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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW

(CAHDI)

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

58th meeting
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Public International Law Division
Directorate of Legal Advice and Public International Law, DLAPIL

TABLE OF CONTENTS

FOREWORD	3
TABLE OF OBJECTIONS	4
APPENDICES	7
APPENDIX I - RESERVATIONS AND DECLARATIONS TO TREATIES CONCLUDED OUTSIDE THE COUNCIL OF EUROPE	7
A. FRAMEWORK AGREEMENT ON FACILITATION OF CROSS-BORDER PAPERLESS TRADE IN ASIA AND THE PACIFIC (2016)	7
1. AZERBAIJAN	7
B. CONVENTION ON THE USE OF ELECTRONIC COMMUNICATIONS IN INTERNATIONAL CONTRACTS (2005).....	7
2. AZERBAIJAN	7
C. CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (1984).....	7
3. THE BAHAMAS	7
D. INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1966).....	8
4. QATAR	8
E. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (1966).....	9
5. QATAR	9
APPENDIX II - RESERVATIONS AND DECLARATIONS TO TREATIES CONCLUDED WITHIN THE COUNCIL OF EUROPE	11
F. COUNCIL OF EUROPE CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE (2011) – CETS No. 210	11
6. CROATIA	11
G. CONVENTION ON CYBERCRIME (2001) – ETS No. 185	11
7. ARGENTINA	11
H. EUROPEAN CONVENTION FOR THE PROTECTION OF ANIMALS KEPT FOR FARMING PURPOSES (1976) – ETS No. 87	12
8. TURKEY	12

FOREWORD

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

This document presents the reactions of member and observer States of the CAHDI to reservations and declarations subject to objection, examined by the Committee at its previous meetings and for which the deadline for objection has expired, since the last CAHDI meeting.

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



TABLE OF OBJECTIONS**LEGEND**

Sign. : Made upon signature

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

TREATIES**RESERVATIONS AND DECLARATIONS TO TREATIES CONCLUDED OUTSIDE THE COUNCIL OF EUROPE**

- A. Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific (2016)
- B. Convention on the Use of Electronic Communications in International Contracts (2005)
- C. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- D. International Covenant on Economic, Social and Cultural Rights (1966)
- E. International Covenant on Civil and Political Rights (1966)

RESERVATIONS AND DECLARATIONS TO TREATIES CONCLUDED OUTSIDE THE COUNCIL OF EUROPE

- F. Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (2011) – CETS No. 210
- G. Convention on Cybercrime (2001) – ETS No. 185
- H. European Convention for the Protection of Animals Kept for Farming Purposes (1976) – ETS No. 87

APPENDICES**APPENDIX I - RESERVATIONS AND DECLARATIONS TO TREATIES CONCLUDED
OUTSIDE THE COUNCIL OF EUROPE****A. FRAMEWORK AGREEMENT ON FACILITATION OF CROSS-BORDER PAPERLESS
TRADE IN ASIA AND THE PACIFIC (2016)****1. AZERBAIJAN**

2 March 2018, 29 March 2018, 29 March 2019

Declaration

“The Republic of Azerbaijan declares that the provisions of the Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific shall not be applied by the Republic of Azerbaijan in respect of the Republic of Armenia.”

**B. CONVENTION ON THE USE OF ELECTRONIC COMMUNICATIONS IN INTERNATIONAL
CONTRACTS (2005)****2. AZERBAIJAN**

18 September 2018, 24 September 2018, 24 September 2019

Declaration

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

In accordance with Article 19, paragraph 1 of the Convention, the Republic of Azerbaijan declares that it will apply this Convention only if the States referred to article 1, paragraph 1 of the Convention are the Contracting States to this Convention.

In accordance with Article 19, paragraph 2 of the Convention, the Republic of Azerbaijan will not apply the Convention to transactions for which a notarised form or State registration is required under the legislation of the Republic of Azerbaijan.

The Republic of Azerbaijan understands international contracts covered by the Convention as civil law contracts involving foreign citizens and legal entities, or having a foreign element.”

**C. CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING
TREATMENT OR PUNISHMENT (1984)****3. THE BAHAMAS**

31 May 2018, 1 June 2018, 1 June 2019

Reservations

“The Government of the Commonwealth of The Bahamas does not recognize the competence of the Committee against Torture as provided for in Article 20 of the UNCAT.

The Government of the Commonwealth of The Bahamas does not consider itself bound by paragraph 1 of Article 30 of the Convention.

The Government of the Commonwealth of The Bahamas reserves the right to award compensation to torture victims referred to in Article 14 of the Convention against Torture only at the discretion of the Supreme or Appellate Courts, or the Attorney-General of the Commonwealth of The Bahamas.”

Note by the CAHDI Secretariat: Please note that the reservations made by The Bahamas in the first two paragraphs above are allowed by Articles 28(1) and 30(2), respectively, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

D. INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1966)

4. QATAR

21 May 2018, 21 May 2018, 21 May 2019

Reservation:

“The State of Qatar does not consider itself bound by the provisions of Article 3 of the International Covenant on Economic, Social and Cultural Rights, for they contravene the Islamic Sharia with regard to questions of inheritance and birth.”

Statement:

“The State of Qatar shall interpret that what is meant by “trade unions” and their related issues stated in Article 8 of the International Covenant on Economic, Social and Cultural Right[s], is in line with the provisions of the Labour Law and national legislation. The State of Qatar reserves the right to implement that article in accordance with such understanding.”

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 8

1. The States Parties to the present Covenant undertake to ensure:
 - (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
 - (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.
2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State. 3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

E. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (1966)

5. QATAR

21 May 2018, 21 May 2018, 21 May 2019

Reservations:

“The State of Qatar does not consider itself bound by the following provisions of the International Covenant on Civil and Political Rights for the below mentioned reasons:

1. Article 3 with regard to provisions related to the inheritance of power, for it contravenes the provisions of article 8 of the Constitution.
2. Article 23.4, for it contravenes the Islamic Sharia.”

