

**COUNCIL OF EUROPE
COMMITTEE OF MINISTERS**

RECOMMENDATION No. R (99) 13

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

**ON RESPONSES TO INADMISSIBLE
RESERVATIONS TO INTERNATIONAL TREATIES**

*(Adopted by the Committee of Ministers on 18 May 1999
at the 670th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe;

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Supporting the work of the *ad hoc* Committee of Legal Advisers (CAHDI) in the field of reservations to international treaties and welcoming in particular its operation as a European observatory of reservations to international treaties;

Bearing in mind the ongoing work of the International Law Commission in the field of reservations to international treaties;

Having regard to the rules of international law relating to reservations to international treaties including the Vienna Convention on the Law of Treaties of 23 May 1969;

Noting, however, that when the Vienna Convention on the Law of Treaties was adopted, subsequent developments were not envisaged, in particular the formulation of reservations of a general character and the increasing role of the monitoring bodies provided for by certain treaties;

Recalling that States, when adopting international treaties, may prohibit, restrict or allow the formulation of reservations;

Concerned by the increasing number of inadmissible reservations to international treaties, especially reservations of a general character;

Aware that inadmissible reservations hinder the effectiveness of international conventions, particularly those concerning human rights, whether at regional or at universal level, and that, therefore, a common approach on the part of the member States as regards such reservations may be a means to improve that situation;

Recommends that, when confronted with reservations to international treaties which give rise to doubts as to their admissibility, the governments of member States take into consideration in their law and practice the model response clauses appended to this Recommendation.

Model response clauses to reservations

1. Model response to non-specific reservations

Initial statement

The Government of (State X) has examined the reservations made by the Government of (State Y) at the time of the ratification of / accession to the (relevant Convention).

The Government of (State X) notes that the said reservations include reservations of a general nature in respect of the provisions of the Convention which may be contrary to the (Constitution/domestic legislation/traditions) of (State Y).

The Government of (State X) is of the view that these general reservations raise doubts as to the full commitment of (State Y) to the object and purpose of the (relevant Convention) and would like to recall that according to (relevant provision of the relevant Convention/article 19(c) of the Vienna Convention on the Law of the Treaties), a reservation incompatible with the object and purpose of the Convention shall not be permitted.

Additional statements - examples

- It is in the common interest of States that treaties to which they have chosen to become Parties are respected, as to their object and purpose, by all Parties and that States are prepared to undertake any legislative changes necessary to comply with their obligations under these treaties.

- Furthermore, the Government of (State X) considers that general reservations such as those made by the Government of (State Y), which do not clearly specify the provisions of the (relevant Convention) to which they apply and the extent of the derogation therefrom, undermine the basis of international treaty law.

Concluding statement – alternatives as examples

a) The Government of (State X) therefore objects to the aforesaid general reservations made by the Government of (State Y) to the (relevant Convention). (State X remains silent as to whether the relevant Convention enters into force or not between State X and State Y).

b) The Government of (State X) therefore objects to the aforesaid general reservations made by the Government of (State Y) to the (relevant Convention). This objection does not preclude the entry into force of the Convention between (State Y) and (State X).

c) The Government of (State X) therefore objects to the aforesaid general reservations made by the Government of (State Y) to the (relevant Convention). This objection does not preclude the entry into force, in its entirety, of the Convention between (State Y) and (State X).

d) The Government of (State X) therefore objects to the aforesaid general reservations made by the Government of (State Y) to the (relevant Convention). This objection does not preclude the entry into force, in its entirety, of the (relevant Convention) between (State Y) and (State X). The Convention thus becomes operative between (State X) and (State Y) without (State Y) benefiting from these reservations.

e) The Government of (State X) therefore objects to the aforesaid general reservations made by the Government of (State Y) to the (relevant Convention). This objection precludes the entry into force of the Convention between (State Y) and (State X).

f) Given the general character of these reservations a final assessment as to their admissibility under international law cannot be made without further clarification. According to international law a reservation is inadmissible to the extent that its application negatively affects the compliance by a State with its obligations under the Convention which are essential for the fulfilment of its object and purpose. Therefore (State X) cannot consider the reservations made by the Government of (State Y) as admissible unless the Government of (State Y), by providing additional information or through subsequent practice, ensures that these reservations are compatible with the provisions essential for the implementation of the object and purpose of the Convention. This objection does not preclude the entry into force of the Convention between (State Y) and (State X).

2. Model response to specific reservations

Initial statements

The Government of (State X) has examined the reservations made by the Government of (State Y) at the time of its ratification of / accession to the (relevant Convention) in respect of Articles (x y z).

The Government of (State X) is of the view that the reservations in respect of Articles (x y z) raise doubts as to the full commitment of (State Y) to the object and purpose of the (relevant Convention) and would like to recall that, according to (Article (xx) of the (relevant Convention/article 19(c) of the Vienna Convention on the Law of the Treaties), a reservation incompatible with the object and purpose of the present Convention shall not be permitted.

Additional statements – example

- It is the common interest of States that treaties to which they have chosen to become Parties are respected, as to their object and purpose, by all Parties and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

Concluding statement – alternatives as examples

a) The Government of (State X) therefore objects to the aforesaid reservations made by the Government of (State Y) to the (relevant Convention). (State X remains silent as to whether the relevant Convention enters into force or not between State X and State Y).

b) The Government of (State X) therefore objects to the aforesaid reservations made by the Government of (State Y) to the (relevant Convention). This objection does not preclude the entry into force of the Convention between (State Y) and (State X).

c) The Government of (State X) therefore objects to the aforesaid reservations made by the Government of (State Y) to the (relevant Convention). This objection does not preclude the entry into force, in its entirety, of the Convention between (State Y) and (State X).

d) The Government of (State X) therefore objects to the aforesaid reservations made by the Government of (State Y) to the (relevant Convention). This objection does not preclude the entry into force, in its entirety, of the Convention between (State Y) and (State X). The

Convention thus becomes operative between (State X) and (State Y) without (State Y) benefiting from these reservations.

e) The Government of (State X) therefore objects to the aforesaid reservations made by the Government of (State Y) to the (relevant Convention). This objection precludes the entry into force of the Convention between (State Y) and (State X).