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**THE PRACTICE OF HUMAN RIGHTS TREATY BODIES WITH
RESPECT TO RESERVATIONS TO INTERNATIONAL HUMAN
RIGHTS TREATIES**

Addendum

1. The treaty bodies have continued to address the question of reservations made by States parties, with four committees referring to them in concluding observations, and the Committee on the Rights of the Child referring to them in a general comment. Reservations have also been discussed during constructive dialogue with States parties. In general, committees refer to reservations to the treaties they monitor, but the Committee on the Rights of the Child has also expressed concern at the reservations maintained by the State party to other treaties, in this case the International Covenant on Civil and Political Rights.¹

2. On 3 February 2006 the International Court of Justice delivered its judgment in the case concerning *Armed activities on the territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, in which the Democratic Republic of the Congo sought to invoke the jurisdiction of the Court on the basis of article 22 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in circumstances where Rwanda had not made a declaration under article 36, paragraph 2 of the Statute of the Court. Article 22 states that “any dispute between two or more States parties with respect to the interpretation

¹¹ The Human Rights Committee also considered the application of a declaration in *Yurich v Chile* (Communication No 1078/2002, CCPR/C/D/1078/2002, 12 December 2005).

of application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement". Rwanda argued that the jurisdiction of the court under ICERD was precluded by its reservation to the entire article 22.

3. In concluding that it had no jurisdiction with respect to the dispute, the court held that the fact that a reservation has not been objected to by at least two thirds of States parties to the Convention automatically implies that it is compatible with the object and purpose of the Convention, also drawing attention to the fact that the Democratic Republic of the Congo had raised no objection to the reservation.

4. A joint separate opinion by Judges Higgins, Elaraby, Kooijmans, Owada and Simma, recognized that since the 1951 Advisory Opinion on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, many other issues had emerged, including "whether, in particular, a role as regards assessment of compatibility with object and purpose is to be assigned to monitoring bodies established under United Nations multilateral human rights treaties".² It also states: "The Human Rights Committee in General Comment No. 24 has sought to provide some answers to contemporary problems in the context of the International Covenant on Civil and Political Rights, with its analysis being very close to that of the European Court of Human Rights and the Inter-American Court. The practice of such bodies is not to be viewed as 'making an exception' to the law as determined in 1951 by the International Court; we take the view that it is rather a development to cover what the Court was never asked at the time, and to address new issues that have arisen subsequently".³

5. It also states that: "Human rights courts and tribunals have not regarded themselves as precluded by this Court's 1951 Advisory Opinion from doing other than noting whether a particular State has objected to a reservation. This development does not create a 'schism' between general international law as represented by the Court's 1951 Advisory Opinion, a 'deviation' therefrom by these various courts and tribunals. Rather, it is to be regarded as developing the law to meet contemporary realities, nothing in the specific findings of the Court in 1951 prohibiting this. Indeed, it is clear that the practice of the International Court itself reflects this trend for tribunals and courts themselves to pronounce on compatibility with the object and purpose, when the need arises".⁴

6. In his tenth report on reservations to treaties,⁵ the Special Rapporteur focused, *inter alia*, on reservations incompatible with the object and purpose of the treaty. He suggested that the draft guidelines on the delicate issue of reservations of this kind to

² See joint separate opinion, § 12.

³ Ibid. para. 16.

⁴ Ibid. paras. 22 and 23.

⁵ A/CN.4/558 and A/CN.4/558/Add.1.

general human rights treaties should be drafted in a flexible way to allow sufficient leeway for interpretation, and proposed that:⁶

“To assess the compatibility of a reservation with the object and purpose of a general treaty for the protection of human rights, account should be taken of the indivisibility of the rights set out therein, the importance that the right which is the subject of the reservation has within the general architecture of the treaty, and the seriousness of the impact the reservation has upon it”.

