

CHILE

CAT

RESERVATIONS AND DECLARATIONS

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

Upon signature:

...

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

3. The Government of Chile reserve the right to formulate, upon ratifying the Convention, any declarations or reservations it may deem necessary in the light of its domestic law.

Upon ratification:

The Government of Chile declares that in its relations with American States that are Parties to the Inter-American Convention to Prevent and Punish Torture, it will apply that Convention in cases where its provisions are incompatible with those of the present Convention.

...

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:

Italy (14 August 1989):

The Government of Italy considers that the reservations entered by Chile are not valid, as they are incompatible with the objection and purpose of the Convention. The present objection is in no way an obstacle to the entry into force of this Convention between Italy and Chile.

Denmark (7 September 1989):

"The Danish Government considers the said reservations as being incompatible with the object and purpose of the Convention and therefore invalid.

"This objection is not an obstacle to the entry into force of the said Convention between Denmark and Chile."

Luxembourg (12 September 1989):

...The Grand Duchy of Luxembourg objects to the reservations, which are incompatible with the intent and purpose of the Convention.

This objection does not represent an obstacle to the entry into force of the said Convention between the Grand Duchy of Luxembourg and Chile.

Czechoslovakia (20 September 1989):

"The Czechoslovak Socialist Republic considers the reservations of the Government of Chile [...] as incompatible with the object and purpose of this Convention.

"The obligation of each State to prevent acts of torture in any territory under its jurisdiction is unexceptional. It is the obligation of each State to ensure that all acts of torture are offences under its criminal law. This obligation is confirmed, inter alia , in article 2, paragraph 3 of the Convention concerned.

"The observance of provisions set up in article 3 of this Convention is necessitated by the need to ensure more effective protection for persons who might be in danger of being subjected to torture and this is obviously one of the principal purposes of the Convention.

"Therefore, the Czechoslovak Socialist Republic does not recognize these reservations as valid."

France (20 September 1989):

France considers that the reservations made by Chile are not valid as being incompatible with the object and purpose of the Convention.

Such objection is not an obstacle to the entry into force of the Convention between France and Chile.

Sweden (25 September 1989):

"... These reservations are incompatible with the object and purpose of the Convention and therefore are impermissible according to article 19 (c) of the Vienna Convention on the Law of Treaties. For this reason the Government of Sweden objects to these reservations. This objection does not have the effect of preventing the Convention from entering into force between Sweden and Chile, and the said reservations cannot alter or modify, in any respect, the obligations arising from the Convention."

Spain (26 September 1989):

... The aforementioned reservations are contrary to the purposes and aims of the Convention.

The present objection does not constitute an obstacle to the entry into force of the Convention between Spain and Chile.

Norway (28 September 1989):

"... The Government of Norway considers the said reservations as being incompatible with the object and purpose of the Convention and therefore invalid.

"This objection is not an obstacle to the entry into force of the said Convention between Norway and Chile."

Portugal (6 October 1989):

"...The Government of Portugal considers such reservations to be incompatible with the object and purpose of this Convention and therefore invalid.

"This objection does not constitute an obstacle to the entry into force of the Convention between Portugal and Chile."

Greece (13 October 1989):

Greece does not accept the reservations since they are incompatible with the purpose and object of the Convention.

The above-mentioned objection is not an obstacle to the entry into force of the Convention between Greece and Chile.

Finland (20 October 1989):

"... The Government of Finland considers the said reservations as being incompatible with the object and purpose of the Convention and therefore invalid.

"This objection is not an obstacle to the entry into force of the said Convention between Finland and Chile."

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."

Turkey (3 November 1989):

"The Government of Turkey considers such reservations to be incompatible with the object and purpose of this Convention and therefore invalid.

"This objection does not constitute an obstacle to the entry into force of the Convention between Turkey and Chile."

