.5 - Consultations with other sections or ministries - Political reactions with the reserving State <p>15. Individually/Co-ordinated Establish dialogue with a reserving Party in order to suggest reconsideration or withdrawal of the reservations (Art. 20.5)</p>
ROLE OF THE DEPOSITORIES		<p>5. Functions</p> <p>A. Receive reservations and declaration</p> <p>B. Publish reservations</p> <p>C. Receive and publish objections to reservations</p>	<p>9. Functions</p> <p>A. Receive reservations and declarations</p> <p>B. Establish whether the reservation complies with the treaty's reservation clause (Art. 19.a or b)</p> <p>C. Publish the reservations</p> <p>D. Receive and publish the objections made to reservations</p>	<p>16. No new reservations may be made after ratification (Art. 2.1.d)</p>

¹⁸ All articles concern the Vienna Convention on the Law of the Treaties. See Appendix hereafter.

Appendix**Convention on the Law of Treaties¹⁹****Article 2*****Use of terms***

For the purposes of the present Convention:

(d) “reservation” means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty; whereby it purports to exclude or to modify the legal effects of certain provisions of the treaty in their application to that State.

Article 19***Formulation of reservations***

A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

(a) the reservation is prohibited by the treaty; (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or (c) in cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

Article 20***Acceptance of and objection to reservations***

1. A reservation expressly authorised by a treaty does not require any subsequent acceptance by the other contracting States unless the treaty so provides.

2. When it appears from the limited number of the negotiating States and the object and purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

3. When a treaty is a constituent instrument of an international organization and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organization.

4. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:

(a) acceptance by another contracting State of a reservation constitutes the reserving State a party to the treaty in relation to that other State if or when the treaty is in force for those States;

(b) an objection by another contracting State to a reservation does not preclude the entry into force of the treaty as between the

¹⁹ Signed in Vienna on 23 May 1969 UN Doc. A/Conf.39/27. UN Conference on the Law of the Treaties. Official Records. Documents of the Conference (A/Conf.39/11 Add.2) United Nations, New York 1971, pp. 289-301.

objecting and reserving States unless a contrary intention is definitely expressed by the objecting State;

(c) an act expressing a State's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.

5. For the purposes of paragraphs 2 and 4 and unless the treaty otherwise provides, a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

Article 21

Legal effects of reservations and of objections to reservations

1. A reservation established with regard to another party in accordance with articles 19, 20 and 23:

(a) modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and

(b) modifies those provisions to the same extent for that other party in its relations with the reserving State.

2. The reservation does not modify the provisions of the treaty for the other parties to the treaty *inter se*.

3. When a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation.

Article 22

Withdrawal of reservations and of objections to reservations

1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State which has accepted the reservation is not required for its withdrawal.

2. Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.

3. Unless the treaty otherwise provides, or it is otherwise agreed:

(a) the withdrawal of a reservation becomes operative in relation to another contracting State only when notice of it has been received by that State; (b) the withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State which formulated the reservation.

Article 23

Procedure regarding reservations

1. A reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting States and other States entitled to become parties to the treaty.
2. If formulated when signing the treaty subject to ratification, acceptance or approval, a reservation must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.
3. An express acceptance of, or an objection to, a reservation made previously to confirmation of the reservation does not itself require confirmation.
4. The withdrawal of a reservation or of an objection to a reservation must be formulated in writing.