7. In the report on the work of the fifty-seventh session of the International Law Commission to the General Assembly,⁷ the Special Rapporteur recalled that the Commission had met with all human rights treaty bodies with the exception of the Committee on the Elimination of Discrimination against Women. He proposed that a one - or two day seminar should be organized on the subject of reservations to human rights treaties so that the Commission could review its preliminary conclusion of 1997,⁸ although he was aware of certain organizational difficulties (not all treaty bodies meet at the same time) and budgetary constraints.⁹ The proposal was welcomed by several members, and it was suggested that seminar should focus in particular on the problem of compatibility of reservations with the object and purpose of the treaty and, subsequently, on the role of human rights treaty bodies in determining compatibility.¹⁰

⁶ Draft guideline 3.1.12. See A/CN.4/558/Add.1.

⁷ ILC Report, [A/60/10](#), 2005, chap. X, paras. 333 - 438

⁸ Para. 370 of the report.

⁹ Para. 436 of the report.

¹⁰ Para. 425 of the report.

Annexes

Annex 1: The Practice of the human rights treaty bodies with respect to reservations – concluding observations/comments and miscellaneous issues.

- A. Human Rights Committee
- B. Committee on the Elimination of Discrimination against Women
- C. Committee against Torture
- D. Committee on the Rights of the Child

Annex 2: Table of reservations, objections and withdrawals

- A. International Covenant on Civil and Political Rights
- B. International Covenant on Economic, Social and Cultural Rights
- C. Convention on the Elimination of All Forms of Discrimination against Women
- D. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
- E. Optional Protocol to the Convention on the Rights of the Child on sale of children, child prostitution and pornography
- F. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Annex I

Human Rights Committee

Positive remarks

On one occasion the Committee

- welcomed the delegation's announcement that the State party was now in a position to withdraw some of its reservations.

Critical remarks

On four occasions the Committee:

- Recommended that the State party regretted that reservations had not been withdrawn (*Iceland, Italy, Norway and Thailand*).

Iceland

1. The Committee regrets that Iceland maintains its reservations to several provisions of the Covenant. The State party is invited to withdraw its reservations (CCPR/CO/83/ISL)

Italy

2. The Committee, while welcoming the delegation's announcement that the State party is now in a position to withdraw some of its reservations to the Covenant, regrets that the withdrawal of reservations to articles 14, paragraph 3, 15, paragraph 1 and 19, paragraph 3, is not part of this process.

3. The State party is encouraged to pursue the in-depth review process it started in May 2005 to assess the status of its reservations to the Covenant, with a view to withdrawing them all. The Committee would appreciate receiving more detailed information on the reasons why the withdrawal of the State party's reservations to articles 14, paragraph 3, 15, paragraph 1 and 19, paragraph 3 is thus far not envisaged (CCPR/ITA/CO/5).

Norway

4. The Committee regrets that Norway maintains its reservations to article 10, paragraphs 2(b) and 3, article 14 and to article 20, paragraph 1 of the Covenant. The State party should continue to review the possibility of withdrawing its reservations (CCPR/C/NOR/CO/5).

Thailand

5. The Committee notes that some of the declarations made at the time of the accession by Thailand amount to reservations, and regrets their maintenance (article 2

of the Covenant). The State party should consider the withdrawal of such declarations (CCPR/CO/84/THA).

Committee on the Elimination of Discrimination against Women

Positive remarks

On eight occasions, the Committee

- commended, welcomed or expressed its appreciation to a State party for ratifying the Convention without reservations (Benin, Cambodia, Gambia, Eritrea, Former Yugoslav Republic of Macedonia, Lao People's Democratic Republic, Samoa, Togo).

On two occasions the Committee

- commended a State party for withdrawing its reservations (Ireland, Turkey).

On one occasion the Committee

- noted that the state party had begun to work on the withdrawal of its declaration on article 9, paragraph 1 of the Convention (Turkey).

Critical remarks

On one occasion the Committee

- expressed, reiterated its concern that the State party continues to have reservations and noted that reservations to articles 2 and 16 are contrary to the object and purpose of the Convention, and urged the State party to expedite legislative reform to allow it to withdraw its reservations within a concrete timeframe (Algeria).

On one occasion the Committee

- indicated that it remained concerned that the State party continued to retain its reservations to article 16 and the State party's attention to the fact that reservations to article 16 are contrary to the object and purpose of the Convention (Thailand).

