



European Treaty Series - No. 190

PROTOCOL AMENDING
THE EUROPEAN CONVENTION
ON THE SUPPRESSION
OF TERRORISM

Strasbourg, 15.V.2003

The member States of the Council of Europe, signatory to this Protocol,

Bearing in mind the Committee of Ministers of the Council of Europe's Declaration of 12 September 2001 and its Decision of 21 September 2001 on the Fight against International Terrorism, and the Vilnius Declaration on Regional Co-operation and the Consolidation of Democratic Stability in Greater Europe adopted by the Committee of Ministers at its 110th Session in Vilnius on 3 May 2002;

Bearing in mind the Parliamentary Assembly of the Council of Europe's Recommendation 1550 (2002) on Combating terrorism and respect for human rights;

Bearing in mind the General Assembly of the United Nations Resolution A/RES/51/210 on measures to eliminate international terrorism and the annexed Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, and its Resolution A/RES/49/60 on measures to eliminate international terrorism and the Declaration on Measures to Eliminate International Terrorism annexed thereto;

Wishing to strengthen the fight against terrorism while respecting human rights, and mindful of the Guidelines on human rights and the fight against terrorism adopted by the Committee of Ministers of the Council of Europe on 11 July 2002;

Considering for that purpose that it would be appropriate to amend the European Convention on the Suppression of Terrorism (ETS No. 90) opened for signature in Strasbourg on 27 January 1977, hereinafter referred to as "the Convention";

Considering that it would be appropriate to update the list of international conventions in Article 1 of the Convention and to provide for a simplified procedure to subsequently update it as required;

Considering that it would be appropriate to strengthen the follow-up of the implementation of the Convention;

Considering that it would be appropriate to review the reservation regime;

Considering that it would be appropriate to open the Convention to the signature of all interested States,

Have agreed as follows:

Article 1

- 1 The introductory paragraph to Article 1 of the Convention shall become paragraph 1 of this article. In sub-paragraph b of this paragraph, the term "signed" shall be replaced by the term "concluded" and sub-paragraphs c, d, e and f of this paragraph shall be replaced by the following sub-paragraphs:

- "c an offence within the scope of the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, adopted at New York on 14 December 1973;
- d an offence within the scope of the International Convention Against the Taking of Hostages, adopted at New York on 17 December 1979;

- e an offence within the scope of the Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980;
 - f an offence within the scope of the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal on 24 February 1988;”.
- 2 Paragraph 1 of Article 1 of the Convention shall be supplemented by the following four sub-paragraphs:
- “g an offence within the scope of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10 March 1988;
 - h an offence within the scope of the 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;
 - i an offence within the scope of the International Convention for the Suppression of Terrorist Bombings, adopted at New York on 15 December 1997;
 - j an offence within the scope of the International Convention for the Suppression of the Financing of Terrorism, adopted at New York on 9 December 1999.”.
- 3 The text of Article 1 of the Convention shall be supplemented by the following paragraph:
- “2 Insofar as they are not covered by the conventions listed under paragraph 1, the same shall apply, for the purpose of extradition between Contracting States, not only to the commission of those principal offences as a perpetrator but also to:
- a the attempt to commit any of these principal offences;
 - b the participation as an accomplice in the perpetration of any of these principal offences or in an attempt to commit any of them;
 - c organising the perpetration of, or directing others to commit or attempt to commit, any of these principal offences.”.

Article 2

Paragraph 3 of Article 2 of the Convention shall be amended to read as follows:

- “3 The same shall apply to:
- a the attempt to commit any of the foregoing offences;
 - b the participation as an accomplice in any of the foregoing offences or in an attempt to commit any such offence;
 - c organising the perpetration of, or directing others to commit or attempt to commit, any of the foregoing offences.”.

Article 3

- 1 The text of Article 4 of the Convention shall become paragraph 1 of this article and a new sentence shall be added at the end of this paragraph as follows: “Contracting States undertake to consider such offences as extraditable offences in every extradition treaty subsequently concluded between them.”.
- 2 The text of Article 4 of the Convention shall be supplemented by the following paragraph:
 - “2 When a Contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State with which it has no extradition treaty, the requested Contracting State may, at its discretion, consider this Convention as a legal basis for extradition in relation to any of the offences mentioned in Articles 1 or 2.”.

