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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

## **52<sup>nd</sup> meeting**

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Public International Law and Treaty Office Division  
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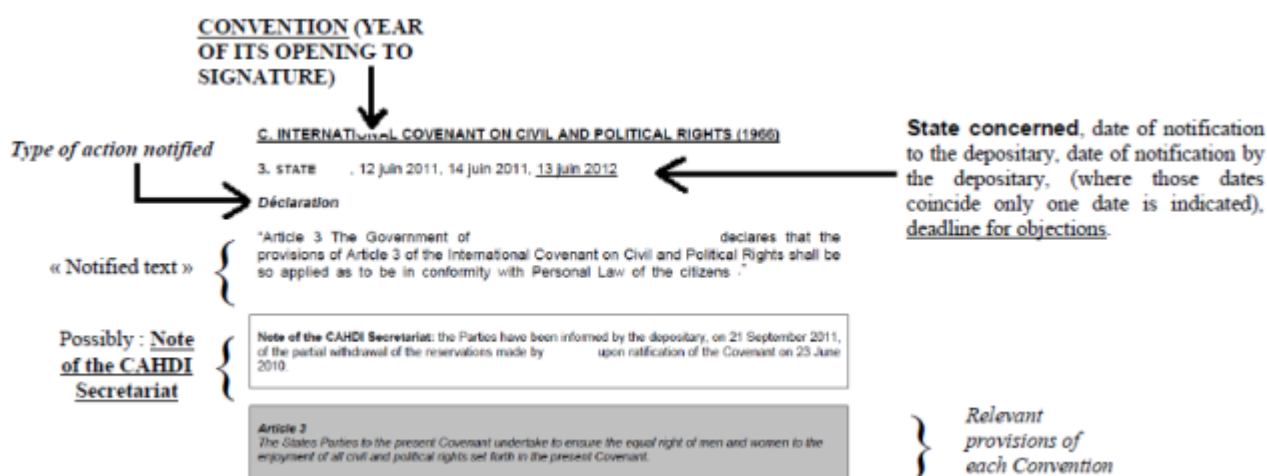
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## FOREWORD

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

This document presents the reactions of member and observer States of the CAHDI to outstanding reservations and declarations examined by the Committee and for which the deadline for objection has expired. To this end, a table of objections to the reservations and declarations examined at the 50<sup>th</sup> (Strasbourg, 24-25 September 2015) and 51<sup>st</sup> (Strasbourg, 3-4 March 2016) meetings of the CAHDI is set out.

Appendix I contains the text of the reservations and declarations to treaties concluded outside the Council of Europe. Appendix II presents the text of the reservations and declarations to treaties concluded within 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. Convention on the privileges and immunities of the specialized agencies (1947)
- B. United Nations Convention on the law of the sea (1982)
- C. Convention on the rights of the child (1989)
- D. Optional Protocol to the Convention on the rights of persons with disabilities (2006)

**RESERVATIONS AND DECLARATIONS TO COUNCIL OF EUROPE TREATIES**

- E. Convention on mutual administrative assistance in tax matters (1988) and Protocol amending the Convention on mutual administrative assistance in tax matters (2010)
- F. Council of Europe Convention on preventing and combating violence against women and domestic violence (2011)



Conventions		Conventions concluded outside the Council of Europe						COE Convention	
		A	B	C			D	E	F
Reservation		1	2	3	4	5	6	7	8
CAHDI members, participants and observers ↓	State Deadline								
		Tajikistan 23/04/16	Panama 10/05/16	Oman 11/06/16	Oman 12/08/16	Brunei Darussalam 09/08/16	Turkey 25/03/16	Azerbaijan 04/06/16	Poland 29/04/16
Netherlands									●
Norway									
Poland									
Portugal									
Romania									
Russian Federation									
San Marino									
Serbia									
Slovakia									
Slovenia									
Spain									
Sweden									●
Switzerland									
“the former Yugoslav Republic of Macedonia”									
Turkey									
Ukraine									
United Kingdom									
Australia									
Canada									
Holy See									
Israel									
Japan									
Mexico									
New Zealand									
United States of America									

## APPENDICES

### APPENDIX I

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

##### A. CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES (1947)

##### 1. TAJIKISTAN, 18 March 2015, 24 April 2015, 23 April 2016

##### **Reservations**

“(a) The Republic of Tajikistan applies the provisions of section 7 of the Convention in accordance with national legislation;

(b) The Republic of Tajikistan does not consider itself bound by the provisions of sections 24 and 32 of the Convention, concerning the compulsory jurisdiction of the International Court of Justice.

