

## MALAYSIA

### CRC

#### RESERVATIONS AND DECLARATIONS

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

#### Reservation:

"The Government of Malaysia accepts the provisions of the Convention on the Rights of the Child but expresses reservations with respect to articles 1, 2, 7, 13, 14, 15, [...], 28, [paragraph 1 (a)] 37, [...] of the Convention and declares that the said provisions shall be applicable only if they are in conformity with the Constitution, national laws and national policies of the Government of Malaysia."

19 July 2010

#### Declaration:

"With respect to article 28 paragraph 1 (a) of the Convention, the Government of Malaysia wishes to declare that with the amendment to the Education Act 1996 in the year 2002, primary education in Malaysia is made compulsory. In addition, the Government of Malaysia provides monetary aids and other forms of assistance to those who are eligible."

#### Note

Subsequently, the Government of Malaysia informed the Secretary-General that it had decided to withdraw its reservation to articles 22, 28 paragraph 1 (b), (c), (d), (e) and paragraphs 2 and 3, article 40 paragraph 3 and 4, articles 44 and 45" made upon accession. It should be noted that, the Secretary-General had received from the following States, communications in regard to the reservations made by the Government of Malaysia upon accession, on the dates indicated hereinafter:

#### **Belgium** (1 July 1996):

The Belgian Government believes that this reservation is incompatible with the object and purpose of the Convention and that, consequently, in accordance with article 51, paragraph 2, of the Convention, it is not permitted.

...

Accordingly, Belgium wishes to be bound by the Convention in its entirety as regards [the State of Malaysia] which [has] expressed reservations prohibited by the [said] Convention.

Moreover, as the 12 month period specified in article 20.5 of the Vienna Convention on the Law of Treaties is not applicable to reservations which are null and void, Belgium's objection to such

reservations is not subject to any particular time-limit.

**Denmark** (2 July 1996):

"The reservation is covering multiple provisions, including central provisions of the Convention. Furthermore, it is a general principle of international law that internal law may not be invoked as justification for failure to perform treaty obligations. Consequently, the Government of Denmark considers the said reservation as being incompatible with the object and purpose of the Convention and accordingly inadmissible and without effect under international law. The Convention remains in force in its entirety between Malaysia and Denmark.

It is the opinion of the Government of Denmark that no time limit applies to objections against reservations, which are inadmissible under international law.

The Government of Denmark recommends the Government of Malaysia to reconsider its reservation to the said Convention."

*(Note 37, Chapter IV.11, Multilateral Treaties Deposited with the Secretary-General)*

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#### Note

The declaration of 19 July 2010 modifies the earlier declaration of 23 March 1999.

*(Note 38, Chapter IV.11, Multilateral Treaties Deposited with the Secretary-General)*

#### **OBJECTIONS MADE TO STATE PARTY'S RESERVATIONS AND DECLARATIONS**

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

Austria, 18 June 1996

With regard to the reservations made by Malaysia upon accession:

"Under article 19 of the Vienna Convention on the Law of Treaties which is reflected in article 51 of the [Convention] a reservation, in order to be admissible under international law, has to be compatible with the object and purpose of the treaty concerned. A reservation is incompatible with object and purpose of a treaty if it intends to derogate from provisions the implementation of which is essential to fulfilling its object and purpose.

The Government of Austria has examined the reservation made by Malaysia to the [Convention]. Given the general character of these reservations a final assessment as to its admissibility under international law cannot be made without further clarification.

Until the scope of the legal effects of this reservation is sufficiently specified by Malaysia, the Republic of Austria considers these reservations as not affecting any provision the

implementation of which is essential to fulfilling the object and purpose of the [Convention].

Austria, however, objects to the admissibility of the reservations in question if the application of this reservation negatively affects the compliance of Malaysia ... with its obligations under the [Convention] essential for the fulfilment of its object and purpose.

Austria could not consider the reservation made by Malaysia ... as admissible under the regime of article 51 of the [Convention] and article 19 of the Vienna Convention on the Law of Treaties unless Malaysia ... , by providing additional information or through subsequent practice to ensure [s] that the reservations are compatible with the provisions essential for the implementation of the object and purpose of the [Convention]".

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**Finland**, 14 June 1996

With regard to the reservations made by Malaysia upon accession:

"The reservation made by Malaysia covers several central provisions of the [said Convention]. The broad nature of the said reservation leaves open to what extent Malaysia commits itself to the Convention and to the fulfilment of its obligations under the Convention. In the view of the Government of Finland reservations of such comprehensive nature may contribute to undermining the basis of international human rights treaties.