Article 4

- 1 The text of Article 5 of the Convention shall become paragraph 1 of this article.
- 2 The text of Article 5 of the Convention shall be supplemented by the following paragraphs:
 - “2 Nothing in this Convention shall be interpreted as imposing on the requested State an obligation to extradite if the person subject of the extradition request risks being exposed to torture.
 - 3 Nothing in this Convention shall be interpreted either as imposing on the requested State an obligation to extradite if the person subject of the extradition request risks being exposed to the death penalty or, where the law of the requested State does not allow for life imprisonment, to life imprisonment without the possibility of parole, unless under applicable extradition treaties the requested State is under the obligation to extradite if the requesting State gives such assurance as the requested State considers sufficient that the death penalty will not be imposed or, where imposed, will not be carried out, or that the person concerned will not be subject to life imprisonment without the possibility of parole.”.

Article 5

A new article shall be inserted after Article 8 of the Convention and shall read as follows:

“Article 9

The Contracting States may conclude between themselves bilateral or multilateral agreements in order to supplement the provisions of this Convention or to facilitate the application of the principles contained therein.”.

Article 6

- 1 Article 9 of the Convention shall become Article 10.
- 2 Paragraph 1 of new Article 10 shall be amended to read as follows:
 - “The European Committee on Crime Problems (CDPC) is responsible for following the application of the Convention. The CDPC:
 - a shall be kept informed regarding the application of the Convention;

- b shall make proposals with a view to facilitating or improving the application of the Convention;
- c shall make recommendations to the Committee of Ministers concerning the proposals for amendments to the Convention, and shall give its opinion on any proposals for amendments to the Convention submitted by a Contracting State in accordance with Articles 12 and 13;
- d shall, at the request of a Contracting State, express an opinion on any question concerning the application of the Convention;
- e shall do whatever is necessary to facilitate a friendly settlement of any difficulty which may arise out of the execution of the Convention;
- f shall make recommendations to the Committee of Ministers concerning non-member States of the Council of Europe to be invited to accede to the Convention in accordance with Article 14, paragraph 3;
- g shall submit every year to the Committee of Ministers of the Council of Europe a report on the follow-up given to this article in the application of the Convention.”.

3 Paragraph 2 of new Article 10 shall be deleted.

Article 7

1 Article 10 of the Convention shall become Article 11.

2 In the first sentence of paragraph 1 of new Article 11, the terms “Article 9, paragraph 2” shall be replaced by the terms “Article 10.e, or by negotiation”. In the second sentence of this paragraph, the term “two” shall be deleted. The remaining sentences of this paragraph shall be deleted.

3 Paragraph 2 of new Article 11 shall become paragraph 6 of this article. The sentence “Where a majority cannot be reached, the referee shall have a casting vote” shall be added after the second sentence and in the last sentence the terms “Its award” shall be replaced by the terms “The tribunal’s judgement”.

4 The text of new Article 11 shall be supplemented by the following paragraphs:

“2 In the case of disputes involving Parties which are member States of the Council of Europe, where a Party fails to nominate its arbitrator in pursuance of paragraph 1 of this article within three months following the request for arbitration, an arbitrator shall be nominated by the President of the European Court of Human Rights at the request of the other Party.

3 In the case of disputes involving any Party which is not a member of the Council of Europe, where a Party fails to nominate its arbitrator in pursuance of paragraph 1 of this article within three months following the request for arbitration, an arbitrator shall be nominated by the President of the International Court of Justice at the request of the other Party.

4 In the cases covered by paragraphs 2 and 3 of this article, where the President of the Court concerned is a national of one of the Parties to the dispute, this duty shall be carried out by the Vice-President of the Court, or if the Vice-President is a national of one of the Parties to the dispute, by the most senior judge of the Court who is not a national of one of the Parties to the dispute.

- 5 The procedures referred to in paragraphs 2 or 3 and 4 above apply, *mutatis mutandis*, where the arbitrators fail to agree on the nomination of a referee in accordance with paragraph 1 of this article.”.

Article 8

A new article shall be introduced after new Article 11 and shall read as follows:

“Article 12

- 1 Amendments to this Convention may be proposed by any Contracting State, or by the Committee of Ministers. Proposals for amendment shall be communicated by the Secretary General of the Council of Europe to the Contracting States.
- 2 After having consulted the non-member Contracting States and, if necessary, the CDPC, the Committee of Ministers may adopt the amendment in accordance with the majority provided for in Article 20.d of the Statute of the Council of Europe. The Secretary General of the Council of Europe shall submit any amendments adopted to the Contracting States for acceptance.
- 3 Any amendment adopted in accordance with the above paragraph shall enter into force on the thirtieth day following notification by all the Parties to the Secretary General of their acceptance thereof.”.

