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Doctoral Dissertation

# RESERVATIONS TO INTERNATIONAL HUMAN RIGHTS TREATIES: PROBLEMATIC ISSUES

SOCIAL SCIENCES,
LAW (S 001)
VILNIUS, 2026

Mykolas Romeris University

MYKOLAS ROMERIS UNIVERSITY

**Aistė Augustauskaitė-Keršienė**

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# IŠLYGOS TARPTAUTINĖMS ŽMOGAUS TEISIŲ APSAUGOS SUTARTIMS: PROBLEMINIAI ASPEKTAI

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## DEFINITION OF TERMS

**Artificial Intelligence (AI)**: Advanced computational technologies, particularly natural language processing systems, that are employed to enhance monitoring, analysis, and assessment of treaty reservations through systematic data processing, pattern recognition, and comparative analysis, whilst preserving human legal interpretation authority.

**Human Rights Treaties**: International legal instruments specifically designed to protect and promote fundamental human rights, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), United Nations Convention on the Rights of the Child (CRC), and European Convention on Human Rights (ECHR).

**Impermissible Reservation**: A unilateral statement by a state that conflicts with the object and purpose of a treaty as prohibited under Article 19(c) of the Vienna Convention on the Law of Treaties, thereby undermining the treaty's fundamental objectives and essential provisions.

**Interpretative Declaration**: A unilateral statement made by a state to specify or clarify its understanding of treaty provisions without intending to exclude or modify the legal effect of those provisions, distinguished from reservations by its interpretative rather than exclusionary purpose.

**Object and Purpose Test**: The legal standard established by the 1951 ICJ Advisory Opinion on the Genocide Convention and codified in Article 19(c) of the Vienna Convention on the Law of Treaties, requiring that reservations do not conflict with the fundamental objectives and essential character of a treaty.

**Objection**: A formal statement by a state party expressing disapproval of another state's reservation, which may affect the legal relationship between the objecting and reserving states but does not automatically invalidate the reservation under current international law.

**Reservation**: As defined in Article 2(1)(d) of the Vienna Convention on the Law of Treaties, "a unilateral statement, however phrased or named, made by a State when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State".

**Severability Doctrine**: The legal principle whereby impermissible reservations are removed from a state's instrument of ratification without invalidating the entire ratification, allowing the state to remain bound by the treaty whilst eliminating the incompatible reservation.

**Treaty Body**: International monitoring committees established under human rights treaties to oversee state compliance, review periodic reports, issue general comments, and provide interpretative guidance on treaty implementation, though typically lacking binding enforcement authority.

**Vienna Convention on the Law of Treaties (VCLT)**: The 1969 international

agreement codifying the general rules governing treaty formation, interpretation, and termination, including Articles 19-23, which establish the legal framework for reservations to international treaties.

# INTRODUCTION

*The ideal solution would be one that combines practical convenience and reasonable ease and liberty in the matter of making unilateral reservations, with adequate control, a regard for realities, sound legal doctrine, and respect for the rule of law in the international treaty relations of States.*

*Gerald Fitzmaurice*[1]

**Relevance of the topic.** Reservations to human rights treaties have sparked intense discussions for decades, often reflecting very conflicting views, both in the doctrine and practice of international law. Vienna Convention on the Law of the Treaties (hereinafter - VCLT)[2] defines a "reservation" as "a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State". This state-centric definition has been broadened by scholars to include international organizations as potential reserving entities, reflecting developments in international law since the VCLT adoption."[3]

To begin with, "the power of making reservations to international treaties grows out of the principle of 'sovereignty of states', so states can claim that they will not be bound by some particular provisions of an international treaty which they do not give their consent"[4].

M.N. Shaw emphasizes the importance of international treaties for state relations, arguing that "the international treaties, particularly the multilateral ones, are the results of a crucial need to regulate the relations between states and to provide stability and control over their relations. In this context, it can be said that treaties may lose their effectiveness if states are unwilling to enforce them, in other words, if they make reservations to exclude or to modify the legal effect of certain provisions of the treaty"[5]. Moreover, article 27 of VCLT provides that a state may not invoke the provisions of its internal law as justification for its failure to perform its obligations under treaty. "While the possibility of formulating reservations may be considered as an exception to this rule, since reservations are made because of the non-conformity of domestic law with international law, the 'right' to formulate reservations can never go so far as to give priority to domestic law in general, since this would not constitute implementation of

1 Sir Gerald Fitzmaurice (1901-1982), Judge of the International Court of Justice (1960-1973), Judge of the European Court of Human Rights (1974-1980), and former Legal Adviser to the United Kingdom Foreign Office.

2 Vienna Convention on the Law of Treaties adopted on 23 May 1969 (1980). 155 UNTS 331.

3 Yamali, Nurullah. 'How Adequate Is the Law Governing Reservations to Human Rights Treaties?' *Ankara: Ministry of Foreign Affairs*, 2004, p. 3.

4 *Ibid. p. 4.*

5 M.N. Shaw. International Law. 6th. ed., Cambridge University Press, Cambridge. 2008. p. 915

the treaty in good faith."[6] Although states are obligated to observe this principle when formulating reservations, empirical analysis of reservation practice demonstrates that numerous states invoke incompatibility with domestic legal frameworks, traditional customs, or religious doctrines as justification for their reservations, thereby attempting to satisfy the object and purpose test whilst simultaneously undermining treaty effectiveness. This approach reveals a fundamental tension between formal compliance with reservation requirements and substantive adherence to human rights obligations, as states frequently employ broad compatibility claims to circumvent specific treaty provisions without demonstrating genuine engagement with the underlying human rights principles at stake.

Speaking more narrowly, the International Court of Justice (hereinafter - ICJ) for the first time formed practice and had the opportunity to explain its approach to the effects of reservations to a multilateral human rights treaty in its 1951 advisory opinion on Reservations to the Genocide Convention[7].

M. Fitzmaurice highlights the significance of the Reservations to the Genocide Convention Advisory Opinion, noting that it: "established new foundations in the practice of reservations to all multilateral treaties that protect human rights, as well. It may be said that until then, the general practice of States concerning reservations was based on the so-called "unanimity rule" or the "League of Nations" rule. Under this principle, all parties to the treaty had to consent to all reservations. This was a very inflexible rule, which, although securing the integrity of the treaty, did not attract wider participation."[8]

It is important to note that the Genocide Convention contains no express provision governing reservations. Consequently, states began to formulate various reservations to the Convention, creating uncertainty for the Secretary-General of the United Nations (as depositary) regarding which states should be counted in determining the Convention's entry into force. The Court further clarified that the contractual principle of absolute integrity was inapplicable to the Genocide Convention, emphasizing that no absolute rule of international law exists requiring unanimous acceptance of reservations by all parties. This conclusion was supported by reference to the established practice of international organizations, including the Organization of American States, which had developed more flexible approaches to reservation acceptance that departed from strict unanimity requirements. However, "it must clearly be assumed that the contracting States are desirous of preserving intact at least what is essential to the object of the Convention; should this desire be absent, it is quite clear that the Convention itself be impaired both in its principle and in its application"[9].

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6 T. Kamminga, Menno, and Martin Scheinin. *The Impact of Human Rights Law on General International Law*. Oxford University Press, 2009. p. 71-72

7 Reservations to the Convention on Genocide, Advisory Opinion, ICJ Reports 1951, p. 15.

8 M. Fitzmaurice. 'On the Protection of Human Rights, the Rome Statute and the Preservation of Multilateral Treaties'. *SYBIL* 10 (2006): p. 134.

9 *Ibid. p. 137*

In this landmark decision, the ICJ established a foundational precedent for the practice of reservations to multilateral human rights treaties. The Court articulated that contracting states must be presumed to desire the preservation of those elements essential to the treaty's object and purpose; absent such intention, the Convention would be fundamentally compromised both in principle and application. This formulation introduced a critical test whereby reservations must be assessed against their compatibility with the treaty's core objectives, rather than being subject to absolute prohibitions or unlimited permissibility. The Court's reasoning thus provided a nuanced framework that balanced state sovereignty in treaty participation with the imperative to maintain the integrity of human rights instruments, establishing what would become known as the "object and purpose" test for evaluating reservations' validity.

In 2006, the ICJ delivered its judgment on jurisdiction and admissibility in the case concerning Armed activities on the territory of the Congo opposing the Democratic Republic of the Congo (DRC) to Rwanda.[10] In this case, the DRC sought to invoke the jurisdiction of the ICJ on the basis of (among other treaty provisions) Article 22 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD)[11] while Rwanda argued that the ICJ had no jurisdiction as it was precluded by its reservation to Article 22.[12] The ICJ found that it had no jurisdiction in the case, as two-thirds of the state parties had not objected to the reservation. Again, the ICJ found that they also did not have jurisdiction under the Genocide Convention as Rwanda had a reservation precluding the ICJ's jurisdiction. The ICJ found that this reservation was not incompatible with the object and purpose of the treaty. In a joint separate opinion, Judges Higgins, Elaraby, Kooijmans, Owada, and Simma observed that since the 1951 opinion, there have been many developments in international law that could not be taken into consideration, including the creation of human rights treaties, which have monitoring bodies - something seemingly unique to the human rights treaties. The Judges noted that the work of the treaty bodies should "not be viewed as 'making an exception' to the law as determined in 1951 by the International Court," and declare further: "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."[13] Placating opposing groups has done little to settle the question. This opinion did not quell the controversy over reservations. Instead of settling the issue, there has been a proliferation of working groups, reports, and academic articles working out the "problem" of reservations since the ICJ issued its opinion, despite the appointment of the Special Rapporteur, Alain Pellet, and draft reports issued by the International Law Commission (hereinafter - ILC).

