

# GERMANY

## CRC

### **RESERVATIONS AND DECLARATIONS**

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

Upon ratification:

Declarations:

The Government of the Federal Republic of Germany declares ... that it will take the opportunity afforded by the ratification of the Convention to initiate reforms in its domestic legislation that are in keeping with the spirit of the Convention and that it considers appropriate, in line with article 3 (2) of the Convention, to ensure the well-being of the child. The planned measures include, in particular, a revision of the law on parental custody in respect of children whose parents have not married, are permanently living apart while still married, or are divorced. The principal aim will be to improve the conditions for the exercise of parental custody by both parents in such cases as well. The Federal Republic of Germany also declares that domestically the Convention does not apply directly. It establishes state obligations under international law that the Federal Republic of Germany fulfils in accordance with its national law, which conforms with the Convention.

...

### **Note**

On 15 July 2010, the Government of the Federal Republic of Germany notified its withdrawal of the following declarations concerning articles 9, 10, 18, 22 and 38(2):

The Government of the Federal Republic of Germany reserves the right to make, upon ratification, such declarations as it considers necessary, especially with regard to the interpretation of articles 9, 10, 18 and 22.

The Government of the Federal Republic of Germany is of the opinion that article 18 (1) of the Convention does not imply that by virtue of the entry into force of this provision parental custody, automatically and without taking into account the best interests of the respective child, applies to both parents even in the case of children whose parents have not married, are permanently living apart while still married, or are divorced. Such an interpretation would be incompatible with article 3 (1) of the Convention. The situation must be examined in a case-by-case basis, particularly where the parents cannot agree on the joint exercise of custody.

The Federal Republic of Germany therefore declares that the provisions of the Convention are also without prejudice to the provisions of national law concerning

- a) legal representation of minors in the exercise of their rights;
- b) rights of custody and access in respect of children born in wedlock;
- c) circumstances under family and inheritance law of children born out of wedlock;

This applies irrespective of the planned revision of the law on parental custody, the details of which remain within the discretion of the national legislator.

Nothing in the Convention may be interpreted as implying that unlawful entry by an alien into the territory of the Federal Republic of Germany or his unlawful stay there is permitted; nor may any provision be interpreted to mean that it restricts the right of the Federal Republic of Germany to pass laws and regulations concerning the entry of aliens and the conditions of their stay or to make a distinction between nationals and aliens.

The Government of the Federal Republic of Germany regrets the fact that under article 38 (2) of the Convention even fifteen-year-olds may take a part in hostilities as soldiers, because this age limit is incompatible with the consideration of a child's best interest (article 3 (1) of the Convention). It declares that it will not make any use of the possibility afforded by the Convention of fixing this age limit at fifteen years."

*(Note 30, Chapter IV.11, Multilateral Treaties Deposited with the Secretary-General)*

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#### Note

On 15 July 2010, the Government of the Federal Republic of Germany notified its withdrawal of the following reservations:

"In accordance with the reservations made by it with respect to the parallel guarantees of the International Covenant on Civil and Political Rights, the Federal Republic of Germany declares in respect of article 40 (2) (b) (ii) and (v) of the Convention that these provisions shall be applied in such a way that, in the case of minor infringement of the penal law, there shall not in each and every case exist:

a) a right to have "legal or other appropriate assistance" in the preparation and presentation of the defence, and/or

b) an obligation to have a sentence not calling for imprisonment reviewed by a "higher competent authority or judicial body".

*(Note 31, Chapter IV.11, Multilateral Treaties Deposited with the Secretary-General)*

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## Note

On 1 November 2010, the Government of the Government of the Federal Republic of Germany notified the Secretary-General that it had decided to withdraw its declaration made upon ratification. The text of the withdrawn declaration read as follows:

“The Government of the Federal Republic of Germany declares that it will take the opportunity afforded by the ratification of the Convention to initiate reforms in its domestic legislation that are in keeping with the spirit of the Convention and that it considers appropriate, in line with article 3 (2) of the Convention, to ensure the well-being of the child. The planned measures include, in particular, a revision of the law on parental custody in respect of children whose parents have not married, are permanently living apart while still married, or are divorced. The principal aim will be to improve the conditions for the exercise of parental custody by both parents in such cases as well. The Federal Republic of Germany also declares that domestically the Convention does not apply directly. It establishes state obligations under international law that the Federal Republic of Germany fulfils in accordance with its national law, which conforms with the Convention.”