On one occasion,

- the Committee urged the State party to consider withdrawing its reservations to articles 7(b) and 16 which are contrary to the object and purpose of the Convention (Israel)

On one occasion

- the Committee noted that the State party had entered reservations to articles 9(2), 16 and 29 (1) of the Convention. It expressed concern at the reservations to articles 9(2) and 16 which it considered are contrary to the object and purpose of the Convention and urged the State party to expedite the necessary steps to limit and ultimately withdraw its reservations (Lebanon).

On three occasions

- the Committee noted that reservations have been made by the State party to particular provisions of the Convention (Australia, Democratic People's Republic of Korea, Israel)

On three occasions

- the Committee urged the State party to expedite the steps necessary for the withdrawal of its reservation to a particular article of the Convention (Australia) adding on two occasions within a concrete timeframe (Democratic People's Republic of Korea, Thailand)

On one occasion

- the Committee welcomed the fact that reservations are kept under regular review, but noted that they remained and called on the State party to study carefully the nature and thrust of the reservations with the aim of withdrawing them as soon as possible (Ireland).

On one occasion the Committee

- urged the State party to consider withdrawing its reservations to articles 7(b) and 16 which are contrary to the object and purpose of the Convention (Israel).

Algeria

Principal areas of concern and recommendations

6. The Committee reiterates its concern that the State party continues to have reservations to articles 2, 9 (2), 15 (4) and 16. The Committee notes that reservations to articles 2 and 16 are contrary to the object and purpose of the Convention.

7. The Committee urges the State party to expedite legislative reform, especially of the Family Code, to allow it to proceed to withdraw its reservations to the Convention within a concrete time frame (A/60/38).

Australia

8. The Committee notes that Australia maintains its reservations to article 11, paragraph 2, of the Convention and in relation to women's employment in combat units.

9. While welcoming the introduction of the maternity payment in 2004 and the existence of paid maternity leave for female government employees in some states and territories as well as some paid maternity leave schemes in private sector employment, the Committee remains concerned about the lack of uniformity in work-related paid maternity leave schemes. It is also concerned that there is no national system of paid maternity leave and that, as a consequence, the State party continues to maintain its reservation to article 11, paragraph 2, of the Convention.

10. **The Committee urges the State party to take further appropriate measures to introduce maternity leave with pay or with comparable social benefits. It also recommends that the State party evaluate its maternity payment introduced in 2004 in the light of article 11, paragraph 2 (b), of the Convention and to expedite the steps necessary for the withdrawal of its reservation to this article (A/61/38).**

Cambodia

11. The Committee commends the State party for ratifying the Convention without reservations (A/61/38).

Benin

12. The Committee commends the State party for ratifying the Convention without reservations (A/60/38).

Democratic People's Republic of Korea

13. The Committee notes that reservations have been made by the State party to article 2, paragraph (f), article 9, paragraph 2 and article 29, paragraph 1, of the Convention.

14. While appreciating the State party's willingness to amend national legislation and subsequently consider lifting the reservations to article 2, paragraph (f), and article 9, paragraph 2, the Committee considers that the reservations to articles 2 and 9 are contrary to the object and purpose of the Convention.

15. **The Committee urges the State party to expedite its efforts towards the withdrawal of reservations to the Convention within a concrete time frame (A/60/38).**

Eritrea

16. The Committee commends the State party for ratifying the Convention on the Elimination of All Forms of Discrimination against Women without reservations (A/61/38).

The former Yugoslav Republic of Macedonia

17. The Committee commends the State party for ratifying the Convention without reservations (A/60/38).

Gambia

18. The Committee commends the State party for ratifying the Convention without reservations (A/60/38).

Ireland

19. The Committee commends the State party for the withdrawal of the reservations to articles 15 (3) and 13 (b) and (c).

20. While welcoming the fact that reservations to articles 11 (1), 13 (a) and 16.1(d) and (f) are being kept under regular review, the Committee notes that they remain

21. **The Committee calls upon the State party to study carefully the nature and thrust of the remaining reservations within the context of article 23 of the Convention on the Elimination of All Forms of Discrimination against Women and the Vienna Convention on the Law of Treaties, with the aim of withdrawing them as soon as possible (A/60/38).**

Israel

22. The Committee notes that Israel continues to retain its reservations to articles 7 (b) and 16 of the Convention.

23. The Committee remains concerned that the State party continues to retain its reservations to articles 7 (b) and 16 of the Convention. The Committee is particularly concerned at the State party's statement that such reservations are "unavoidable at this point in time" and its position that laws based on religious values cannot be reformed.