Article 9

A new article shall be introduced after new Article 12 and shall read as follows:

“Article 13

- 1 In order to update the list of treaties in Article 1, paragraph 1, amendments may be proposed by any Contracting State or by the Committee of Ministers. These proposals for amendment shall only concern treaties concluded within the United Nations Organisation dealing specifically with international terrorism and having entered into force. They shall be communicated by the Secretary General of the Council of Europe to the Contracting States.
- 2 After having consulted the non-member Contracting States and, if necessary the CDPC, the Committee of Ministers may adopt a proposed amendment by the majority provided for in Article 20.d of the Statute of the Council of Europe. The amendment shall enter into force following the expiry of a period of one year after the date on which it has been forwarded to the Contracting States. During this period, any Contracting State may notify the Secretary General of any objection to the entry into force of the amendment in its respect.
- 3 If one-third of the Contracting States notifies the Secretary General of an objection to the entry into force of the amendment, the amendment shall not enter into force.
- 4 If less than one-third of the Contracting States notifies an objection, the amendment shall enter into force for those Contracting States which have not notified an objection.
- 5 Once an amendment has entered into force in accordance with paragraph 2 of this article and a Contracting State has notified an objection to it, this amendment shall come into force in respect of the Contracting State concerned on the first day of the month following the date on which it has notified the Secretary General of the Council of Europe of its acceptance.”.

Article 10

- 1 Article 11 of the Convention shall become Article 14.
- 2 In the first sentence of paragraph 1 of new Article 14 the terms “member States of the Council of Europe” shall be replaced by the terms “member States of and Observer States to the Council of Europe” and in the second and third sentences, the terms “or approval” shall be replaced by the terms “, approval or accession”.
- 3 The text of new Article 14 shall be supplemented by the following paragraph:
 - “3 The Committee of Ministers of the Council of Europe, after consulting the CDPC, may invite any State not a member of the Council of Europe, other than those referred to under paragraph 1 of this article, to accede to the Convention. The decision shall be taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.”.
- 4 Paragraph 3 of new Article 14 shall become paragraph 4 of this article, and the terms “or approving” and “or approval” shall be replaced respectively by the terms “, approving or acceding” and “, approval or accession”.

Article 11

- 1 Article 12 of the Convention shall become Article 15.
- 2 In the first sentence of paragraph 1 of new Article 15, the terms “or approval” shall be replaced by the terms “, approval or accession”.
- 3 In the first sentence of paragraph 2 of new Article 15, the terms “or approval” are replaced by the terms “, approval or accession”.

Article 12

- 1 Reservations to the Convention made prior to the opening for signature of the present Protocol shall not be applicable to the Convention as amended by the present Protocol.
- 2 Article 13 of the Convention shall become Article 16.
- 3 In the first sentence of paragraph 1 of new Article 16 the terms “Party to the Convention on 15 May 2003” shall be added before the term “may” and the terms “of the Protocol amending the Convention” shall be added after the term “approval”. A second sentence shall be added after the terms “political motives” and shall read: “The Contracting State undertakes to apply this reservation on a case-by-case basis, through a duly reasoned decision and taking into due consideration, when evaluating the character of the offence, any particularly serious aspects of the offence, including:”. The remainder of the first sentence shall be deleted, with the exception of sub-paragraphs a, b and c.
- 4 The text of new Article 16 shall be supplemented by the following paragraph:
 - “2 When applying paragraph 1 of this article, a Contracting State shall indicate the offences to which its reservation applies.”.
- 5 Paragraph 2 of new Article 16 shall become paragraph 3 of this article. In the first sentence of this paragraph, the term "Contracting" shall be added before the term "State" and the terms “the foregoing paragraph” shall be replaced by the terms “paragraph 1.”.