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10 Armed Activities on the Territory of the Congo (New Application : 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006, p. 6

11 *Ibid. p. 9.*

12 *Ibid. p 10.*

13 *Ibid*. Joint Separate Opinion of Higgins, Kooijmans, Elaraby, Owada, and Simma, JJ. p 60.

Even though the ICJ formed practice case by case and highlighted the main features of the reservations, the questions related to certain aspects of the validity of reservations and the legal consequences of invalid reservations remain vague.

It must be mentioned that "the provisions on reservations in VCLT follow the main structure of the Reservations to the Genocide Convention Advisory Opinion. However, the system of reservations causes several problems both in the practice and theory of the law of treaties, as the VCLT has left gaps in the regulation of fundamental issues (such as the permissibility of reservations), and certain other provisions were ambiguous (such as the "object and purpose" of a treaty which, generally, is not well defined in the VCLT)"[14]. These problems proved to be particularly difficult to solve in human rights treaties and especially those relating to the religious aspect, where reservations raise many questions concerning their permissibility and/or compatibility with the object and purpose of a treaty.

Beyond the aforementioned issues, a persistent question concerns whether the VCLT regime provides adequate coverage for the distinctive characteristics of human rights instruments. Whilst human rights treaties primarily establish protection for individuals, they simultaneously create binding obligations between state parties themselves. Consequently, reservations entered by contracting states generate effects that extend beyond the domestic sphere, influencing not only the rights of individuals within the reserving state's jurisdiction but also affecting the legal relationships and expectations of all other treaty members. This dual impact highlights the complexity of reservations in the human rights context, where the traditional conception of treaty obligations intersects with the multilateral and Erga omnes character of human rights protection. The interconnected nature of these obligations suggests that reservations to human rights treaties require scrutiny to ensure they do not undermine either the individual protections envisaged or the collective framework of state responsibilities that underpins the treaty regime.

While drafting the guidelines "Guide to practice on Reservations to Treaties", ILC expressed its position that "VCLT regime is for all treaties, including human rights ones. However, it should be noted that human rights treaties have some features that are different from other multilateral treaties. First, human rights treaties do not create reciprocal relationships between states parties but envisage some obligations upon the states in the interest of individuals, to create an objective regime of protection of human rights."[15] In other words, "individuals are the recipients of duties imposed on states"[16]. The author of this thesis upholds this position that was also expressed in Hu-

14 *Ibid.* p. 440.

15 K. Korkelia. "New Challenges to the Regime of Reservations Under the International Covenant on Civil and Political Rights". *European Journal of International Law*, Vol. 13, 2000, p. 3.

16 Yamali, Nurullah. 'How Adequate Is the Law Governing Reservations to Human Rights Treaties?' *Ankara: Ministry of Foreign Affairs*, 2004, p. 3.

man Rights Committee Comment No. 24[17] and will prove that the VCLT regime is not enough to preclude invalid reservations to human rights treaties.

Furthermore, the distinction between interpretative declarations and reservations presents a critical analytical challenge, as states frequently employ interpretative declarations to circumvent the procedural and substantive constraints governing reservations. These constitute fundamentally different legal instruments: whilst reservations are intended to modify or exclude the legal effect of specific treaty provisions, interpretative declarations purport merely to clarify the meaning or scope attributed by the declaring state to provisions. However, this conceptual distinction becomes problematic in practice when interpretative declarations produce substantive effects equivalent to reservations whilst avoiding the regulatory framework applicable to the latter.[18] The differentiation between these instruments requires application of the general interpretative principles established in Article 31 of the VCLT, which mandates good faith interpretation according to the ordinary meaning of terms within their context and in light of the treaty's object and purpose. Crucially, the legal characterization of a unilateral statement depends not upon its formal designation but upon its actual legal effect, as demonstrated by the European Court of Human Rights in *Belilos v. Switzerland*. This necessitates systematic analysis of both the substantive content of interpretative declarations and the responses of other state parties, as such reactions provide crucial evidence of how the international community perceives the declaration's true nature and legal consequences. The proliferation of disguised reservations through interpretative declarations thus represents a significant challenge to treaty integrity that requires enhanced institutional oversight and clearer definitional criteria.

Many researchers have been widely discussing who can determine the validity of reservations to human rights treaties. International human rights experts emphasize the role of the monitoring bodies that are established under various international treaties. By making their reports on how the state parties implement treaty norms and how the mechanism of protection works in their national legal system, these UN bodies inform other treaty members about the relevant situation. According to these reports, if the state party that entered an invalid reservation does not make the national legal system compatible with treaty norms, other state parties should demand to withdraw invalid reservation that was entered because the reserving state clearly avoids taking responsibility and implementing the treaty in its national law system. "International human rights law and the competencies of the human rights treaty bodies are evolving

17 Human Rights Committee, General Comment 24 (52), General comment on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.6. 1994

18 E.g. France's declaration to the International Covenant on Civil and Political Rights regarding Article 27, which purported to "interpret" the provision but effectively excluded its application to French territory, leading to criticism from the Human Rights Committee in General Comment No. 24; Belarus's recent "interpretative declaration" to the Protocol against the Smuggling of Migrants, which Lithuania, other countries and the EU objected to as constituting a disguised reservation (UN Doc C.N.374.2023. TREATIES-XVIII.12.b).

to meet the demands of an expanding and interconnected world society. The work of the treaty bodies, comments from observers, the acquiescence of the States, and the ILC Guide to Practice point to the competence of treaty bodies to determine the validity of reservations as well as to indicate the legal effect of invalidity."[19] "Even though there is no doubt that treaty bodies are the main monitors on how the states implement the obligations under international treaties, the problem is that the reports of UN bodies do not have a binding effect. Furthermore, the fact remains that so long as the view of the monitoring body is not legally binding, there is the possibility that the view of other state parties may differ from the monitoring body's view."[20]

Recognizing the complexity of the abovementioned challenges, this research explores how emerging technologies could assist in addressing these systemic issues of reservations. The thesis proposes specific AI applications, including natural language processing for treaty text analysis, automated flagging of potentially incompatible reservations, and multilingual databases for comparative analysis, whilst emphasizing appropriate safeguards to preserve human legal interpretation authority and address ethical concerns.

**The importance of the thesis**. The significance of this research is underscored by the sustained attention that the reservations regime has received from the international legal community. The International Law Commission commenced its comprehensive examination of "the law and practice relating to reservations to treaties" in 1994, culminating in the adoption of the detailed "Guide to Practice on Reservations to Treaties" during its sixty-third session in 2011.[21] Whilst this instrument represents a significant contribution to the clarification of reservation practice, this dissertation contends that the application of VCLT provisions to human rights treaties generates substantial doctrinal and practical difficulties that persist despite the apparent theoretical coherence of the regulatory framework. Furthermore, the author argues that the non-binding character of the ILC Guidelines fundamentally limits their capacity to address the systemic challenges identified in human rights treaty practice. Consequently, whilst the Guidelines provide a valuable analytical framework for understanding reservation practice, they cannot resolve the fundamental structural inadequacies of the VCLT regime when applied to human rights instruments. The author, therefore, states that meaningful reform requires binding institutional mechanisms and enhanced oversight authority rather than reliance upon non-binding guidance that lacks enforcement capacity. The persistence of problematic reservation practices despite the existence of comprehensive guidelines demonstrates the urgent need for the systemic reforms proposed in this research.

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19 Kasey L. McCall-Smith. 'Reservations and the Determinative Function of Human Rights Treaty Bodies'. *German Yearbook of International Law* 54 (2012), p. 521-563.

20 A. Nisuke. "Reservation to the International Covenant on Civil and Political Rights and the Human Rights Committee: Personal Experience of its former Member". *Der Staat im Rech*t 70 (2013). p. 977-984

21 International Law Commission, *Guide to Practice on Reservations to Treaties*, UN Doc A/66/10/Add.1 (2011)

**The novelty of the thesis.** It should be noted that great expectations for clarity in the reservations' rules were focused on the outcome of the ILC's Guide to Practice on Reservations. However, following the 2011 publication of the Guide, it is apparent that despite several progressive guidelines, little has changed in the context of reservations to human rights treaties.[22] The inadequacy of the VCLT regime in addressing invalid reservations to human rights treaties necessitates exploration of alternative mechanisms to strengthen institutional oversight and enhance treaty effectiveness. This study, therefore, will examine supplementary approaches to reservation governance, including enhanced treaty body authority, improved monitoring mechanisms, and innovative technological solutions that could address the systemic deficiencies identified in current practice.

Furthermore, this research will provide an empirical analysis of existing state practice regarding reservations and their impact upon human rights treaty implementation. Through systematic examination of reservation patterns, state objections, and treaty body responses, this study provides insights into how reservations affect the practical realization of human rights protections and the functioning of multilateral treaty regimes. This empirical foundation enables the development of evidence-based recommendations for institutional reform that address documented deficiencies whilst preserving the balance between state sovereignty and treaty integrity. The analysis thus contributes to both theoretical understanding of reservation practice and practical solutions for enhancing the effectiveness of human rights treaty systems in contemporary international law.

It must be mentioned that the absence of comprehensive academic research systematically integrating human rights treaty reservation analysis, empirical examination of problematic state practices, and critical assessment of existing institutional frameworks represents a significant gap in international legal literature. This dissertation seeks to provide the first integrated analysis of these elements whilst exploring innovative technological applications, particularly artificial intelligence (AI), for enhancing reservation compatibility assessment. The author believes that this research will thus offer additional guidance for international organizations and legal practitioners whilst establishing a foundational resource for future scholarship in human rights treaty governance.

**The object of this thesis** is the analysis of reservations to core international human rights treaties, examining the procedural mechanisms governing reservation formulation and assessment, and identifying systemic deficiencies that permit states to circumvent fundamental obligations through incompatible reservations. The research seeks to create a basis for the development of institutional reforms addressing the inadequacies of the VCLT framework when applied to human rights instruments.

