

CANADA

CAT

OBJECTIONS MADE TO OTHER STATES PARTIES RESERVATIONS AND DECLARATIONS

(Ed. note: for the text targeted by the following objections, see the Reservations and Declarations of the State which is the subject of the objection)

27 June 2011

With regard to the reservations made by Pakistan upon ratification:

“The Government of Canada has carefully examined the reservations made by the Government of the Islamic Republic of Pakistan upon ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in accordance with which the Government of the Islamic Republic of Pakistan declares that:

The provisions of Articles 4, 6, 12, 13 and 16 ‘shall be so applied to the extent that they are not repugnant to the Provisions of the Constitution of Pakistan and the Sharia laws’.

The Government of Canada considers that a reservation which consists of a general reference to national law or to the prescriptions of the Islamic Sharia constitutes, in reality, a reservation with a general, indeterminate scope. Such a reservation makes it impossible to identify the modifications to obligations under the Convention that it purports to introduce and impossible for the other States Parties to the Convention to know the extent to which Pakistan has accepted the obligations of the Convention, an uncertainty which is unacceptable, especially in the context of treaties related to human rights.

The Government of Canada notes that the above-mentioned reservations made by the Government of the Islamic Republic of Pakistan, addressing many of the most essential provisions of the Convention, and aiming to exclude the obligations under those provisions, are incompatible with the object and purpose of the Convention, and thus inadmissible under article 19(c) of the Vienna Convention on the Law of Treaties. The Government of Canada therefore objects to the aforesaid reservations made by the Government of the Islamic Republic of Pakistan.

This objection does not preclude the entry into force in its entirety of the Convention between Canada and the Islamic Republic of Pakistan.”

Note

The German Democratic Republic had signed and ratified the Convention on 7 April 1986 and 9

September 1987, respectively, with the following reservations and declaration:

Reservations:

The German Democratic Republic declares in accordance with article 28, paragraph 1 of the Convention that it does not recognize the competence of the Committee provided for in article 20.

The German Democratic Republic declares in accordance with article 30, paragraph 2 of the Convention that it does not consider itself bound by paragraph 1 of this article.

Declaration:

The German Democratic Republic declares that it will bear its share only of those expenses in accordance with article 17, paragraph 7, and article 18, paragraph 5, of the Convention arising from activities under the competence of the Committee as recognized by the German Democratic Republic.

...

[T]he Secretary-General has received from the following States, objections to the declaration made by the German Democratic Republic, on the dates indicated hereinafter:

...

Canada (5 October 1988):

The Government of Canada considers that this declaration is incompatible with the object and purpose of the Convention against Torture, and thus inadmissible under article 19 (c) of the Vienna Convention on the Law of Treaties. Through its function and its activities, the Committee against Torture plays an essential role in the execution of the obligations of States parties to the Convention against Torture. Any restriction whose effect is to hamper the activities of the Committee would thus be incompatible with the object and purpose of the Convention.

...

Subsequently, in a communication received on 13 September 1990, the Government of the German Democratic Republic notified the Secretary-General that it had decided to withdraw the reservations, made upon ratification, to articles 17 (7), 18 (5), 20 and 30 (1) of the Convention.

...

(Note 3, Chapter IV.9, Multilateral Treaties Deposited with the Secretary-General)

Note

In a communication received on 7 September 1990, the Government of Chile notified the Secretary-General that it had decided to withdraw the declaration made by virtue of article 28 (1) upon signature and confirmed upon ratification by which the Government did not recognize the competence of the Committee against torture as defined by article 20 of the Convention. The

Government of Chile further decided to withdraw the following reservations, made upon ratification, to article 2 (3) and article 3, of the Convention:

(a) [To] Article 2, paragraph 3, in so far as it modifies the principle of "obedience upon reiteration" contained in Chilean domestic law. The Government of Chile will apply the provisions of that international norm to subordinate personnel governed by the Code of Military Justice, provided that the order patently intended to lead to perpetration of the acts referred to in article 1 is not insisted on by the superior officer after being challenged by his subordinate.

(b) Article 3, by reason of the discretionary and subjective nature of the terms in which it is drafted.

It will be recalled that the Secretary-General had received various objections to the said declarations from the following States on the dates indicated hereinafter:

...

Canada (23 October 1989):

"The reservations by Chile are incompatible with the object and purpose of the Convention Against Torture and thus inadmissible under article 19 (c) of the Vienna Convention on the Law of Treaties."

...

Further, in a communication received on 3 September 1999, the Government of Chile withdrew the following reservation made upon ratification:

The Government of Chile will not consider itself bound by the provisions of article 30, paragraph 1 of the Convention.

(Note 17, Chapter IV.9, Multilateral Treaties Deposited with the Secretary-General)

DECLARATIONS RE: ARTICLES 21 AND 22

13 November 1989

"The Government of Canada declares that it recognizes the competence of the Committee Against Torture, pursuant to article 21 of the said Convention, to receive and consider communications to the effect that a state party claims that another state party is not fulfilling its obligations under this Convention.

"The Government of Canada also declares that it recognizes the competence of the Committee Against Torture, pursuant to article 22 of the said Convention, to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a state party of the provisions of the Convention."