

Reservations and Declarations – Réserves et Déclarations ANSWERS

Question 1

Rome Statute of the International Criminal Court (Rome, 17 July 1998)

Participant	Signature	Ratification
Australia	9 Dec 1998	1 Jul 2002

Australia

Reservations are forbidden under the Rome Statute.

This is a declaration. Note the language used at the end of the first paragraph. The State would be stopped from asserting at a later date that it was, in fact, a reservation.

"The Government of Australia, having considered the Statute, now hereby ratifies the same, for and on behalf of Australia, with the following declaration, the terms of which have full effect in Australian law, **and which is not a reservation:**

Australia notes that a case will be inadmissible before the International Criminal Court (the Court) where it is being investigated or prosecuted by a State. Australia reaffirms the primacy of its criminal jurisdiction in relation to crimes within the jurisdiction of the Court. To enable Australia to exercise its jurisdiction effectively, and fully adhering to its obligations under the Statute of the Court, no person will be surrendered to the Court by Australia until it has had the full opportunity to investigate or prosecute any alleged crimes. For this purpose, the procedure under Australian law implementing the Statute of the Court provides that no person can be surrendered to the Court unless the Australian Attorney-General issues a certificate allowing surrender. Australian law also provides that no person can be arrested pursuant to an arrest warrant issued by the Court without a certificate from the Attorney-General.

Australia further declares its understanding that the offences in Article 6, 7 and 8 will be interpreted and applied in a way that accords with the way they are implemented in Australian domestic law."

Question 2

Convention on the Elimination of All Forms of Discrimination against Women

New York, 18 December 1979

Participant	Signature	Ratification
Jordan	3 Dec 1980	1 Jul 1992

Jordan

These are reservations. Regardless of what Jordan calls these statements (they are called “declaration”, the terminology (“does not consider itself bound”) legally affects the obligations under the treaty.

Therefore, they would need to be signed by one of the three authorities and submitted upon ratification or accession. (minus the late reservation exception).

Note that Jordan made the declaration/reservation upon signature and then confirmed it upon ratification. If Jordan had not confirmed it, it would lapse and would no longer apply once Jordan became party.

Declaration made upon signature and confirmed upon ratification:

Jordan does not consider itself bound by the following provisions:

1. Article 9, paragraph 2;
2. Article 15, paragraph 4 (a wife's residence is with her husband);
3. Article 16, paragraph (1) (c), relating to the rights arising upon the dissolution of marriage with regard to maintenance and compensation;
4. Article 16, paragraph (1) (d) and (g).

Question 3

WHO Framework Convention on Tobacco Control

Geneva, 21 May 2003

Participant	Signature	Ratification
Viet Nam	3 Sep 2003	17 Dec 2004

Viet Nam

Silent as to reservations.

This is a permissible reservation. It states that Viet Nam will only permit arbitration when it agrees and on a case by case basis – not with every other State Party. So, it limits the effects of the treaty provisions.

Note, however, if Viet Nam called this a “declaration” or a “statement”, the depositary would not change its name to “reservation”.

"Any dispute arising between the Socialist Republic of Viet Nam and any other Parties to the Convention concerning the implementation or application of the Convention, which is not resolved through negotiation or any other peaceful means in accordance with paragraph 1, article 27 thereof, shall be referred to arbitration for settlement, only on the basis of agreement between the Socialist Republic of Viet Nam and such parties, on the basis of case by case."

Question 4

Stockholm Convention on Persistent Organic Pollutants

Stockholm, 22 May 2001

Participant	Signature	Ratification
Bahrain	22 May 2002	31 Jan 2006

Bahrain

Reservations are prohibited by the Stockholm Convention.

If you read the terms of the Convention, one article states that “Reservations to this Convention are not permitted”. Another article on the settlement of disputes between States Parties under the Convention provides for arbitration or ICJ jurisdiction and then notes that a State may declare upon ratification that “arbitration according to the procedures adopted by the Conference of States is the only binding procedure...”

Despite the language, this is simply a statement of treaty law. Amendments to treaties are not binding on states parties until they are ratified.

Declarations:

1. Arbitration according to the procedures adopted by the Conference of States Parties is the only binding procedure for the Government of the Kingdom of Bahrain regarding resolving any dispute on the interpretation or implementation of the Convention. ***This is a declaration that has the effect of a permissible reservation in that it limits the types of procedures available for settlement of disputes.***
2. Any amendment to the Convention annexes A, B and C will not be binding to the Kingdom of Bahrain unless it is ratified according to the constitutional rules.

Participant	Signature	Ratification
Belgium	23 May 2001	25 May 2006

Belgium

This is a territorial extension or application, not a territorial exclusion. Belgium is not excluding parts of its territory. Note regional exceptions that the SG permits (New Zealand, Denmark, UK, China with HK and Macao). Belgium is not one of these exceptions. The legal effect of this statement is that Belgium extends the treaty to all of its regions, which is in accordance with Article 29 of the Vienna Convention of the Law of Treaties.

The territorial application or declaration was not confirmed upon ratification. But in Belgium's case, it does not matter. This could be seen as a political statement directed at a domestic audience.

Declaration made upon signature:

"This signature engages also the Walloon region, the Flemish region, and the Brussels-Capital region."