It also must be mentioned that the bilateral treaties do not include the case of reservations since "an agreement between two parties cannot exist where one party refuses

22 Kasey L. McCall-Smith. 'Mind the Gaps: The ILC Guide to Practice on Reservations to Human Rights Treaties'. International Community Law Review 16 (2014) p. 263-305.

to accept some of the provisions of the treaty"[23]. Therefore, the author will analyse only multilateral treaties. It should be noted that the highest number of reservations have been made to these international UN treaties: the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter - CEDAW), International Covenant on Civil and Political Rights (hereinafter - ICCPR), International Covenant on Social and Economic Rights (hereinafter - ICSER), United Nations Convention on the Rights of the Child (hereinafter -CRC), as well as the regional human rights instrument - Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter ECHR or European Convention on Human Rights). Therefore, the author of this dissertation focuses on the analysis of the mentioned human rights instruments and the practice of making reservations under these legal documents and will not analyse other international treaties where the number of reservations is comparatively lower[24].

**Overall aim of the thesis.** The main purpose of this thesis is to develop and propose an innovative conceptual framework for addressing reservations to human rights treaties to safeguard the integrity and transformative essence of international human rights law. The author addresses the long-standing tension between universality and integrity in the human rights treaty system - a tension facilitated by the VCLT reservations rules, which are frequently described as complex, ambiguous, and often counter-intuitive. The application of these general reservations rules to human rights treaties creates a system characterized by ambiguity and confusion regarding the obligations owed by states, undermining both legal certainty and the protective function of human rights law.

To achieve this purpose, **the tasks** are defined as follows:

1. To conduct a critical analysis of the VCLT regime, identifying structural inadequacies and demonstrating its limitations when applied to international human rights treaties that establish objective regimes of individual protection rather than reciprocal state obligations.
2. To systematically examine and categorize reservations to major human rights instruments, including the ICCPR, ICESCR, CEDAW and CRC, assessing their compatibility with each treaty's object and purpose through empirical analysis of reservation content and scope.

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23 M.N. Shaw. *International Law (6th. ed.)*. Cambridge: Cambridge University Press, Cambridge, 2008, p. 915

24 CEDAW is among the most reserved human rights treaties (with around 48-62 States having entered reservations), followed by ICESCR (about 42 States), ICCPR and CRC with fewer but still significant reservations, while CRPD and UNCAT have mainly procedural or interpretative reservations, and the ECHR permits only very limited reservations under Article 57. Under the sources of UN Treaty Collection, Chapter IV: Human Rights, available at: https://treaties.un.org; OHCHR, Status of Ratification Interactive Dashboard, available at: https://indicators.ohchr.org; Modern Diplomacy, *Reservations of CEDAW: Between Universality and Integrity* (2024); Wikipedia, *Convention on the Elimination of All Forms of Discrimination against Women* (accessed Aug. 2025)

3. To evaluate state practice regarding reservation objections (state responses, the effectiveness of objection mechanisms, and the factors contributing to limited international reactions to problematic reservations).
4. To assess the impact of reservations on human rights protection, examining how incompatible reservations undermine treaty effectiveness and compromise the realization of fundamental rights within reserving states' jurisdiction.
5. To develop proposals, including enhanced treaty body authority, technological innovations such as AI-assisted compatibility assessment tools, and improved monitoring mechanisms designed to strengthen reservation oversight and reduce the prevalence of invalid reservations to human rights treaties.

**Methodology:**

The methodological framework of this dissertation is grounded in doctrinal legal analysis, supplemented by empirical examination and technological innovation. The research systematically analyses primary sources, including VCLT, human rights treaty texts, state reservations and objections, treaty body jurisprudence, and ICJ decisions. This doctrinal foundation is complemented by empirical assessment of state practices and institutional effectiveness. Furthermore, the thesis proposes innovative AI applications to enhance reservation analysis and monitoring, whilst emphasizing the primacy of human legal interpretation and the need for appropriate ethical safeguards. This multifaceted approach enables comprehensive evaluation of existing frameworks and development of theoretically sound and practically viable reform proposals.

**The structure of the thesis:**

The thesis is organized into four main parts, each designed to provide a comprehensive analysis of reservations to international human rights treaties and to develop proposals for addressing gaps in the current legal framework.

The first part examines the historical and conceptual development of reservations in human rights law. It analyses key international instruments, including VCLT, the Human Rights Committee's General Comment No. 24, and relevant guidelines on reservations. This section identifies existing issues and limitations, such as institutional inefficiencies in monitoring reservations, legal ambiguities regarding the permissibility of reservations, and tensions between state sovereignty and universal human rights protection. A situation analysis considers the current state of human rights treaty reservations, including those to the CRC, CEDAW, ICESCR, and ICCPR, examines the evolution of treaty bodies' approaches, and highlights persistent problems in certain countries, such as incompatible reservations or lack of enforcement mechanisms.

The second part evaluates the effectiveness of the current regulatory framework, focusing on the impact of reservations on human rights protection. It assesses whether gaps have emerged since the adoption of VCLT and discusses calls for reform, including stricter guidelines and enhanced oversight mechanisms. Scientific limitations are considered, highlighting the challenge of balancing legal theory with political realities. Finally, this section proposes potential mitigation strategies, including strengthening treaty bodies' authority to assess and invalidate incompatible reservations, setting the foundation for conceptual and practical recommendations.

The third part examines the practice of objections to reservations by states. It explores the frequency and patterns of objections, reasons for abstaining from objections (such as political alliances, fear of reciprocity, or strategic silence), and the impact of objections on state behaviour and treaty compliance. Case studies illustrate national responses to international pressure to modify or remove reservations, providing empirical evidence of gaps in the current system and opportunities for reform.

The fourth part investigates how artificial intelligence can support the monitoring and assessment of reservations. It considers AI as a transparency facilitator through automating reservation tracking, highlighting potentially incompatible reservations, and providing public access to compliance data. Methodological considerations address the design and functionality of AI tools, including natural language processing for treaty text analysis, while balancing state sovereignty with public oversight. Stakeholder analysis examines the roles of state actors, national human rights institutions, international bodies, NGOs, treaty depositaries, and legal scholars in utilizing AI tools to strengthen compliance.

The final part synthesizes the findings of the previous sections and formulates policy and legal recommendations for improving the reservation regime. It also considers the future potential of AI in determining the validity of reservations and enhancing the integrity, effectiveness, and transformative capacity of international human rights law.

**The sources:**

This doctoral thesis provides a detailed analysis of primary international legal instruments, including VCLT and the core human rights treaties mentioned above, such as CEDAW, ICCPR, ICESCR, CRC, and the ECHR. The study also compares state practices, focusing on specific reservations made to these fundamental human rights treaties, as well as the objections raised by other states.

In addition, the thesis draws upon the work of the International Law Commission (ILC), particularly its guidelines on reservations, and the Human Rights Committee's General Comment No. 24, which provides interpretative guidance on the application and permissibility of reservations. Case law is also a crucial source of analysis. Landmark cases such as the *Genocide Convention case* and the *Belilos case* have established foundational principles regarding the concept of reservations, and the most significant provisions of these decisions are examined in detail. Other relevant jurisprudence from regional human rights courts, including the European Court of Human Rights, is considered to illustrate the practical implications of reservations.

The research engages with established theoretical frameworks and scholarly discourse in international law. This includes works on treaty interpretation and reservations by authors such as Alain Pellet, Malcolm N. Shaw, Ian Brownlie, and Olivier Corten. The thesis also considers doctrinal debates on the balance between state sovereignty and the protection of universal human rights, the concept of object and purpose of treaties, and the legal effects of invalid or incompatible reservations. Monographs, specialized articles, and critical commentaries are analysed to support the identification of gaps in the current legal regime and to inform the development of proposals for

strengthening treaty bodies' authority.

Furthermore, the thesis examines reports, observations, and other interpretative documents issued by United Nations bodies and treaty monitoring committees, which provide practical insights into how reservations are assessed and addressed in practice. By combining doctrinal, jurisprudential, and empirical sources, this work aims to construct a comprehensive and theoretically grounded analysis that can serve as a basis for developing innovative solutions to enhance the effectiveness and integrity of human rights treaty law.

**Scope and limitations:**

Whilst this dissertation proposes institutional reforms such as pooled review committees and discusses the potential role of artificial intelligence (AI) tools in supporting reservation monitoring, it does not provide detailed implementation blueprints for these mechanisms. Specifying precise appointment procedures, voting mechanisms, financing arrangements, or developing actual AI systems would require interdisciplinary research combining legal analysis with political economy, institutional design, diplomatic practice, computer science expertise, and empirical piloting - tasks beyond the scope of this doctrinal legal study. Similarly, this study does not undertake an empirical analysis of the domestic implementation of reservations in specific national jurisdictions. This dissertation establishes the normative foundation and legal principles upon which such institutional mechanisms and technological tools could be built, should states parties demonstrate political will to implement them. The detailed institutional architecture and technical development would be subjects of future interdisciplinary research and diplomatic negotiation amongst states parties.

**Defence statements.**

1. **VCLT reservation mechanism is insufficient for human rights treaties**: Due to the widespread practice of states making reservations that conflict with the object and purpose of such treaties, the VCLT framework is too narrow and inadequate, necessitating alternative regulatory approaches to safeguard the integrity of human rights law.
2. **State practice and emerging customary norms have outpaced VCLT provisions**: Despite formal rules on objections, the limited use of objections by states and the development of new customary practices demonstrate that the VCLT regime alone cannot effectively regulate the compatibility of reservations; consequently, the assessment of validity now relies on evolving treaty practice and supplementary interpretative mechanisms.
3. **Innovative mechanisms, including AI-assisted tools, can enhance the assessment and management of reservations**: Integrating advanced technological solutions and extending procedural timelines could reduce subjectivity, improve transparency, and enable national and international actors to more accurately identify invalid or incompatible reservations, addressing gaps left by both the VCLT and existing ILC guidelines.