24. **The Committee urges the State party to consider withdrawing its reservations to articles 7 (b) and 16, which are contrary to the object and purpose of the Convention (A/60/38).**

Lao People's Democratic Republic

25. The Committee commends the State party for ratifying the Convention without reservations (A/60/38).

Lebanon

26. The Committee notes that Lebanon entered reservations on articles 9 (2), 16 (1) (c), (d), (f), (g), and 29 (1) of the Convention.

27. The Committee expresses concern that the State party continues to have reservations to article 9, paragraph 2, and article 16, paragraph 1 (c), (d), (f) and (g), of the Convention. The Committee considers that the reservations to articles 9 and 16 are contrary to the object and purpose of the Convention.

28. **The Committee urges the State party to expedite the necessary steps to limit and ultimately withdraw its reservations to the Convention (A/60/38).**

Samoa

29. The Committee commends the State party for ratifying the Convention without reservations (A/60/38).

Thailand

30. The Committee remains concerned that the State party continues to retain its reservation to article 16 of the Convention. The Committee draws the attention of the State party to the fact that reservations to article 16 are contrary to the object and purpose of the Convention.

31. **The Committee urges the State party to expedite its efforts towards the withdrawal of its reservation to article 16 of the Convention within a concrete time frame (A/61/38).**

Togo

32. The Committee commends the State party for ratifying the Convention on the Elimination of All Forms of Discrimination against Women without reservations (A/61/38).

Turkey

33. The Committee commends the State party for the withdrawal of the reservation to article 15, paragraphs 2 and 4, and article 16, paragraph 1 (c), (d), (f) and (g) of the Convention.

34. The Committee notes that the State party has begun to work on the withdrawal of its declaration on article 9, paragraph 1, of the Convention following the removal of the provisions in the Citizenship Act that formed the basis for the declaration (A/60/38).

Committee against Torture

Positive remarks

On one occasion the Committee

- Noted the withdrawal of a reservation as a positive development.

Bahrain

35. The Committee notes the following positive developments:

(c) The withdrawal of its reservation to article 20 the Convention (CAT/C/CR/34/BHR).

Committee on the Rights of the Child

Positive remarks

On two occasions the Committee

- welcomed the withdrawal of a reservation (China, Liechtenstein).

On two occasions the Committee

- welcomed information that legal reforms would be undertaken allowing the State party to restrict the scope of its reservation (Denmark) or information provided that the State party is committed to withdrawing its reservation (Mauritius).

On one occasions the Committee

- noted the efforts made by the State its reservations to particular articles(Thailand).

Critical remarks

On two occasions the Committee

- expressed its opinion that the State party's reservation to an article was unnecessary (Australia, Bosnia and Herzegovina)

On four occasions the Committee

- reiterated its previous recommendation or recommended that State party withdraw its reservation in accordance with the Vienna Declaration and Plan of Action of 1993 (Australia, Bosnia and Herzegovina, Denmark, Mauritius), in the case of Bosnia, as expeditiously as possible and that it take the necessary procedural matters to that effect.

On three occasions the Committee

- recommended or reiterated its recommendation that the State party withdraw its reservations (Liechtenstein, Thailand), for all areas under its jurisdiction (China).

On three occasions the Committee

- regretted that the State party had not withdrawn its reservations to particular articles (China, Liechtenstein, Thailand).

On one occasion the Committee

- reiterated its concern that the general nature of the State party's reservation allows courts, Governments and other officials to negate many of the Convention's provisions and this raises serious concerns as to its compatibility with the object and purpose of the Convention and reiterated in light of article 51, paragraph 2 of the Convention, its previous recommendation that the State party review the general nature of its reservation with a view to withdrawing it or narrowing it in accordance with the Vienna Declaration and Plan of Action of the World Conference on Human Rights of 1993 (Saudi Arabia).