Concerning the jurisdiction of the International Court of Justice in disputes arising out of the interpretation or application of the Convention, the Republic of Tajikistan will maintain the position that for any dispute to be referred to the International Court of Justice for settlement, the agreement of all Parties involved in the dispute must be obtained in each individual case. This reservation similarly applies to the provision contained in section 32, stipulating that the advisory opinion of the International Court of Justice shall be accepted as decisive.”

##### **Section 7**

*Without being restricted by financial controls, regulations or moratoria of any kind:*

*(a) The specialized agencies may hold funds, gold or currency of any kind and operate accounts in any currency;*

*(b) The specialized agencies may freely transfer their funds, gold or currency from one country to another or within any country and convert any currency held by them into any other country.*

##### **Section 24**

*If any State party to this Convention considers that there has been an abuse of a privilege or immunity conferred by this Convention, consultations shall be held between that State and the specialized agency concerned to determine whether any such abuse has occurred and, if so, to attempt to ensure that no repetition occurs. If such consultations fail to achieve a result satisfactory to the State and the specialized agency concerned, the question of whether an abuse of a privilege or immunity has occurred shall be submitted to the International Court of Justice in accordance with section 32. If the International Court of Justice finds that such an abuse has occurred, the State party to this convention affected by such abuse shall have the right, after notification to the specialized agency in question, to withhold from the specialized agency concerned the benefits of the privilege or immunity so abused.*

##### **Section 32**

*All differences arising out of the interpretation or application of the present Convention shall be referred to the International Court of Justice unless in any case it is agreed by the parties to have recourse another mode of settlement. If a difference arises between one of the specialized agencies on the one hand, and a member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court and the relevant provisions of the agreements concluded between the United Nations and the specialized agency concerned. The opinion given by the Court shall be accepted as decisive by the parties.*

##### B. UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (1982)

##### 2. PANAMA, 29 April 2015, 11 May 2015, 10 May 2016

##### **Declaration**

“In accordance with paragraph 1 of article 287 of the United Nations Convention on the Law of the Sea of December 10th, 1982, the Government of the Republic of Panama declares that it accepts the competence and jurisdiction of the International Tribunal of the Law of the Sea for the settlement of the dispute between the Government of the Republic of Panama and the Government of the Italian Republic concerning the

interpretation or application of UNCLOS that arose from the detention of the Motor Tanker NORSTAR, flying the Panamanian flag.”

#### **Article 287**

1. When signing, ratifying or acceding to this Convention or at any time thereafter, a State shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention:

- (a) the International Tribunal for the Law of the Sea established in accordance with Annex VI;
  - (b) the International Court of Justice;
  - (c) an arbitral tribunal constituted in accordance with Annex VII;
  - (d) a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein.
- [...]

### **C. CONVENTION ON THE RIGHTS OF THE CHILD (1989)**

#### **3. OMAN, 9 December 2014, 12 June 2015, 11 June 2016**

##### ***Withdrawal of reservations to Articles 7, 9, 21 and 30<sup>1</sup> - Controversial date of notification of the withdrawal***

“The Secretary-General notes that the notification of withdrawal of reservations was signed by the Minister for Foreign Affairs of Oman on 9 January 2011 and received by the Office of the High Commissioner for Human Rights in Geneva on 14 January 2011. The notification, however, was received by the Treaty Section of the Office of Legal Affairs on 9 December 2014. In a note received from the Permanent Mission on 19 May 2015, the Government of Oman informed the Secretary-General that it considers that the withdrawal took effect on 14 January 2011.”

#### **4. OMAN, 9 December 2014, 13 August 2015, 12 August 2016**

##### ***Modification of reservation<sup>4</sup>***

“The text of the modified reservation now reads as follows:

The Sultanate of Oman is not committed to the contents of Article (14) of the Convention, which gives the child the right to freedom of religion until he reaches the age of maturity.”

\*\*\*

The Secretary-General notes that the notification of modification of the reservation was signed by the Minister for Foreign Affairs of Oman on 9 January 2011 and received by the Office of the High Commissioner for Human Rights in Geneva on 14 January 2011. The notification was received by the Treaty Section of the Office of Legal Affairs on 9 December 2014. In a note received from the Permanent Mission on 19 May 2015, the Government of Oman informed the Secretary-General that it considers that the modification of the reservation took effect on 14 January 2011.