# PART I. LEGAL REGULATION ON RESERVATIONS TO INTERNATIONAL HUMAN RIGHTS TREATIES

## 1.1. Historical And Conceptual Development of Reservations in Human Rights Law

In the early post-World War II period, the international community focused on promoting widespread adoption of treaties, including human rights instruments such as the ICCPR, CERD. During this time, reservations were often accepted to encourage broad participation.[25] VCLT formalized this approach, providing a framework that allowed states to make reservations while also enabling other states to make objections, if they considered the reservations incompatible with the treaty's object and purpose. However, objections were relatively uncommon, as states prioritized universal treaty participation over detailed scrutiny of reservations.[26] For example, the United States ratified the ICCPR with multiple reservations, reflecting a cautious approach to international human rights obligations.[27]

Reservations to treaties - and to human rights treaties in particular- constitute one of the most contentious aspects of the law of treaties, generating intense scholarly debate and divergent state practice. This chapter examines the concept of reservations in depth, with particular attention to the jurisprudence of the International Court of Justice concerning reservations to human rights treaties. Central to this analysis is the Court's 1951 Advisory Opinion on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, which established foundational principles that continue to shape contemporary reservation practice and doctrine.

### 1.1.1. Concept of Reservations prior to 1951

To begin with, the power to make reservations to international treaties grows out of the principle of "sovereignty of states", so states can claim that they will not be bound by some particular provisions of an international treaty to which they do not give their consent.[28]

On the other hand, the international treaties, in particular the multilateral ones

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25 Anderson, Niina. *Reservations and Objections to Multilateral Treaties on Human Rights*. Master's thesis, Faculty of Law, University of Lund, 2001.

26 Ibid. *See also* Coccia, Mauro. "Reservations to Multilateral Treaties on Human Rights." *California Western International Law Journal*, 1985. p. 4.

27 United Nations Treaty Collection. "International Covenant on Civil and Political Rights." *United Nations*, last modified August 23, 2025. https://treaties.un.org/pages/viewdetails.aspx?chapter=4&clang=_en&mtdsg_no=iv-4&src=ind. Reservations by United States of America.

28 Yamali, Nurullah. 'How Adequate Is the Law Governing Reservations to Human Rights Treaties?' *Ankara: Ministry of Foreign Affairs*, 2004, p. 4

are the results of a crucial need to regulate the relations between states and to provide stability and a control on the relations. In this context, it can be said that treaties may lose their effectiveness if states are unwilling to enforce them, in other words if they make reservations to exclude or to modify the legal effect of certain provisions of the treaty.[29] When the social, political, and other contextual differences between states that maintain divergent reservation positions are taken into consideration, the rationale for such variations becomes readily apparent. Particular attention must be paid to these aspects when analyzing human rights treaties, as the heterogeneity of state interests and domestic legal frameworks significantly influences reservation practices.

Prior to the 1951 ICJ Advisory Opinion on Reservations to the Genocide Convention, two principal regimes governed reservations to treaties. Under the League of Nations' unanimity rule, a reservation was valid only if accepted by all contracting parties; otherwise, both the reservation and the associated signature or ratification were treated as null and void, a practice largely followed in Western Europe.[30] In contrast, the Pan-American Union adopted a more flexible consent-based approach, whereby a treaty remained in force between the reserving state and those accepting the reservation, but not with states that rejected it.[31] Although differing in application, both systems were grounded in the principle of state consent, which dominated the law of treaties before the shift introduced by the 1951 Advisory Opinion.

### 1.1.2. The 1951 Advisory Opinion on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide

Speaking more narrowly, it has to be noted that the Genocide Convention does not have a rule on reservations. States therefore started to append various reservations to this Convention and the Secretary General of the United Nations (a depositary of the Convention) was uncertain which States should count in the determination of the date of entry into force of the Convention. The Court also explained that the contractual rule of absolute integrity is not relevant in relation to the Genocide Convention, and that there is no absolute rule of international law which only permits a reservation upon the acceptance by all the parties, as evidenced by the practice of such organizations as the Organization of American States. However, "it must clearly be assumed that the contracting States are desirous of preserving intact at least what is essential to the object of the Convention; should this desire be absent, it is quite clear that the Convention itself would be impaired both in its principle and in its application"[32].

As established above, the authority to formulate reservations to international

29 M.N. Shaw. International Law. 6th. ed., Cambridge University Press, Cambridge. 2008. p. 915

30 Malkin, H. M. "Reservations to Multilateral Conventions." *British Yearbook of International Law* 7 (1926): 141.

31 Fitzmaurice, Malgosia, and Agnes Rydberg. *Derogations and Reservations in International Law*. Oxford University Press, 2021. p. 1.

32 Ibid. p. 137.

treaties derives from the principle of state sovereignty. The Reservations to the Genocide Convention Advisory Opinion fundamentally transformed both the conceptual understanding of reservations and state practice in this area, establishing new foundations for the practice of reservations to multilateral human rights treaties. The Court confirmed its recognition that whilst states possess sovereign authority to formulate reservations, this authority is not unlimited - it must be exercised in a manner consistent with preserving the treaty's essential object and purpose.

### 1.1.3. Consequences of Objections to Reservations Under Genocide Convention Case

As to the consequences of the objections to a reservation, the Court envisaged the following possibilities: "It may be that the divergence of views between the parties as to the admissibility of a reservation will not in fact have any consequences. On the other hand, it may be that certain parties who consider that the assent given by other parties to a reservation is incompatible with the purpose of the Convention, will decide to adopt a position on the jurisdictional plane in respect of this divergence and to settle the dispute which thus arises either by special agreement or by procedure laid down in Article IX of the Convention. Finally, it may be that a State, whilst not claiming the reservation is incompatible with the object and purpose of the Convention, will nevertheless object to it, but that understanding between that State and the reserving State will have the effect that the Convention will enter into force between them, except for the clauses affected by the reservation".[33]

In this section of the Advisory Opinion, the Court identified three possible outcomes when a state formulates a reservation to a multilateral treaty. First, other parties may accept the reservation (either expressly or by not objecting), in which case the treaty enters into force between the reserving state and accepting states with the reservation in effect. Secondly, a state party may object to the reservation on the ground that it is incompatible with the object and purpose of the treaty and may seek to resolve the resulting dispute either by special agreement or by referring the matter to an appropriate judicial or arbitral body designated under the treaty. Thirdly, a state party may object to the reservation without claiming that it is incompatible with the object and purpose of the treaty; in this case, the treaty will nevertheless enter into force between the reserving and objecting states, except for the provisions affected by the reservation.

Even though the International Court of Justice formed practice case by case and highlighted the main features of the reservations, the questions of the validity of reservations, and what the legal consequences of invalid reservations especially to those made to the human rights treaties are still unanswered. It also has to be mentioned that the bilateral treaties do not include the case of reservations since "an agreement

33 Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion 1951, I.C.J. Rep. p. 15.

between two parties cannot exist where one party refuses to accept some of the provisions of the treaty"[34] The problem is about the multilateral treaties and to solve this and the other problems concerning treaties and therefore the regime of the VCLT should be analysed further.

The importance of this case shows the fact that the provision on reservations in VCLT follows the main structure of the Reservations to the Genocide Convention Advisory Opinion. However, the questions of the validity of reservations and the legal consequences of invalid reservations, especially to those made to the human rights treaties this case remained unanswered.

From a doctrinal perspective, the Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide Advisory Opinion represents a seminal contribution to the interpretation of reservations in international law. The Court's reasoning reflects a pragmatic equilibrium between the principle of state consent and the imperative of preserving treaty integrity, establishing that the legal consequences of reservations depend not solely upon formal treaty provisions but also upon the reciprocal interactions and agreements amongst contracting parties. By delineating the permissibility of reservations, the scope for objections, and the effects of partial acceptance, the Court resolved key ambiguities that had previously been treated abstractly in legal doctrine - particularly concerning multilateral treaties where a unilateral refusal to accept specific provisions cannot vitiate the treaty in its entirety. Moreover, the Court's approach underscores the necessity of in-depth doctrinal analysis: such decisions not only illuminate the inherent limitations of formal treaty law but also provide a conceptual foundation for developing innovative compliance mechanisms, including procedural and technological tools for assessing reservation compatibility. Consequently, the Genocide Convention Advisory Opinion serves both as a doctrinal cornerstone and as a practical departure point for addressing persistent questions concerning the validity and legal effects of reservations to multilateral human rights treaties.

In the author's view, this case assumes particular significance as it exemplifies how international courts can address doctrinal lacunae through judicial practice, thereby furnishing interpretive guidance that supplements the VCLT. Whilst the VCLT codifies the fundamental rules governing reservations, it leaves critical questions unresolved concerning the legal consequences of invalid or incompatible reservations- particularly in the context of human rights treaties, where the object and purpose are generally regarded as non-derogable. Through analysis of this case, the author traces the emergence of customary norms and identifies areas where the existing legal framework proves insufficient to address the challenges posed by reservations that undermine the universality of human rights protections.

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34 M.N. Shaw. International Law (6th. ed.). Cambridge: Cambridge University Press, Cambridge, 2008, p. 915.

## 1.2. Existence and Evolution of Treaty Reservations' Regime

### 1.2.1. The Regime of Reservations Under the Vienna Convention on The Law of Treaties

In this part of the thesis, the author will analyse the definition of reservations and the practical problems the system of reservations causes to human rights treaties. An important question at this point arises whether the human rights treaties are of a different character in the sense of making reservations, and if the VCLT approach can be applied to them to a whole extent. All these questions will be analysed in this part as well.

