

UNITED STATES OF AMERICA

CAT

RESERVATIONS AND DECLARATIONS

(Unless otherwise indicated, the reservations and declarations were made upon ratification, accession or succession)

Upon signature:

Declaration:

"The Government of the United States of America reserves the right to communicate, upon ratification, such reservations, interpretive understandings, or declarations as are deemed necessary."

Upon ratification:

Reservations:

"I. The Senate's advice and consent is subject to the following reservations:

(1) That the United States considers itself bound by the obligation under article 16 to prevent 'cruel, inhuman or degrading treatment or punishment', only insofar as the term 'cruel, inhuman or degrading treatment or punishment' means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and-or Fourteenth Amendments to the Constitution of the United States.

(2) That pursuant to article 30 (2) the United States declares that it does not consider itself bound by Article 30 (1), but reserves the right specifically to agree to follow this or any other procedure for arbitration in a particular case.

II. The Senate's advice and consent is subject to the following understandings, which shall apply to the obligations of the United States under this Convention:

(1) (a) That with reference to article 1, the United States understands that, in order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering and that mental pain or suffering refers to prolonged mental harm caused by or resulting from (1) the intentional infliction or threatened infliction of severe physical pain or suffering; (2) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (3) the threat of imminent death; or (4) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.

(b) That the United States understands that the definition of torture in article 1 is intended to apply only to acts directed against persons in the offender's custody or physical control.

(c) That with reference to article 1 of the Convention, the United States understands that 'sanctions' includes judicially-imposed sanctions and other enforcement actions authorized by United States law or by judicial interpretation of such law. Nonetheless, the United States understands that a State Party could not through its domestic sanctions defeat the object and purpose of the Convention to prohibit torture.

(d) That with reference to article 1 of the Convention, the United States understands that the term 'acquiescence' requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his legal responsibility to intervene to prevent such activity.

(e) That with reference to article 1 of the Convention, the United States understands that noncompliance with applicable legal procedural standards does not per se constitute torture.

(2) That the United States understands the phrase, 'where there are substantial grounds for believing that he would be in danger of being subjected to torture,' as used in article 3 of the Convention, to mean 'if it is more likely than not that he would be tortured.'

(3) That it is the understanding of the United States that article 14 requires a State Party to provide a private right of action for damages only for acts of torture committed in territory under the jurisdiction of that State Party.

(4) That the United States understands that international law does not prohibit the death penalty, and does not consider this Convention to restrict or prohibit the United States from applying the death penalty consistent with the Fifth, Eighth and-or Fourteenth Amendments to the Constitution of the United States, including any constitutional period of confinement prior to the imposition of the death penalty.

(5) That the United States understands that this Convention shall be implemented by the United States Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered by the Convention and otherwise by the state and local governments. Accordingly, in implementing articles 10-14 and 16, the United States Government shall take measures appropriate to the Federal system to the end that the competent authorities of the constituent units of the United States of America may take appropriate measures for the fulfilment of the Convention.

III. The Senate's advice and consent is subject to the following declarations:

(1) That the United States declares that the provisions of articles 1 through 16 of the Convention are not self-executing.

Note

On 3 June 1994, the Secretary-General received a communication from the Government of the United States of America requesting, in compliance with a condition set forth by the Senate of the United States of America, in giving advice and consent to the ratification of the Convention, and in contemplation of the deposit of an instrument of ratification of the Convention by the Government of the United States of America, that a notification should be made to all present and prospective ratifying Parties of the Convention to the effect that:

"... nothing in this Convention requires or authorizes legislation, or other action, by the United States of America prohibited by the Constitution of the United States as interpreted by the United States."

(Note 12, Chapter IV.9, Multilateral Treaties Deposited with the Secretary-General)

Note

On 26 February 1996, the Government of Germany notified the Secretary-General that with respect to the reservations under I (1) and understandings under II (2) and (3) made by the United States of America upon ratification "it is the understanding of the Government of the Federal Republic of Germany that [the said reservations and understandings] do not touch upon the obligations of the United States of America as State Party to the Convention."

(Note 23, Chapter IV.9, Multilateral Treaties Deposited with the Secretary-General)

OBJECTIONS MADE TO STATE PARTY'S RESERVATIONS AND DECLARATIONS

Finland, 27 February 1996

With regard to the reservations, understandings and declarations made by the United States of America upon ratification:

"A reservation which consists of a general reference to national law without specifying its contents does not clearly define to the other Parties of the Convention the extent to which the reserving State commits itself to the Convention and therefore may cast doubts about the commitment of the reserving State to fulfil its obligations under the Convention. Such a reservation is also, in the view of the Government of Finland, subject to the general principle to treaty interpretation according to which a party may not invoke the provisions of its internal law as justification for failure to perform a treaty.

The Government of Finland therefore objects to the reservation made by the United States to article 16 of the Convention [(cf. Reservation I.(1)]. In this connection the Government of Finland would also like to refer to its objection to the reservation entered by the United States

with regard to article 7 of the International Covenant on Civil and Political Rights." [For the text of the objection see under "Objections" in chapter IV.4].