Comments with respect to other treaties

On one occasion the Committee

- expressed concern that the State party has maintained its reservation to a provision of the International Covenant on Civil and Political Rights which it considered hampered full implementation of one of the provisions of the Convention on the Rights of the Child and recommended that the State party withdrew the reservation to the ICCPR in order to ensure full implementation of the CRC (Finland).

On one occasions the Committee

- drew the State party's attention to articles 2 and 24 of the ICCPR which the State party ratified without reservations (Thailand)

Australia

Reservations

36. The Committee is of the opinion that the State party's reservation to article 37 (c) is unnecessary since there appears to be no contradiction between the logic behind it and the provisions of article 37 (c) of the Convention. In fact, the concerns expressed by the State party in its reservation are well taken care of by article 37 (c), which provides that every child deprived of liberty shall be separated from adults "unless it is considered in the best interests of the child not to do so" and that the child "shall have the right to maintain contact with his or her family".

37. The Committee, in light of the 1993 Vienna Declaration and Programme of Action, recommends that the State party continue and strengthen its efforts towards a full withdrawal of its reservation (CRC/C/15/Add. 268).

Bosnia and Herzegovina

38. The Committee, while noting the State party's declaration that it is currently not in the position to withdraw its reservation to article 9, paragraph 1, of the Convention, is of the opinion that in practice there is no need for it, since the social work centres may be considered as a "competent authority" in line with article 9 of the Convention.

39. The Committee, in the light of the Vienna Declaration and Programme of Action, recommends that the State party withdraw its reservation as expeditiously as possible and that it take the necessary procedural measures to that effect (CRC/C/15/Add. 260).

China

Reservations and declarations

40. The Committee welcomes the withdrawal of the State party's reservation to article 22 as applied to the Hong Kong SAR. However, it regrets the fact that reservations remain with regard to article 6 and are applied to the entire State party, and that for the Hong Kong and Macau SARs reservations with respect to articles 32 and 37 (c) remain in force.

41. **The Committee recommends that the State party review and withdraw all reservations to the Convention for all areas under its jurisdiction (CRC/C/CHN/CO/2).**

Denmark

Reservations

42. The Committee welcomes the information provided by the delegation that the State party will undertake legal reforms, which may make it possible to restrict the scope of the reservation to article 40.

43. **The Committee, in light of the Vienna Declaration and Programme of Action, recommends that the State party continue its efforts towards full withdrawal of the reservation to article 40 (CRC/C/DNK/CO/3)**

Finland

Administration of juvenile justice

44. The Committee is concerned that:

(b) The State party has maintained its reservation to article 10, paragraphs 2 (b) and 3, of the International Covenant on Civil and Political Rights, which can hamper the full implementation of article 37 (c) of the Convention.

45. **The Committee recommends that the State party**

(b) **Consider withdrawing its reservation to article 10, paragraphs 2 (b) and 3, of the International Covenant on Civil and Political Rights in order to ensure full implementation of the Convention (CRC/C/15/Add.272).**

Liechtenstein

46. The Committee welcomes the withdrawal by the State party of its reservation to article 10 (2) and its willingness to consider withdrawing remaining reservations. However, the Committee regrets that despite indications in 2001 of the intention to withdraw its reservation to article 7 of the Convention, the State party still has not

done so. The Committee further regrets that despite its previous recommendations (CRC/C/15/Add.143, paras. 6 to 9) the reservation to article 10 (1) has not been withdrawn either.

47. The Committee reiterates its recommendation that the State party take the necessary legal and other measures to establish a practice in the area of family reunification and access to citizenship in accordance with the principles and provisions of the Convention. It further recommends that the State party consider withdrawing its reservations to articles 7 and 10 (1) of the Convention in the near future (CRC/C/LIE/CO/2).

Mauritius

48. The Committee notes the fact that the reservation made on article 22 of the Convention has not yet been withdrawn. However, the Committee is encouraged by the information provided by the delegation that the State party is committed to withdrawing its reservation to article 22 of the Convention.