Australia (7 November 1989):

"[The Government of Australia] has come to the conclusion that these reservations are incompatible with the object and purpose of the Convention and therefore are impermissible according to article 19 of the Vienna Convention on the Law of Treaties. The Government of Australia therefore objects to these reservations. This objection does not have the effect of preventing the Convention from entering into force between Australia and Chile, and the afore-mentioned reservations cannot alter or modify, in any respect, the obligations arising from the Convention."

Netherlands (7 November 1989):

"Since the purpose of the Convention is strengthening of the existing prohibition of torture and similar practices the reservation to article 2, paragraph 3, to the effect to an order from a superior officer or a public authority may - in some cases - be invoked as a justification of torture, must be rejected as contrary to the object and purpose of the Convention.

"For similar reasons the reservation to article 3 must be regarded as incompatible with the object and purpose of the Convention.

"These objections are not an obstacle to the entry into force of this Convention between the Kingdom of the Netherlands and Chile."

Switzerland (8 November 1989):

These reservations are not compatible with the object and purpose of the Convention, which are to improve respect for human rights of fundamental importance and to make more effective the struggle against torture throughout the world.

This objection does not have the effect of preventing the Convention from entering into force between the Swiss Confederation and the Republic of Chile.

United Kingdom of Great Britain and Northern Ireland (8 November 1989):

"The United Kingdom is unable to accept the reservation to article 2, paragraph 3, or the reservation to article 3."

In the same communication, the Government of the United Kingdom notified the Secretary-General of the following:

"(a) The reservations to article 28, paragraph 1, and to article 30, paragraph 1, being reservations expressly permitted by the Convention, do not call for any observations by the United Kingdom.

"(b) The United Kingdom takes note of the reservation referring to the Inter-American Convention to Prevent and Punish Torture, which cannot, however, affect the obligations of Chile in respect of the United Kingdom, as a non-Party to the said Convention."

Austria (9 November 1989):

"The reservations [...] are incompatible with the object and purpose of the Convention and are therefore impermissible under article 19 (c) of the Vienna Convention on the Law of Treaties. The Republic of Austria therefore objects against these reservations and states that they cannot alter or modify, in any respect, the obligations arising from the Convention for all States Parties thereto."

New Zealand (10 December 1989):

"... The New Zealand Government considers the said reservations 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 New Zealand and Chile."

Bulgaria (24 January 1990):

"The Government of the People's Republic of Bulgaria considers the reservations made by Chile with regard to art. 2, para. 3 and art. 3 of the Convention against torture and other forms of cruel, inhuman or degrading treatment or punishment of December 10, 1984 incompatible with the object and the purpose of the Convention.

"The Government of the People's Republic of Bulgaria holds the view that each State is obliged to take all measures to prevent any acts of torture and other forms of cruel and inhuman treatment within its jurisdiction, including the unconditional qualification of such acts as crimes in its national criminal code. It is in this sense that art. 2, para. 3 of the Convention is formulated.

"The provisions of art. 3 of the Convention are dictated by the necessity to grant the most effective protection to persons who risk to suffer torture or other inhuman treatment. For this reason these provisions should not be interpreted on the basis of subjective or any other circumstances, under which they were formulated.

"In view of this the Government of the People's Republic of Bulgaria does not consider itself bound by the reservations."

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)

OBJECTIONS MADE TO STATE PARTY'S RESERVATIONS AND DECLARATIONS

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

DECLARATIONS RE: ARTICLES 21 AND 22

15 March 2004

By virtue of the powers vested in me by the Constitution of the Republic of Chile, I should like to declare that the Government of Chile recognizes the competence of the Committee against Torture established pursuant to article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations in resolution 39/46 of 10 December 1984, with respect to acts of which the commencement of execution is subsequent to the communication of this declaration by the Republic of Chile to the Secretary-General of the United Nations:

- (a) To receive and consider communications to the effect that a State party claims that the State of Chile is not fulfilling its obligations under the Convention, in accordance with article 21 thereof; and
- (b) To receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by the State of Chile of the provisions of the Convention, in accordance with article 22 thereof.