[*Ed. note: as follows:*

28 September 1993

With regard to the reservations, understandings and declarations made by the United States of America:

"... It is recalled that under international treaty law, the name assigned to a statement whereby the legal effect of certain provisions of a treaty is excluded or modified, does not determine its status as a reservation to the treaty. Understanding (1) pertaining to articles 2, 4 and 26 of the Covenant is therefore considered to constitute in substance a reservation to the Covenant, directed at some of its most essential provisions, namely those concerning the prohibition of discrimination. In the view of the Government of Finland, a reservation of this kind is contrary to the object and purpose of the Covenant, as specified in article 19(c) of the Vienna Convention on the Law of Treaties.

As regards reservation (2) concerning article 6 of the Covenant, it is recalled that according to article 4(2), no restrictions of articles 6 and 7 of the Covenant are allowed for. In the view of the Government of Finland, the right to life is of fundamental importance in the Covenant and the said reservation therefore is incompatible with the object and purpose of the Covenant.

As regards reservation (3), it is in the view of the Government of Finland subject to the general principle of treaty interpretation according to which a party may not invoke the provisions of its internal law as justification for failure to perform a treaty.

For the above reasons the Government of Finland objects to reservations made by the United States to articles 2, 4 and 26 [cf. Understanding (1)], to article 6 [cf. Reservation (2)] and to article 7 [cf. Reservation (3)]. However, the Government of Finland does not consider that this objection constitutes an obstacle to the entry into force of the Covenant between Finland and the United States of America.]

Netherlands, 26 February 1996

With regard to the reservations, understandings and declarations made by the United States of America upon ratification:

"The Government of the Netherlands considers the reservation made by the United States of America regarding the article 16 of [the Convention] to be incompatible with the object and purpose of the Convention, to which the obligation laid down in article 16 is essential. Moreover,

it is not clear how the provisions of the Constitution of the United States of America relate to the obligations under the Convention. The Government of the Kingdom of the Netherlands therefore objects to the said reservation. This objection shall not preclude the entry into force of the Convention between the Kingdom of the Netherlands and the United States of America.

The Government of the Kingdom of the Netherlands considers the following understandings to have no impact on the obligations of the United States of America under the Convention:

II. 1 a This understanding appears to restrict the scope of the definition of torture under article 1 of the Convention.

1 d This understanding diminishes the continuous responsibility of public officials for behaviour of their subordinates.

The Government of the Kingdom of the Netherlands reserves its position with regard to the understandings II. 1b, 1c and 2 as the contents thereof are insufficiently clear."

Sweden, 27 February 1996

With regard to the reservations, understandings and declarations made by the United States of America upon ratification:

"The Government of Sweden would like to refer to its objections to the reservations entered by the United States of America with regard to article 7 of the International Covenant on Civil and Political Rights. [For the text of the objections see under "Objections" in chapter IV.4]. The same reasons for objection apply to the now entered reservation with regard to article 16 reservation I (1) of [the Convention]. The Government of Sweden therefore objects to that reservation.

It is the view of the Government of Sweden that the understandings expressed by the United States of America do not relieve the United States of America as a party to the Convention from the responsibility to fulfil the obligations undertaken therein."

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)

29 June 2011

Objection to the reservations made by Pakistan upon ratification:

"The Government of the United States of America objects to Pakistan's reservations to the CAT. Pakistan has reserved to Articles 3, 4, 6, 12, 13, and 16 of the Convention, which address non-refoulement, criminalization of acts which constitute torture, arrest or apprehension of those suspected of committing torture, investigation of credible allegations of torture, the right to bring before and have examined by competent authorities allegations of torture and for protection of complainants and witnesses, and the prevention of cruel, inhuman or degrading treatment or punishment. At the same time, Pakistan has chosen not to participate in the Committee's inquiry process under Article 20. The combination of Pakistan's reservations and its decision not to participate in the Article 20 process raises serious concerns because the reservations obscure the extent to which Pakistan intends to modify its substantive obligations under the Convention, and preclude further inquiry by the Committee if well-founded indications of systematic torture do arise. As a result, the United States considers the totality of Pakistan's reservations to Articles 3, 4, 6, 12, 13, and 16 to be incompatible with the object and purpose of the [Convention]. This objection does not constitute an obstacle to the entry into force of the [Convention] between the United States and Pakistan, and the aforementioned articles shall apply between our two states, except to the extent of Pakistan's reservations."

DECLARATION RE: ARTICLE 21

(Unless otherwise indicated, the declarations were made upon ratification, accession or succession)

"The United States declares, pursuant to article 21, paragraph 1, of the Convention, that it recognizes the competence of the Committee against Torture to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Convention. It is the understanding of the United States that, pursuant to the above-mentioned article, such communications shall be accepted and processed only if they come from a State Party which has made a similar declaration."