*(Note 32, Chapter IV.11, Multilateral Treaties Deposited with the Secretary-General)*

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## Note

The German Democratic Republic had signed and ratified the Convention on 7 March 1990 and 2 October 1990, respectively. See also note 2 under “Germany” in the “Historical Information” section in the front matter of *[the electronic version on the website of the Multilateral Treaties Deposited with the Secretary-General; <http://treaties.un.org/pages/HistoricalInfo.aspx>]*.

*[Ed. note: Note 2 under Germany is as follows:*

*Germany*

*Note 2*

*In a communication dated 3 October 1990, the Federal Minister for Foreign Affairs of the Federal Republic of Germany notified the Secretary-General of the following:*

*"... Through the accession of the German Democratic Republic to the Federal Republic of Germany with effect from 3 October 1990, the two German States have united to form one sovereign State, which as a single Member of the United Nations remains bound by the provisions of the Charter in accordance with the solemn declaration of 12 June 1973. As from the date of unification, the Federal Republic of Germany will act in the United Nations under the designation 'Germany'."*

*The former German Democratic Republic was admitted to the Organization on 18 September 1973 by Resolution No. 3050 (XXVIII). For the text of the declaration of acceptance*

*of the obligations contained in the Charter dated 12 June 1973 made by the German Democratic Republic (registered under No. 12758), see United Nations, Treaty Series, vol. 891, p. 103.*

*[Ed. note: as follows:*

*On behalf of the Council of Ministers of the German Democratic Republic, I solemnly declare that the German Democratic Republic is willing to accept and conscientiously carry out the obligations contained in the Charter of the United Nations.*

*Chairman of the Council of Ministers of the German Democratic Republic  
Berlin, 12 June 1973.]*

*Consequently, and in the light of articles 11 and 12 of the Treaty of 31 August 1990 (Unification Treaty) between the Federal Republic of Germany and the German Democratic Republic, entries in status lists pertaining to formalities (i.e., signatures, ratifications, accessions, declarations and reservations, etc.) effected by the Federal Republic of Germany will now appear under "Germany" and indicate the dates of such formalities.*

*As regards treaties in respect of which formalities had been effected by both the Federal Republic of Germany and the former German Democratic Republic prior to unification, the entry will similarly indicate in the corresponding table the type of formality effected by the Federal Republic of Germany and the date on which it took place, while the type of formality effected by the former German Democratic Republic and the date thereof will appear in a footnote.*

*Finally, as regards the treatment of treaties in respect of which formalities were effected by the former German Democratic Republic alone, article 12, para. 3 of the Unification Treaty contains the following provision: "Should the united Germany intend to accede to international organizations or other multilateral treaties of which the German Democratic Republic but not the Federal Republic of Germany is a member, agreement shall be reached with the respective contracting parties and with the European Communities where the latter's competence is affected". Accordingly, a footnote indicating the date and type of formality effected by the former German Democratic Republic will be included in the status of the treaties concerned, the corresponding footnote indicator being inserted next to the heading "Participant".]*

*(Note 9, Chapter IV.11, Multilateral Treaties Deposited with the Secretary-General)*

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#### Note

In a communication received by the Secretary-General on 15 February 1990, the Government of the Federal Republic of Germany indicated that "it was [its] intention to make the [said]

declaration on the occasion of the signing of the Convention on the Rights of the Child".  
(Note 29, Chapter IV.11, Multilateral Treaties Deposited with the Secretary-General)

## **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)*

25 June 1992

With regard to the reservations made by Myanmar upon accession:

The Federal Republic of Germany considers that the reservations made by the Union of Myanmar regarding articles 15 and 37 of the Convention on the Rights of the Child are incompatible with the object and purpose of the Convention (article 51, paragraph 2) and therefore objects to them.

This objection shall not preclude the entry into force of the Convention as between the Union of Myanmar and the Federal Republic of Germany.