The Government of Finland also recalls that the said reservation is subject to the general principle of the observance of the treaties according to which a party may not invoke its internal law, much less its national policies, as justification for its failure to perform its treaty obligations. It is in the common interest of the States that contracting parties to international treaties are prepared to undertake the necessary legislative changes in order to fulfil the object and purpose of the treaty. Moreover, the internal legislation as well as the national policies are also subject to changes which might further expand the unknown effects of the reservation.

In its present formulation the reservation is clearly incompatible with the object and purpose of the Convention and therefore inadmissible under article 51, paragraph 2, of the [said Convention]. Therefore the Government of Finland objects to such reservation. The Government of Finland further notes that the reservation made by the Government of Malaysia is devoid of legal effect.

The Government of Finland recommends the Government of Malaysia to reconsider its reservation to the [said Convention]."

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**Germany**, 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].

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**Ireland**, 26 June 1996

With regard to the reservation made by Malaysia upon accession:

"Ireland considers that this reservation is incompatible with the object and purpose of the Convention and is therefore prohibited by article 51 (2) of the Convention. The Government of Ireland also considers that it contributes to undermining the basis of international treaty law. The Government of Ireland therefore objects to the said reservation.

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**Netherlands**

With regard to the reservations made by Djibouti, Indonesia, Iran (Islamic Republic of), Pakistan and the Syrian Arab Republic upon ratification:

"The Government of the Kingdom of the Netherlands considers that such reservations, which seek to limit the responsibilities of the reserving State under the Convention by invoking general principles of national law, may raise doubts as to the commitment of these States to the object and purpose of the Convention and moreover, contribute to undermining the basis of international treaty law. It is in 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 Kingdom of the Netherlands therefore objects to these reservations.

This objection does not constitute an obstacle to the entry into force of the Convention between the Kingdom of the Netherlands and the aforementioned States."

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

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- 25 June 1996: with regard to the reservation made by Malaysia upon accession;

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**Norway, 27 June 1996**

With regard to the reservation made by Malaysia upon ratification:

"The Government of Norway considers that the reservation made by the Government of Malaysia, due to its very broad scope and undefined character, is incompatible with the object and purpose of the Convention, and thus not permitted under article 51, paragraph 2, of the Convention. Moreover, the Government of Norway considers that the monitoring system established under the Convention is not optional and that, accordingly, reservations with respect to articles 44 and 45 of the Convention are not permissible. For these reasons, the Government of Norway objects to the reservation made by the Government of Malaysia.

The Government of Norway does not consider this objection to preclude the entry into force of the Convention between the Kingdom of Norway and Malaysia."

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**Portugal**

15 July 1992

With regard to the reservations made by Myanmar upon accession, by Bangladesh, Djibouti, Indonesia, Kuwait and Pakistan upon ratification and by Turkey upon signature:

"The Government of Portugal considers that reservations by which a State limits its responsibilities under the Convention by invoking general principles of National Law may create doubts on the commitments of the reserving State to the object and purpose of the Convention and, moreover, contribute to undermining the basis of International Law. It is in the common interest of States that treaties to which they have chosen to become parties also are respected, as to object and purpose, by all parties. The Government of Portugal therefore objects to the reservations.

This objection shall not constitute an obstacle to the entry into force of the Convention between Portugal and Myanmar.

The Government of Portugal furthermore notes that, as a matter of principle, the same objection could be made to the reservations presented by Bangladesh, Djibouti, Indonesia, Kuwait, Pakistan and Turkey."

Subsequently, the Secretary-General received, from the Government of the Portugal, objections

of the same nature as the one above with regard to reservations made by the following States on the dates indicated hereinafter:

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- 4 December 1995: with regard to the reservation made by Malaysia upon accession;

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## **Sweden**

20 September 1991

With regard to the reservation made by Indonesia upon ratification concerning articles 1, 14, 16, 17, 21, 22 and 29:

"A reservation by which a State party limits its responsibilities under the Convention by invoking general principles of national law may cast doubts on the commitments of the reserving state to the object and purpose of the Convention and, moreover, contribute to undermining the basis of international treaty law. It is in the common interest of states that treaties to which they have chosen to become parties also are respected, as to object and purpose, by all parties. The Government of Sweden therefore objects to the reservations.

"This objection does not constitute an obstacle to the entry into force of the Convention between Sweden and the Republic of Indonesia."

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

...

- 26 June 1996: with regard to the reservations made by Malaysia upon accession;

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*(Ed. note: for other objections, see Note under Reservations and Declarations, above)*