- 6 Paragraph 3 of new Article 16 shall become paragraph 4 of this article. In the first sentence of this paragraph, the term "Contracting" shall be added before the term "State".
- 7 The text of new Article 16 shall be supplemented by the following paragraphs:
- “5 The reservations referred to in paragraph 1 of this article shall be valid for a period of three years from the day of the entry into force of this Convention in respect of the State concerned. However, such reservations may be renewed for periods of the same duration.
- 6 Twelve months before the date of expiry of the reservation, the Secretariat General of the Council of Europe shall give notice of that expiry to the Contracting State concerned. No later than three months before expiry, the Contracting State shall notify the Secretary General of the Council of Europe that it is upholding, amending or withdrawing its reservation. Where a Contracting State notifies the Secretary General of the Council of Europe that it is upholding its reservation, it shall provide an explanation of the grounds justifying its continuance. In the absence of notification by the Contracting State concerned, the Secretary General of the Council of Europe shall inform that Contracting State that its reservation is considered to have been extended automatically for a period of six months. Failure by the Contracting State concerned to notify its intention to uphold or modify its reservation before the expiry of that period shall cause the reservation to lapse.
- 7 Where a Contracting State does not extradite a person, in application of a reservation made in accordance with paragraph 1 of this article, after receiving a request for extradition from another Contracting State, it shall submit the case, without exception whatsoever and without undue delay, to its competent authorities for the purpose of prosecution, unless the requesting State and the requested State otherwise agree. The competent authorities, for the purpose of prosecution in the requested State, shall take their decision in the same manner as in the case of any offence of a serious nature under the law of that State. The requested State shall communicate, without undue delay, the final outcome of the proceedings to the requesting State and to the Secretary General of the Council of Europe, who shall forward it to the Conference provided for in Article 17.
- 8 The decision to refuse the extradition request, on the basis of a reservation made in accordance with paragraph 1 of this article, shall be forwarded promptly to the requesting State. If within a reasonable time no judicial decision on the merits has been taken in the requested State according to paragraph 7, the requesting State may communicate this fact to the Secretary General of the Council of Europe, who shall submit the matter to the Conference provided for in Article 17. This Conference shall consider the matter and issue an opinion on the conformity of the refusal with the Convention and shall submit it to the Committee of Ministers for the purpose of issuing a declaration thereon. When performing its functions under this paragraph, the Committee of Ministers shall meet in its composition restricted to the Contracting States.”.

Article 13

A new article shall be introduced after new Article 16 of the Convention, and shall read as follows:

“Article 17

- 1 Without prejudice to the application of Article 10, there shall be a Conference of States Parties against Terrorism (hereinafter referred to as the “COSTER”) responsible for ensuring:

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- a the effective use and operation of this Convention including the identification of any problems therein, in close contact with the CDPC;
 - b the examination of reservations made in accordance with Article 16 and in particular the procedure provided in Article 16, paragraph 8;
 - c the exchange of information on significant legal and policy developments pertaining to the fight against terrorism;
 - d the examination, at the request of the Committee of Ministers, of measures adopted within the Council of Europe in the field of the fight against terrorism and, where appropriate, the elaboration of proposals for additional measures necessary to improve international co-operation in the area of the fight against terrorism and, where co-operation in criminal matters is concerned, in consultation with the CDPC;
 - e the preparation of opinions in the area of the fight against terrorism and the execution of the terms of reference given by the Committee of Ministers.
- 2 The COSTER shall be composed of one expert appointed by each of the Contracting States. It will meet once a year on a regular basis, and on an extraordinary basis at the request of the Secretary General of the Council of Europe or of at least one-third of the Contracting States.
 - 3 The COSTER will adopt its own Rules of Procedure. The expenses for the participation of Contracting States which are member States of the Council of Europe shall be borne by the Council of Europe. The Secretariat of the Council of Europe will assist the COSTER in carrying out its functions pursuant to this article.
 - 4 The CDPC shall be kept periodically informed about the work of the COSTER.”.

Article 14

Article 14 of the Convention shall become Article 18.

Article 15

Article 15 of the Convention shall be deleted.

Article 16

- 1 Article 16 of the Convention shall become Article 19.
- 2 In the introductory sentence of new Article 19, the terms “member States of the Council” shall be replaced by the terms “Contracting States”.
- 3 In paragraph b of new Article 19, the terms "or approval" shall be replaced by the terms ", approval or accession”.
- 4 In paragraph c of new Article 19, the number “11” shall read “14”.
- 5 In paragraph d of new Article 19, the number “12” shall read “15”.
- 6 Paragraphs e and f of new Article 19 shall be deleted.
- 7 Paragraph g of new Article 19 shall become paragraph e of this article and the number “14” shall read “18”.

- 8 Paragraph h of new Article 19 shall be deleted.

Article 17

- 1 This Protocol shall be open for signature by member States of the Council of Europe signatories to the Convention, which may express their consent to be bound by:
- a signature without reservation as to ratification, acceptance or approval; or
 - b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.
- 2 Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 18

This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which all Parties to the Convention have expressed their consent to be bound by the Protocol, in accordance with the provisions of Article 17.

Article 19

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance or approval;
- c the date of entry into force of this Protocol, in accordance with Article 18;
- d any other act, notification or communication relating to this Protocol.

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

Done at Strasbourg, this 15th day of May 2003, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory States.