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17 March 1993

With regard to the reservations made by Tunisia upon ratification:

The Federal Republic of Germany considers the first of the declarations deposited by the Republic of Tunisia to be a reservation. It restricts the application of the first sentence of article 4 to the effect that any national legislative or statutory decisions adopted to implement the Convention may not conflict with the Tunisian Constitution. Owing to the very general wording of this passage the Government of the Federal Republic of Germany is unable to perceive which provisions of the Convention are covered, or may be covered at some time in the future, by the reservation and in what manner. There is a similar lack of clarity with regard to the reservation relating to article 2.

The Government of the Federal Republic of Germany therefore objects to both these reservations. This objection does not prevent the Convention from entering into force as between the Federal Republic of Germany and the Republic of Tunisia.

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21 September 1994

With regard to the reservation made by the Syrian Arab Republic upon ratification:

This reservation, owing to its indefinite nature, does not meet the requirements of international law. The Government of the Federal Republic of Germany therefore objects to the reservation made by the Syrian Arab Republic.

This objection shall not preclude the entry into force of the Convention as between the Syrian Arab Republic and the Federal Republic of Germany.

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11 August 1995

With regard to the reservation made by Iran (Islamic Republic) upon ratification:

[Same objection, mutatis mutandis, as the one made with regard to the Syrian Arab Republic.]  
[Ed. note: see above]

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20 March 1996

With regard to the reservations made by Malaysia upon accession and Qatar upon ratification:

The Government of the Federal Republic of Germany considers that such a reservation, which seeks to limit the responsibilities of [Malaysia and Qatar, respectively] under the Convention by invoking general principles of national law, may raise doubts as to the commitment of [Malaysia and Qatar, respectively] to the object and purpose of the Convention and, moreover, contributes to undermining the basis of international treaty law. It is the common interest of states that treaties to which they have chosen to become parties should be respected, as to object and purpose, by all parties. The Government of the Federal Republic of Germany therefore objects to the said reservation.

This objection does not constitute an obstacle to the entry into force of the Convention between the Federal Republic of Germany and [Malaysia and Qatar, respectively].

Subsequently, the Secretary-General received, from the Government of Germany, objections of the same nature as the one above with regard to reservations made by the following States on the dates indicated hereinafter:

- 13 June 1996: with regard to the reservation made by Botswana upon ratification;
- 4 September 1996: with regard to the reservations made by Singapore upon accession;
- 12 February 1997: with regard to the reservations made by Brunei Darussalam and Saudi Arabia upon accession.
- 28 January 1998: with regard to the reservations made by Oman upon accession.

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## Note

On 6 May 1996, the Secretary-General received the following communication from the Government of the Syrian Arab Republic with regard to the objection by the Government of Germany to its reservations made upon ratification:

The laws in effect in the Syrian Arab Republic do not recognize the system of adoption, although they do require that protection and assistance should be provided to those for whatever reason permanently or temporarily deprived of their family environment and that alternative care should be assured them through foster placement and kafalah, in care centres and special institutions and, without assimilation to their blood lineage (nasab), by foster families, in accordance with the legislation in force based on the principles of the Islamic Shariah.

The reservations of the Syrian Arab Republic to articles 20 and 21 mean that approval of the Convention should not in any way be interpreted as recognizing or permitting the system of adoption to which reference is made in these two articles and are subject to these limitations only.

The reservations of the Syrian Arab Republic to article 14 of the Convention are restricted only to its provisions relating to religion and do not concern those relating to thought or conscience. They concern: the extent to which the right in question might conflict with the right of parents and guardians to ensure the religious education of their children, as recognized by the United Nations and set forth in article 18, paragraph 4, of the International Covenant on Civil and Political Rights; the extent to which it might conflict with the right, established by the laws in force, of a child to choose a religion at an appointed time or in accordance with designated procedures or at a particular age in the case where he clearly has the mental and legal capacity to do so; and the extent to which it might conflict with public order and principles of the Islamic Shariah on this matter that are in effect in the Syrian Arab Republic with respect to each case.  
*(Note 51, Chapter IV.11, Multilateral Treaties Deposited with the Secretary-General)*