Statements:

1. “The State of Qatar shall interpret the term “punishment” in Article 7 of the Covenant in accordance with the applicable legislation of Qatar and the Islamic Sharia.
2. The State of Qatar shall interpret Article 18, paragraph 2, of the Covenant based on the understanding that it does not contravene the Islamic Sharia. The State of Qatar reserves the right to implement such paragraph in accordance with such understanding.
3. The State of Qatar shall interpret that the term “trade unions” and all related matters, as mentioned in Article 22 of the Covenant, are in line with the Labor Law and national legislation. The State of Qatar reserves the right to implement such article in accordance with such understanding.
4. The State of Qatar shall interpret Article 23, paragraph 2, of the Covenant in a manner that does not contravene the Islamic Sharia. The State of Qatar reserves the right to implement such paragraph in accordance with such understanding.
5. The State of Qatar shall interpret Article 27 of the Covenant that professing and practicing one's own religion require that they do not violate the rules of public order and public morals, the protection of public safe[t]y and public health, or the rights of and basic freedoms of others.”

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 18

[...]

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

[...]

2. *The right of men and women of marriageable age to marry and to found a family shall be recognized.*

[...]

4. *States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.*

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 practice their own religion, or to use their own language.

APPENDIX II - RESERVATIONS AND DECLARATIONS TO TREATIES CONCLUDED WITHIN THE COUNCIL OF EUROPE**F. COUNCIL OF EUROPE CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE (2011) – STCE No. 210****6. CROATIA**

12 June 2018, 15 June 2018, 15 June 2019

Interpretative declaration

“The Republic of Croatia considers that the aim of the Convention is the protection of women against all forms of violence, as well as the prevention, prosecution and elimination of violence against women and domestic violence.

The Republic of Croatia considers that the provisions of the Convention do not include an obligation to introduce gender ideology into the Croatian legal and educational system, nor the obligation to modify the constitutional definition of marriage.

The Republic of Croatia considers that the Convention is in accordance with the provisions of the Constitution of the Republic of Croatia, in particular with the provisions on the protection of human rights and fundamental freedoms, and shall apply the Convention taking into account the aforementioned provisions, principles and values of the constitutional order of the Republic of Croatia”.

G. CONVENTION ON CYBERCRIME (2001) – ETS No. 185**7. ARGENTINA**

5 June 2018, 8 June 2018, 8 June 2019

Reservations and declarations

“The Argentine Republic makes a reservation to Article 6.1.b of the Convention on Cybercrime and declares that it’s not transposable to its jurisdiction because it contains an anticipatory assumption of the sanction since preparatory actions are established as criminal offences, which is unknown in Argentina’s legislative tradition in criminal legal matters.

The Argentine Republic makes a reservation to Articles 9.1.d, 9.2.b and 9.2.c of the Convention on Cybercrime and declares that they are not transposable to its jurisdiction because they contain anticipatory assumptions inconsistent with the Criminal Code in force, in accordance with the reform introduced by Law 26.38.

The Argentine Republic makes a partial reservation to Article 9.1.e of the Convention on Cybercrime and declares that it’s not transposable to its jurisdiction because, in accordance with the legislation in force until this date, this article is only applicable when the manifest purpose of the possession in question is the distribution or commercialisation (Article 128, second paragraph, of the Criminal Code)]

The Argentine Republic makes a reservation to Article 22.1.d of the Convention on Cybercrime and declares that it’s not transposable to its jurisdiction because its content differs from the rules governing the definition of national criminal jurisdiction.

The Argentine Republic makes a reservation to Article 29.4 of the Convention on Cybercrime and declares that it’s not transposable to its jurisdiction because the requirement of dual criminality is

one of the fundamental bases of the Law on International Cooperation in Criminal Matters No. 24.767 for the kind of cooperation measures provided for in the article and paragraph mentioned.

In accordance with the provisions of Article 24.7 of the Convention, the Government of Argentina designates as responsible authority the Directorate for International Mutual Legal Assistance of the Ministry of Foreign Affairs and Worship of the Argentine Republic.

In accordance with the provisions of Article 27.2.c of the Convention, the Government of Argentina designates as responsible authority the Directorate for International Mutual Legal Assistance of the Ministry of Foreign Affairs and Worship of the Argentine Republic”.

Note by the CAHDI Secretariat: Please note that the reservation made by Argentina in the third paragraph above was withdrawn with effect of 30 July 2018.

Article 42 – Reservations

*By a written notification addressed to the Secretary General of the Council of Europe, any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of the reservation(s) provided for in **Article 4, paragraph 2, Article 6, paragraph 3, Article 9, paragraph 4, Article 10, paragraph 3, Article 11, paragraph 3, Article 14, paragraph 3, Article 22, paragraph 2, Article 29, paragraph 4, and Article 41, paragraph 1.** No other reservation may be made.* (emphasis added)

H. EUROPEAN CONVENTION FOR THE PROTECTION OF ANIMALS KEPT FOR FARMING PURPOSES (1976) – ETS No. 87

8. TURKEY

14 May 2018, 18 May 2018, 18 May 2019

Declaration

“Turkey declares that its ratification of the “European Convention for the Protection of Animals kept for Farming Purposes” (ETS No. 87) neither amounts to any form of recognition of the Greek Cypriot Administration’s pretention to represent the defunct “Republic of Cyprus” as party to that Convention, nor should it imply any obligation on the part of Turkey to enter into any dealing with the so-called Republic of Cyprus within the framework of the said Convention”.