49. The Committee reiterates its previous recommendation that the State party undertake all the necessary measures to withdraw its reservation to article 22 of the Convention, in accordance with the Vienna Declaration and Plan of Action 1993 (CRC/C/MUS/CO/2).

Saudi Arabia

50. The Committee notes the information that the reservation which consists of a general reference to religious law and national law without specifying its contents, is mainly a precautionary measure and does not hamper the State party's implementation of the Convention. But the Committee reiterates its concern that the general nature of the reservation allows courts, governmental and other officials to negate many of the Convention's provisions and this raises serious concerns as to its compatibility with the object and purpose of the Convention.

51. The Committee reiterates, in light of article 51, paragraph 2, of the Convention, its previous recommendation that the State party review the general nature of its reservation with a view to withdrawing it, or narrowing it, in accordance with the Vienna Declaration and Plan of Action of the World Conference on Human Rights of 1993 (CRC/C/SAU/CO/2).

Thailand

52. The Committee notes the efforts made by the State party to review its reservations and its partial compliance with articles 7 and 22 of the Convention, but regrets that these reservations have been maintained.

53. The Committee reiterates its previous recommendation and again draws the State party's attention to articles 2 and 24 of the International Covenant on Civil and Political Rights, which the State party ratified without reservations. In

this regard, the Committee urges the State party to withdraw its reservations to articles 7 and 22 of the Convention in accordance with the Vienna Declaration and Plan of Action of the World Conference on Human Rights of 1993 (A/CONF.157/23).

54. The Committee reiterates its recommendation that the State party withdraw its reservations to articles 7 and 22 of the Convention and urges it to continue to implement measures to ensure that all stateless persons born in Thailand and living under its jurisdiction can acquire a nationality, including the possibility of acquiring Thai nationality.....

55. The Committee regrets that the State party has not ratified the 1951 Convention relating to the Status of Refugees and its 1967 Optional Protocol and that the State party has not withdrawn its reservations to articles 7 and 22 of the Convention (CRC/C/THA/CO/2).

Miscellaneous

General Comment No 6 on treatment of unaccompanied and separated children outside of their country of origin states

The Committee believes that reservations made by States parties to the Convention should not in any way limit the rights of unaccompanied and separated children. As is systematically done with States parties during the reporting process, the Committee recommends that, in the light of the Vienna Declaration and Programme of Action adopted at the 1993 World Conference on Human Rights in Vienna,ⁱ reservations limiting the rights of unaccompanied and separated children be reviewed with the objective of withdrawal (CRC/GC/2005/6).

ⁱ Vienna Declaration and Programme of Action (A/CONF.157/23) adopted by the World Conference on Human Rights, held in Vienna, 14-25 June 1993.

International Covenant on Civil and Political Rights

Substantive provisions by article	Reservations	Declarations/ Understandings	Objections	Withdrawal (partial)	Withdrawal (total)
Global		Mauritania	France, Germany, Greece, Latvia, The Netherlands, Poland, Portugal, Sweden, UK		Italy

Convention on the Elimination of All Forms of Discrimination against Women

Substantive provisions by article	Reservations	Declarations/ Understandings	Objections	Withdrawal (partial)	Withdrawal (total)
Articles 2, paragraph f, article 9, article 15, paragraph 2 16 and 29, paragraph 1	United Arab Emirates		Austria, Finland, France, Germany, Greece, Latvia, The Netherlands, Norway, Poland, Portugal, Spain, Sweden, UK		
Articles 2, paragraph f, 5, 11, paragraphs 1(d) and 2(b) and 16	Micronesia (Federated States of)		Finland, Sweden		

Optional Protocol to the Convention on the Rights of the Child on Children in Armed Conflict

Substantive provisions by article	Reservations	Declarations/ Understandings	Objections	Withdrawal (partial)	Withdrawal (total)
Global	Oman		Finland, Germany, Norway, Poland, Spain Sweden, UK		

Optional Protocol to the Convention on the Rights of the Child on sale of children, child prostitution and child pornography

Substantive provisions by article	Reservations	Declarations/ Understandings	Objections	Withdrawal (partial)	Withdrawal (total)
Global	Oman		France, Norway		