To begin with, the provisions on reservations in VCLT follow the main structure of the Reservations to the Genocide Convention Advisory Opinion. However, the system of reservations causes several problems both in the practice and theory of the law of treaties, as the VCLT has left gaps in the regulation of fundamental issues (such as the permissibility of reservations), and certain other provisions were ambiguous (such as the "object and purpose" of a treaty which, generally, is not well defined in the VCLT).[35]

These problems proved to be particularly difficult to solve in human rights treaties where reservations raise many questions concerning their permissibility and/or compatibility with the object and purpose of a treaty.

**Notion of reservations:** To analyse further, Article 2 of the VCLT defines a "reservation" as a unilateral statement, however phrased or named, made by a State or by an international organization when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State or to that organization."[36]

M. N. Shaw clarifies the notion of the reservation, indicating that "where a state is satisfied with most of the terms of a treaty, but is unhappy about provisions, it may, in certain circumstances, wish to refuse to accept or be bound by such provisions, while consenting to the rest of the agreement. By the device of excluding certain provisions, states may agree to be bound by a treaty which otherwise they might reject entirely."[37]

**What Reservations are Permissible:** Under Article 19, a state has the liberty to make reservations to a multilateral treaty, unless: all reservations are prohibited, or the specific attempted reservation is prohibited, or the specific attempted reservation is incompatible with the object and purpose of the treaty. The effect of this is that a prohibited reservation is without legal effect, and the term of the treaty to which the invalid reservation related applies in full between all the parties. E.g., in the Human Rights

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35 K. Korkelia. "New Challenges to the Regime of Reservations Under the International Covenant on Civil and Political Rights". *European Journal of International Law*, Vol. 13, 2000, p. 440.

36 Yamali, Nurullah. 'How Adequate Is the Law Governing Reservations to Human Rights Treaties?' Ankara: Ministry of Foreign Affairs, 2004, p. 3.

37 M.N. Shaw. *International Law* (6th. ed.). Cambridge: Cambridge University Press, p. 914.

Committee's General Comment, the Committee identifies potential reservations to the International Covenant on Civil and Political Rights which would be impermissible in this sense, being reservations offending rules of jus cogens and reservations to specific protected human rights, the denial of which would be incompatible with the object and purpose of the Covenant. In fact, the list is quite extensive, demonstrating how these procedural rules about reservations may be crucial in ensuring the efficacy or otherwise of a multilateral treaty.[38]

**Acceptance and Objection to Reservations by States:** Under article 20 (2), if it appears from the limited number of negotiating states and the object and purpose of the treaty that the treaty obligations might be accepted in their entirety by all prospective parties, then a reservation requires acceptance by all those parties. M. Dixon explains it in other words: for those classes of treaty which are intended to create a completely uniform set of obligations, the unanimity rule still prevails. A state whose reservation is accepted by all states is a party to the treaty on the terms of its reservation, whilst a state whose reservation is objected to by any one of the prospective parties cannot be a party to the treaty at all.[39]

Acceptance of one state's reservation by another state means that the multilateral treaty comes into force between the members of the treaty, those that accept the reservation, and the reserving state. However, the objection to a state's reservation by another state party does not prevent the entry into force of the treaty between the reserving state and the objecting state unless a contrary intention is expressed by the objecting state.[40] As M. Dixon explains, it goes further than the Genocide Convention case.

The 'object and purpose' test codified in the VCLT differs in a significant respect from the test articulated by the International Court of Justice in the Reservations to the Genocide Convention Advisory Opinion. As discussed above, the Court applied the compatibility test to assess both the permissibility of reservations and the validity of objections to reservations, assigning to individual state parties the authority to make these determinations. By contrast, Article 19(c) VCLT provides that a state may not formulate a reservation that is incompatible with the object and purpose of the treaty, framing incompatibility as an absolute prohibition rather than a matter for individual state assessment. This difference raises a critical question: what are the legal consequences when states fail to object to a reservation that is, objectively, incompatible with the treaty's object and purpose. Does the absence of objections validate an otherwise impermissible reservation, or does the reservation remain invalid regardless of state responses.

VCLT clearly provides that even if the state object to a reservation, the multilateral treaty may still be in force between the objecting state and the reserving state. However, it must be mentioned that if the objecting state has declared that it does not regard

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38 Martin Dixon. *Textbook on international law*, Fourth edition. Oxford: Oxford university, 2000, p. 64

39 Ibid. p. 65

40 Bowett, D.W. *Reservations to Non-Restricted Multilateral Treaties*. Vol. 48. British Yearbook of International Law, 1976. p. 71.

the reserving state as a party to the treaty, then the treaty does not govern only their relations. The treaty is not in force between them, although it may remain in force in their relations with the other state parties. Article 21 also provides that if the entry into force of the treaty between the two states is not opposed by the objecting state, then the treaty will govern their relations, saving only that the provisions to which the reservation relates do not apply as between the two states to the extent of the reservation.[41]

**Reservations to Human Rights Treaties:** The codification of the reservations' regime has raised several fundamental questions concerning its application to human rights treaties. First, whether the VCLT framework, designed for traditional inter-state treaties based on reciprocal obligations, can adequately address the distinctive characteristics of human rights treaties. Secondly, whether the legal consequences of reservations and objections differ when applied to human rights treaties as compared to other multilateral treaties.

Human rights treaties have some features that are different from other multilateral treaties. First of all, human rights treaties do not create reciprocal relationships between states parties, but envisage some obligations upon the states in the interest of individuals, to create an objective regime of protection of human rights.[42] In other words, "individuals are the recipients of duties imposed on states".[43] However, it has to be mentioned that, first of all, the states have certain obligations towards each other while entering the treaties. Therefore, reservations made by the state parties have a certain influence not only on the individuals of those states but also on the rest of the treaty members. Moreover, the common interest in the human rights treaties is the accomplishment of providing a high standard of protection of human rights.[44]

The VCLT establishes a framework distinguishing permissible from impermissible reservations, with legal consequences determined by the interplay between reservation formulation and state objections. Permissible reservations modify treaty obligations bilaterally, whilst impermissible reservations - those incompatible with object and purpose - may prevent treaty relations from being established or give rise to legal disputes requiring resolution.

The application of this framework to human rights treaties presents distinctive challenges. Although human rights treaties primarily benefit individuals, they create inter-state obligations, and reservations affect both individual rights-holders and the collective interest of state parties in maintaining treaty integrity. The VCLT regime, therefore, applies to human rights treaties, but its adequacy remains contested. This thesis argues that the VCLT framework, whilst providing essential guidance, proves insufficient to prevent or remedy invalid reservations to human rights treaties. The

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41 Martin Dixon. *Textbook on international law*, Fourth edition. Oxford: Oxford university, 2000, p. 66.

42 K. Korkelia. "New Challenges to the Regime of Reservations Under the International Covenant on Civil and Political Rights". *European Journal of International Law*, Vol. 13, 2000, p. 3.

43 Yamali, Nurullah. 'How Adequate Is the Law Governing Reservations to Human Rights Treaties?' *Ankara: Ministry of Foreign Affairs*, 2004, p. 7.

44 Ibid., p. 7

decentralized, consent-based model inadequately addresses the collective interest in universal human rights standards, necessitating supplementary mechanisms - whether through monitoring body assessment, judicial determination, or enhanced procedural safeguards - to ensure reservation compatibility and preserve treaty effectiveness.

#### 1.2.1.1 Object and purpose test according to VCLT

The "object and purpose" of a treaty has been described as a "unique and versatile criterion" but one without a definition in law.[45] It has been variously referred to as the *"raison d'*être*",* "fundamental core", or "core obligations" of a treaty. However, these are merely vague descriptions that do little to explain or identify with any certitude what really constitutes the "object and purpose" of a treaty. Opinions differ among scholars and jurists when it comes to giving a concrete shape and context to the term. To some extent, this disagreement shows an intrinsic impossibility of defining with any certainty the "object and purpose" of a treaty.[46]

**"Object and Purpose" as Core Obligation:** Article 19 (c) of VCLT gives a preeminent position to these "core obligations" that automatically become non-derogable, while permitting States to make qualifying reservations to all other provisions of the treaty. In other words, the "object and purpose" of a treaty contains the indispensable provisions of a treaty, as against ancillary provisions. This approach of dividing the treaty into the "minimum" and ancillary provisions is criticized by some scholars who argue that, in the case of human rights treaties such bifurcation is simply not possible because all the "substantive provisions" of the treaty must be considered as forming part of the normative content of the "object and purpose".[47]

This feature of Article 19 (c) becomes especially important when considering reservations to human rights treaties. It has been argued that the determination of the "object and purpose" is, as it stands, a difficult process, and the thought that parts of the treaties that do not constitute the "object and purpose" can be dispensed with through valid reservations places human rights regimes in a precarious position.[48] W. Schabas points out that "all of the substantive provisions of a human rights treaty are essential to its 'object and purpose' and that, as a consequence, reservation to any substantive provision is illegal."[49]

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45 Pellet, Alian. *Tenth Report on Reservations to Treaties*. A/CN.4/55. United Nations General Assembly, 2005. para. 376.

46 Liesbeth, Lijnzaad. 'Reservations to UN-Human Rights Treaties'. *Martinus Nijhoff Publishers*, 1995, p. 83/

47 Ulf Lindefalk. 'On the Meaning of the 'Object and Purpose' Criterion, in the Context of the Vienna Convention on the Law of Treaties,' Vol. 50. *Nordic Journal of International Law*, 2003. p. 434.