<sup>1</sup> **Note of the Secretariat:** the original text of the reservation made upon accession by Oman in 1996 reads as follows: “1. The words “or to public safety” should be added in article 9, paragraph 4, after the words “unless the provision of the information would be detrimental to the well-being of the child”.

2. A reservation is entered to all the provisions of the Convention that do not accord with Islamic law or the legislation in force in the Sultanate and, in particular, to the provisions relating to adoption set forth in its article 21.

3. The provisions of the Convention should be applied within the limits imposed by the material resources available.

4. The Sultanate considers that article 7 of the Convention as it relates to the nationality of a child shall be understood to mean that a child born in the Sultanate of unknown parents shall acquire Omani nationality, as stipulated in the Sultanate’s Nationality Law.

5. The Sultanate does not consider itself to be bound by those provisions of article 14 of the Convention that accord a child the right to choose his or her religion or those of its article 30 that allow a child belonging to a religious minority to profess his or her own religion.”



The Government of Oman further confirmed, in a note received by the Secretary-General on 6 August 2015, that the competent authorities of Oman clarified that the modification of the reservation made to article 14 does not purport to further restrict the reservation made upon accession.”

#### **Article 14**

1. *States Parties shall respect the right of the child to freedom of thought, conscience and religion.*
2. *States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.*
3. *Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.*

### **5. BRUNEI DARUSSALAM, 10 August 2015, 9 August 2016**

#### ***Partial withdrawal of reservations<sup>2</sup>***

“The Government of Brunei Darussalam decided to withdraw its reservations to articles 20 (1), 20 (2) and 21 (a).

The remaining reservations read as follow:

The Government of Brunei Darussalam expresses its reservations on the provisions of the said Convention which may be contrary to the Constitution of Brunei Darussalam and to the beliefs and principles of Islam, the State religion, and without prejudice to the generality of the said reservations, in particular expresses its reservations on Article 14, Article 20 paragraph 3, and Article 21 sub-paragraphs b, c, d and e of the Convention.”

**Article 14** is reproduced above.

#### **Article 20**

1. *A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.*
2. *States Parties shall in accordance with their national laws ensure alternative care for such a child.*
3. *Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.*

#### **Article 21**

*States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:*

- (a) *Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;*
- (b) *Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;*
- (c) *Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;*
- (d) *Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;*
- (e) *Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.*

<sup>2</sup> **Note of the Secretariat:** the original text of the reservation made upon accession by Brunei Darussalam in 1995 reads as follows: “The Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam expresses its reservations on the provisions of the said Convention which may be contrary to the Constitution of Brunei Darussalam and to the beliefs and principles of Islam, the State religion, and without prejudice to the generality of the said reservations, in particular expresses its reservations on Article 14, 20 and 21 of the Convention.”

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**D. OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (2006)****6. TURKEY, 26 March 2015, 25 March 2016*****Declaration***

“Turkey declares that [its] ratification of the Optional Protocol to the Convention on the Rights of Persons with Disabilities 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 Protocol, 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 Protocol.”

## APPENDIX II

### RESERVATIONS AND DECLARATIONS TO COUNCIL OF EUROPE TREATIES

**E. CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS (1988) AND PROTOCOL AMENDING THE CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS (2010)**

**7. AZERBAIJAN**, 29 May 2015, 5 June 2015, 4 June 2016

***Declaration***

“The Republic of Azerbaijan will apply the provisions of the Convention and the Protocol only in respect of the States Parties with which the Republic of Azerbaijan has diplomatic relations.”

**F. COUNCIL OF EUROPE CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE (2011)**

**8. POLAND**, 27 April 2015, 30 April 2015, 29 April 2016

***Declarations***

“The Republic of Poland declares that it will apply the Convention in accordance with the principles and the provisions of the Constitution of the Republic of Poland.

The Republic of Poland recognises the need to interpret Article 18, paragraph 5, of the Convention, in accordance with international agreements to which it is a Party and directly applicable normative acts of international organisations, to which the Republic of Poland submitted the competence of the state authority in some cases. Accordingly, the Republic of Poland shall provide consular protection only to Polish citizens and these national of the Member States of the European Union, which do not have access to diplomatic or consular post in the territory of a third country, on such terms as Polish citizens. Furthermore, in accordance with the universally accepted principles of international law, the Republic of Poland does not grant consular protection to nationals of the host state. The consul of the Republic of Poland can take actions of consular protection only by the measures provided for by international law on consular relations.”

***Article 18 – General obligations***

*[...]*

*5. Parties shall take the appropriate measures to provide consular and other protection and support to their nationals and other victims entitled to such protection in accordance with their obligations under international law.*