48 Belinda, Clark. 'The Vienna Convention Reservations Regime and the Convention on Discrimination Against Women'. Vol.85 *American Journal of International Law*,1991, p. 281.

49 William A. Schabas. 'Reservations to the Convention on the Rights of the Child' Vol. 18. *Human Rights Quarterly*, 1996. p. 476.

Lack of clarity on what constitutes the "core" or the "object and purpose" of a treaty weakens the claim for maintaining the absolute integrity of the treaty. The argument that no reservation can be allowed to any of the "core" provisions of a treaty becomes problematic when there is confusion regarding what may be specifically identified as the "core" provisions.[50]

**State Practices and "Object and Purpose":** The idea that every treaty has a clear and distinct "object and purpose" involves, for the most part, an open-ended concept because it is left to be determined by individual States parties. There is no unanimity or consensus as to the exact contents of the object and purpose of every human rights treaty. For example, in the case of ICCPR, Article 4 (2) may be taken as the only provision in the Covenant that restricts the making of a reservation. It may also be considered as listing the "essential provisions" of the treaty by virtue of the non-derogable rights to which it refers.[51] What are the core provisions of a specific treaty is the question for the state parties who determine the object and purpose of the treaty in their objections to the reservations if the treaty does not provide the essential provisions by itself.

**Uncertainty in Applying the Object and Purpose Test:** The absence of certainty in the determination of what constitutes the "object and purpose" of a treaty is an obvious and intrinsic feature of the compatibility test under Article 19 (c) of the VCLT. The only exception applies to treaties that explicitly delineate the provisions forming the core "object and purpose" and define the specific contexts to which these provisions apply. Such clarity aligns with the framework established under Articles 19-23 of the VCLT, allowing parties to interpret the scope of reservations without resorting to a compatibility assessment. In the case of international human rights treaty law, it is also undesirable because of the impossibility of foreseeing all situations that may be included in the object and purpose of a treaty. [52]

The compatibility test arguably sits well with the flexible policy directive of the VCLT that is also seen in the rest of the reservations regime under Articles 20 and 21. For instance, Article 20 (4) (c) of the VCLT allows a reserving State to become a party to a treaty on the strength of a single contracting State party accepting the reservation, notwithstanding any objection that might be raised on whatever grounds by any other State party. Similarly, Article 21 creates reciprocal treaty relations limited only by the "extent of the reservation" in question. These two provisions indicate that the VCLT approach to the process of determining the validity of reservations is flexible because this determination is ultimately left to the discretion of the various States parties.

Even though the doctrine of international law provides some guidance, it still lacks

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50 Oona A., Hathaway. 'Do Human Rights Treaties Make a Difference'. The Yale Law Journal, 2002, p. 111.

51 Mashood, A. Baderin. 'International Human Rights and Islamic Law'. *Oxford University Press*, 2003, p. 60.

52 Ahmed Ali Sawad. 'Reservations to Human Rights Treaties and the Diversity Paradigm: Examining Islamic Reservations, A thesis submitted for the degree of Doctor of Philosophy at the University of Otago'. *Dunedin New Zealand*, 2008, p. 40.

a clear and universally accepted definition of what constitutes the "object and purpose" of a treaty. Scholars such as Pellet (2012), Crawford (2013), and Shaw (2017) note that this ambiguity generates significant interpretive challenges, particularly in the context of multilateral human rights treaties, where the core principles are often broad and normative rather than precisely codified. While the VCLT offers certain directions for state parties when making objections - primarily through Articles 19-23, which outline the framework for identifying main or essential provisions - these provisions are not sufficiently detailed to resolve disputes over compatibility or invalidity of reservations. Consequently, gaps remain: the doctrine does not provide an operational test for determining whether a reservation undermines the treaty's object and purpose, nor does it clarify the legal consequences for states when objections are raised but not acted upon. This doctrinal vagueness creates uncertainty and allows divergent state practices, thereby highlighting the need for further normative and practical mechanisms to ensure the integrity of multilateral human rights treaties.

To summarize, one of the most problematic aspects of reservations lies in the persistent ambiguity surrounding the definition of a treaty's "object and purpose." As there is no universally accepted definition, Article 19(c) of the VCLT elevates certain "core obligations" to a preeminent status, rendering them non-derogable, while theoretically allowing States to make reservations to other provisions. In the context of human rights treaties, however, all substantive provisions are often regarded as essential to the treaty's object and purpose, meaning that any reservation to these provisions may be considered invalid. This doctrinal vagueness weakens the effectiveness of the legal framework intended to safeguard the absolute integrity of human rights treaties. Consequently, reserving States that make incompatible reservations may evade obligations to protect fundamental rights, thereby undermining the treaty's protective function. The solution could involve clearly and explicitly defining the object and purpose of each treaty, thereby creating a robust and operational distinction between permissible and impermissible reservations.

### 1.2.1.2. Consequences of the reservations incompatible with the object and purpose

As demonstrated above, the lawfulness of a reservation depends upon its compatibility with the treaty's object and purpose. This chapter addresses three critical dimensions of this requirement. First, it examines the methodological challenges inherent in identifying invalid reservations, given the absence of clear criteria or authoritative determination mechanisms. Secondly, it analyses the doctrinal approaches that scholars have advanced to distinguish between permissible and impermissible reservations, including the 'core obligations' test, the 'effects-based' approach, and the 'indivisibility' doctrine. Thirdly, it explores the contested question of what legal consequences attach to invalid reservations, including the severability doctrine and the nullity approach.

**Different Approaches:** As was discussed above, Article 19(c) of the VCLT prevents a state from formulating a reservation that is incompatible with the object and purpose

of the treaty. This provision reflects the view taken by the International Court of Justice in the Advisory Opinion on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide.[53] The major issue is how to determine whether the reservations are legal, which means they are in conformity with the object and purpose of the treaty. Several authors suggest different theories and doctrines that will be discussed hereinafter.

There are certain different approaches while deciding about the validity of the reservation, such as the 'admissibility', 'opposability', and 'severability' doctrines,[54] that will be discussed hereinafter.

#### 1.2.1.2.1. Admissibility and opposability approach

According to the 'opposability' doctrine, a reservation cannot be invalidated for being incompatible with the object and purpose of the treaty unless a contracting state objects to a reservation on grounds of incompatibility within 12 months.[55] Contrary to the 'opposability' doctrine, the 'admissibility' approach states that the Vienna Convention rules on acceptance of, and objection to, reservations are only applicable if they are compatible with the object and purpose test.[56] According to this view, "if a reservation is challenged before a competent international court or tribunal, even many years after the reservation was initially drafted, it can still be declared invalid on the grounds of incompatibility"[57].

The authors who suggest that the 'admissibility' doctrine is more favourable provide the following arguments. Scholar R. Moloney prefers the 'admissibility' doctrine, particularly in the case of human rights treaties. To follow this approach, she also provides an example: "In the case of the Convention on the Elimination of All Forms of Discrimination against Women, only four objections were lodged against the far-reaching reservation made by Libya that the Convention would not apply where its provisions conflicted with Shariah law"[58]. R. Higgins suggests that "one might almost say that there is a collusion to allow penetrating and disturbing reservations to go unchallenged"[59].

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53 Moloney, Roslyn. 'Incompatible Reservations to Human Rights Treaties: Severability and the Problem of State Consent' Vol. 35. *Melbourne Journal of International Law*, 2004, p. 155.

54 Curtis Bradley and Jack Goldsmith. 'Treaties, Human Rights and Conditional Consent.' *University of Pennsylvania Law Review*, 2000. p. 435.

55 Ibid. p. 399.

56 Roberto Baratta. 'Should Invalid Reservations to Human Rights Treaties be Disregarded?' Vol. 11, *European Journal of International Law,* 2000. p. 413.

57 Hylton, Daniel N. 'Default Breakdown: The Vienna Convention on the Law of Treaties, Inadequate Framework on Reservations' Vol. 27. *Vanderbilt Journal of Transnational Law*, 1994. p. 45.

58 Moloney, Roslyn. 'Incompatible Reservations to Human Rights Treaties: Severability and the Problem of State Consent'. Vol. 35. *Melbourne Journal of International Law*, 2004. p. 157.

59 Rosalyn, Higgins. 'Human Rights: Some Questions of Integrity'. *Modern Law Review,* 1989, p. 52.

The opposability and admissibility doctrines differ fundamentally in their temporal scope and institutional design. The opposability doctrine assigns to state parties the authority to assess reservation compatibility at the time of reservation formulation, requiring objections to be raised within the VCLT's temporal framework. This approach exhibits strong fidelity to the VCLT regime, which entrusts states - rather than monitoring bodies or courts - with evaluating reservations. The admissibility doctrine, by contrast, permits challenges to reservation validity at any time, potentially years after formulation. Whilst this retrospective approach may serve the collective interest in maintaining human rights standards, it disrupts the legitimate expectations of reserving states, which relied upon the VCLT's premise that objections must be raised within a specified timeframe. This tension between ex ante consent and ex post evaluation remains a central point of contention in the reservations' doctrine.

#### 1.2.1.2.2. Severability doctrine

Under the severability doctrine, an incompatible reservation may be 'severed' from the state's instrument of ratification, leaving it as a party to the treaty without the benefit of its reservation.[60] According to R. Goodman, "a severability regime would also have several clear benefits for both the states concerned and the international human rights regime. Many non-democratic states ratify human rights treaties as tactical concessions to placate international and domestic pressure groups, without any intention of honouring their obligations under the treaty".[61]

**ICJ's Approach to Severability Doctrine:** The severability of invalid reservations has been considered twice by the International Court of Justice, in the Case of Certain *Norwegian Loans (France v Norway)* (Preliminary Objections)[62] and *Interhandel (Switzerland v United States of America)* (Preliminary Objections)[63]. Even though these cases did not deal with the human rights treaties, they formulated basic principles that are important in international law in general and to specific treaty regimes as well. On both occasions, Judge Hersch Lauterpacht, in his separate opinions, suggested that inessential and invalid reservations were severable from a state's instrument of ratification. In neither case, however, did the rest of the Court consider the issue directly.[64]

In his separate opinion in the *Norwegian Loans Case*,[65] having held France's

60 Moloney, Roslyn. 'Incompatible Reservations to Human Rights Treaties: Severability and the Problem of State Consent'. Vol. 35. *Melbourne Journal of International Law*, 2004. p. 160

61 Ryan, Goodman. 'Human Rights Treaties, Invalid Reservations, and State Consent'. *American Journal of International Law*, 2000, p. 439.

62 Case concerning Certain Norwegian Loans (France v. Norway) (Preliminary Objections), ICJ Reports 1957, p. 9.

63 Interhandel (Switzerland v. United States of America) (Preliminary Objections), ICJ Reports 1959, p. 6.

64 Moloney, Roslyn. 'Incompatible Reservations to Human Rights Treaties: Severability and the Problem of State Consent'. Vol. 35. *Melbourne Journal of International Law*, 2004. p. 175.

65 *Case of Certain Norwegian Loans*, Judgment of July 6th, 1957, ICJ Reports, 1957, p. 9.

reservation to its acceptance of the jurisdiction of the Court to be invalid, Judge H. Lauterpacht refused to sever the reservation because it was 'essential' to France's consent. However, in coming to this conclusion, he had regard to the general principle of contract law that it is legitimate - and perhaps obligatory - to sever an invalid condition from the rest of the instrument and to treat the latter as valid provided that having regard to the intention of the parties and the nature of the instrument the condition in question does not constitute an essential part of the instrument.[66]

Judge H. Lauterpacht considered that this principle was applicable to the present case, such that the Court should not allow its jurisdiction to be defeated as the result of remediable defects of expression which are not of an essential character.[67] The view that inessential and invalid elements of a state's ratification could be severed from the whole was, by Judge Lauterpacht's own admission, a departure from the earlier view that every single provision of a treaty is indissolubly linked with the fate of the entire instrument which, in their view, lapses as the result of the frustration or non-fulfilment of any particular provision, however unimportant and non-essential.[68]

**Severability and State Consent:** Despite strong arguments in favour of severability, author E. Baylis argues that: "state consent takes on a different form in the case of human rights treaties, because the intention behind such treaties is to create norms of customary international law which bind all states, not simply States Parties to the treaty. The imposition of a human rights standard on a state does not ultimately depend upon that state's consent, but upon the acceptance of that standard in the international community. In this context, binding a state to a reserved human rights norm does not pose the same affront to national sovereignty as would be presented by binding the state to an economic or political provision."[69]

Whilst the arguments in favor of the severability regime are persuasive in principle, they prove insufficient to justify binding a state to a provision to which it formulated a reservation that may have constituted an essential condition of its consent to be bound. Imposing obligations that a state explicitly sought to exclude through reservation raises fundamental questions about the consensual foundations of treaty law. Moreover, the likelihood that a reserving state will continue to disregard the provision in question - notwithstanding the formal severance of its reservation - undermines the authority and respect that human rights instruments should command, potentially reducing treaty compliance to mere formalism whilst substantive violations persist. It is submitted, therefore, that any regime of severability should apply only to reservations that are inessential to a state's consent. Author C. Redgwell points out her doubts about drawing an artificial distinction between "an intention to be bound and an intention to

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66 Goodman, Rayn. "Human Rights Treaties, Invalid Reservations, and State Consent" *American Journal of International Law, 2002*, p. 441.

67 *Case of Certain Norwegian Loans*, Judgment of July 6th, 1957, ICJ Reports, 1957, p. 9.

68 Ibid. Separate Opinion of Judge Lauterpacht. p. 56.

69 Elena Baylis. 'General Comment 24: Confronting the Problem of Reservations to Human Rights Treaties' *Berkeley Journal of International Law, 1999*, p. 277.

modify certain provisions of the convention in their relation to the reserving state".[70] However, it is still true that reservations are often an inessential component of ratification, and that when challenged, the desirability of remaining in the treaty regime will often outweigh the importance of the reservations.

**Essentiality of Reservations to State Consent:** Determining the essentiality of a reservation to a state's consent to be bound by a treaty regime may be problematic. The International Law Commission has focused upon this problem as justification for its rejection of the severability option, stating "[i]n international society at the present stage, the state alone could know the exact role of its reservation to its consent".[71]

The first is an evidentiary problem: what is the best and most objective manner of determining whether a provision is 'essential' to consent? Some authors have suggested that deciding severability is essentially a matter of the construction of the state's ratification instrument.[72]

The second problem arises when the validity of a reservation is challenged before an international tribunal. A reserving state concerned to prove the essentiality of its reservation has the best access to evidence of its 'intention' at the time of formulating the reservation. Moreover, at the time of formulating the reservation, it is relatively simple for the state to make a statement saying that it is 'essential'. Determining essentiality based on unilateral statements made by a state and subjectively selected evidence is unreliable and would make a system of severability and the reservations regime largely meaningless.

Even though the European Court of Human Rights is a regional court, it outlined an alternative approach to determining essentiality in *Loizidou v Turkey case*[73], the facts of which are discussed below. In *Loizidou v Turkey case*, Türkiye pointed to statements it made at the time of making its reservation as evidence that the reservations were an essential element of Türkiye's consent to be bound by the European Convention on Human Rights and thus could not be severed from its instrument of ratification. Thus, disregarding the reservations would have the consequence that Türkiye's acceptance of the right of individual petition under the European Convention on Human Rights would lapse. However, the Court refused to determine the essentiality of the reservations by reference to Türkiye's statements. Instead, it observed that Türkiye must have been aware of the impermissibility of its reservation in view of the consistent practice of other contracting states. Objections by other contracting states at the time of making the reservation lent 'convincing support' to arguments that the reserving state should have been aware of the invalidity of its reservation. Türkiye's awareness of the legal position indicates a willingness on her part to run the risk that

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70 Catherine, Redgwell. 'Reservations to Treaties and Human Rights Committee General Comment No 24' *International and Comparative Law Quarterly, 1997*, p.267.

71 Report of the International Law Commission, 106

72 Edwards Jr., Richard. "Reservations to Treaties" Vol. 10. *Michigan Journal of International Law,* 1989, p. 378.

73 *Loizidou v Turkey case* (1995). 310 Eur. Court HR (ser A) 7, 30; [1995] ECHR 10; 20 EHRR 99, 137.

the limitation clauses at issue would be declared invalid by the Convention institutions without affecting the validity of the declarations themselves. In other words, where a state should have known that its reservation was invalid, it will be deemed inessential to the state's consent and subject to severance. This sets a high standard for essentiality. However, it is submitted that this would have the effect of forcing states to take greater responsibility in the negotiation of human rights treaties and the formulation of reservations. It is important to note that a state in this position would always have the option of withdrawing from a treaty and then redrafting an instrument of ratification by either amending or redrafting the impugned reservation. In short, although severability creates the useful presumption that states wish to remain within the treaty regime, this may be rebutted by the states themselves[74].

It is submitted that severing an inessential and incompatible reservation from a state's instrument of ratification, using the criteria for essentiality adopted by the ECHR in *Loizidou v Turkey case*, would strengthen the integrity and universality of multilateral human rights treaties, without undermining state sovereignty.[75]

Another important case of the ECHR is *Cudak v. Lithuania*. The Court emphasized that "the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective"[76]. It provides crucial jurisprudential support for the central arguments of this dissertation regarding the inadequacy of the current reservations' regime for human rights treaties. This principle of practical effectiveness directly challenges the tolerance of broad reservations that fundamentally undermine treaty obligations, as such reservations render human rights protections precisely "theoretical or illusory" rather than meaningful safeguards for individuals.

In conclusion, this thesis argues that reservations to human rights treaties should be permitted but only following an admissibility assessment establishing their compatibility with the treaty's object and purpose. Whilst reservations inevitably create gaps in the protection of individuals, they also introduce flexibility that enables states to progressively align their domestic legal systems with international human rights standards. Reservations thus function as transitional mechanisms, facilitating broader treaty participation whilst states undertake the legislative or constitutional reforms necessary for full compliance. Nevertheless, reservations should be regarded as necessary but temporary accommodations, with the ultimate objective being their eventual withdrawal once states achieve full conformity with treaty obligations. The VCLT's decentralized framework, which relies upon individual state objections, proves inadequate for human rights treaties, as states typically refrain from challenging each other's

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74 Edwards Jr., Richard. "Reservations to Treaties" Vol. 10. *Michigan Journal of International Law,* 1989, p. 362

75 Moloney, Roslyn. 'Incompatible Reservations to Human Rights Treaties: Severability and the Problem of State Consent'. Vol. 35. *Melbourne Journal of International Law*, 2004. p. 155.

76 Cudak v. Lithuania, Application no. 15869/02, European Court of Human Rights (Grand Chamber), 23 March 2010, para. 58

reservations on politically sensitive matters. This thesis, therefore, argues that human rights treaty monitoring bodies constitute the most appropriate institutions to assess reservation permissibility. Their competence to perform this function should be explicitly established in the treaty text or through subsequent amendment, ensuring legitimacy and guarding against accusations of exceeding their mandate. In the absence of monitoring bodies, a collective state voting mechanism could provide an alternative means of assessing reservation validity. Where a reservation is determined to be invalid, the default consequence should be severability: the reserving state remains bound by the treaty without the benefit of the impermissible reservation. However, this presumption should be rebutted where the reservation was demonstrably fundamental to the state's consent to be bound - a determination requiring assessment of whether the reservation was "critical" (essential to consent) or "accessory" (non-essential). This nuanced approach may balance the competing imperatives of treaty integrity, respect for state consent, and the protection of individual rights.

### 1.2.1.3. Legal Remedy of the Determination of the Invalidity of a Reservation

After this analysis, the leading question remains: what legal remedy should follow the determination of the invalidity of a reservation? While answering this question, R. Goodman suggests that leading commentators have discussed a limited set of options. Two choices can be identified:

Option 1: The state remains bound to the treaty except for the provision(s) to which the reservation relates.

Option 2: The invalidity of a reservation nullifies the instrument of ratification as a whole, and thus the state is no longer a party to the agreement.[77]

**Partial Application of Treaty:** The first remedial option - i.e., that the state remains bound to the treaty except for the obligations to which the incompatible reservation related could be defined as the most suitable for the reserving state. However, it has been argued that "this option would infringe the interest of other state parties. Their interest consists in preserving the bargained-for elements of a multilateral agreement, which incompatible reservations or similar arrangements would defeat. No scholar has offered a sustained defence of the first remedy, and various commentators have referred to it as implausible"[78].

The structure of modern reservations law, as outlined in the ICJ's opinion in Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide and in the Vienna Convention on the Law of Treaties, is committed to safeguarding these interests of state parties. Before the Reservations opinion, international

77 Ryan, Goodman. 'Human Rights Treaties, Invalid Reservations, and State Consent'. *American Journal of International Law*, 2000, p. 531.

78 William A. Schabas, 'Invalid Reservations to the International Covenant on Civil and Political Rights: Is the United States Still a Party?' *Brooklyn International Law Journal*, 1995; p. 118-19.

practice generally applied a unanimity rule: a state could enter a reservation to a multilateral treaty only if it was accepted by all the other parties.[79]

**Nullification of Instrument of Ratification:** The option that was mentioned as the second one raises the question. Primarily owing to diplomatic sensitivities, states avoid choosing the second option if they are politically willing to enter an objection at all. As for the first option, because the rule of reciprocity produces the exact same result as the reservation, state A loses nothing if state B selects this alternative. States consequently have little incentive to avoid submitting accessory reservations.[80]

The author concludes that the first approach offers the most defensible framework for addressing reservations to human rights treaties. Human rights treaties possess distinctive characteristics: they create objective obligations rather than reciprocal rights, benefit individuals rather than states, and establish collective interests in maintaining universal standards. The first option, whilst potentially resulting in the reserving state falling outside the full treaty regime with respect to specific provisions, preserves the state's engagement with the broader normative framework and maintains the possibility of partial compliance through binding the state to general principles and other substantive provisions. This approach balances competing imperatives: it acknowledges domestic constraints preventing immediate full compliance whilst maintaining normative pressure for progressive implementation. By keeping reserving states within the treaty system, it preserves channels for dialogue and monitoring, prioritizing incremental progress over rigid insistence on full compliance. Crucially, it addresses the fundamental tension between state consent and treaty integrity, respecting consensual foundations whilst refusing to validate reservations that undermine the treaty's essential object and purpose.

### 1.2.1.4. Distinction between Reservation and Interpretative Declaration

The problems with reservations have been on the agenda of the International Law Commission (hereinafter referred to as ILC) since 1993, when the ILC began work (which is still ongoing) on this subject[81]. Some of the topics that have been discussed by the ILC relate directly to the subject matter of the thesis, i.e., the differences between interpretative declarations and reservations submitted by States to human rights treaties. These two concepts are closely linked, and the distinction between them is often problematic.

This part of the thesis will be devoted to the analysis of the notion of interpretative declarations and the distinction between interpretative declarations and reservations.

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79 Jean Kyongun Koh., 'Reservations to Multilateral Treaties: How International Legal Doctrine Reflects World Vision' Vol. 23. *Harvard International Law Journal*, 1982, p. 55.

80 Coccia, Massimo. 'Reservations to Multilateral Treaties on Human Rights' Vol. 15, *California Western International Law Journal*, 1985, p. 11.

81 This Commission began work on the Convention in 1949 and finished in 1969 with a diplomatic conference held by the United Nations in Vienna, Austria.

Usually, multilateral treaties allow both acts, but the main issue is the consequences that are different.

**Reservations vs Interpretative Declarations:** To compare the differences between the reservations and interpretative declarations, it is worth mentioning that different authors are not in the same opinion on how to distinguish them. The line is very thin, though, and the states can manipulate while stating it is not a reservation. In the 63rd General Assembly director, Department of Legal Affairs of the Ministry of Foreign Affairs addressed Chapters VI, VII and VIII of the Report of the International Law Commission dealing with the topics Reservations to Treaties, Responsibility of International Organizations and Expulsion of Aliens, stating that "Reservations and interpretive declarations are two different legal concepts. If a "reservation" is intended to modify or exclude the legal effects of certain provisions of a treaty, an "interpretative declaration" has the purpose to specify or clarify the meaning or the scope attributed by the declaring to a treaty or to certain of its provisions. Therefore, if a reservation has direct legal effects, an interpretative declaration is most of all related to the methodological problem of interpretation, although it has legal consequences associated. Since they are two different legal concepts, they should be treated separately unless they interrelate with each other."[82]

By an interpretative declaration, a State aims at clarifying the meaning or extent it attributes to a given treaty or to some of its provisions. The qualification of a unilateral declaration as a reservation or interpretative declaration depends on the content of this act and on the legal effect it intends to produce, a matter which is far from being always clear. However, the line between such statements and reservations proper may be a thin one, and it will be a matter for construction in each case.

**Intention as Distinction Criteria:** In the words of UN Human Rights Committee in its 1994 General Comment on the effect of the reservations made to the International Covenant on Civil and Political Rights, the distinction between reservations and interpretative declarations should be made according to the intention of the State rather than the form of the instrument. If a statement, irrespective of its name or title, purports to exclude or modify that provision in its application to that State, it is a reservation.[83] The problem of clarification is that a state might have different intentions while making an interpretative declaration. It is always a question of the Islamic countries that make interpretative declarations to the human rights treaties. These countries state that the provision of the treaty is incompatible with the national legal system and customs, and call this unilateral act not a reservation that brings different

82 The 63rd General Assembly, 'Report of the International Law Commission, Chapter VI, Chapter VII and Chapter VIII - Statement by Mr. Luís Serradas Tavares - Director, Department of Legal Affairs of the Ministry of Foreign Affairs - New York'. 30 October 2008.

83 Martin Dixon. *Textbook on international law* (fourth edition). Oxford: Oxford university, 2000, p. 64.

consequences for the state towards the provision of the treaty.[84] In this way, if the other state parties do not raise the question, it is an interpretative declaration or maybe a covered reservation may open the gates for that state not to follow its legal obligations.

In the case of a state not qualifying its declaration as a reservation or interpretative declaration, it is sometimes the depositary who chooses one of the two designations when communicating the declaration to the other States Parties in accordance with Article 77 (1)(e) of VCLT or with any other provision of a particular treaty relevant in the given circumstances. The favor contractus principle[85] has a double impact on the legal regime of reservations: in order to facilitate both the entry into force of a convention and a wide participation to it, the Vienna Convention establishes practically no obstacles to the declaration of reservations, although this is done at the price of the integrity of the treaties.[86]

Furthermore, silence amounts to agreement (Article 20 (5) of VCLT) so that in the reality of treaty relations, about universal treaties, the entry into force of a reservation can be almost automatically assumed if it conforms with the object and purpose. However, a return to treaty integrity is made even easier, since a reservation can be withdrawn at any time, even without the consent of those States which had previously accepted (Article 22 (2)). In that case, the favor contractus principle supersedes the free consent rule.[87]

**Human Rights Case on Interpretative Declarations:** *The Temeltasch v. Switzerland* case was the first one in which the ECHR dealt with the validity of a reservation.[88] The issue was "whether Switzerland could apply to its interpretive declaration to Article 6(3)(e) of the Convention to remove the obligation to provide a free assistance of interpreter if a person charged with a criminal offence cannot understand or speak the language used in court."[89] After determining whether the Swiss interpretative declaration was a reservation, the Court went on to decide whether this reservation was valid. After the examination of the case in the context of the conditions of the Convention for reservations, based on Article 63 of the Convention, the Court held that the reservation was valid.

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84 For instance, Saudi Arabia submitted the following declaration to CEDAW: *"If any provision of the Convention is contrary to the norms of Islamic law, the Kingdom shall not be bound to observe the provisions that are in conflict."*

85 This principle expresses the preference of international treaty law for the maintenance and the conclusion of treaties over expiry for reasons of form. The favor contractus principle can be found in Article 74, too. This provision clarifies that the severance or absence of diplomatic or consular relations does not prevent concerned States to conclude treaties between themselves.

86 Horn, Frank. 'Reservations and Interpretative Declarations to Multilateral Treaties'. *Elsevier Science Publishers B.V*, 1988, p. 33.

87 Aust., Anthony. 'Modern Treaty Law and Practice'. *Cambridge University Press*, 2007, p. 126.

88 K. Korkelia. "New Challenges to the Regime of Reservations Under the International Covenant on Civil and Political Rights". *European Journal of International Law*, Vol. 13, 2000, p. 5.

89 *Belilos v. Switzerland.* (App.10328/83), ECtHR, 29 April 1988.

those relating to gender issues) is the *Belilos case*. The Lausanne Police Board imposed on Mrs. Marlène Belilos a fine of 200 Swiss francs for having taken part in a demonstration in the streets of the city on 4 April for which permission had not been sought in advance[90]. After the exhaustion of domestic remedies, she raised a complaint under Article 6 of the Convention. In its final submissions the Government declared that "Switzerland's interpretative declaration concerning Article 6 § 1 of the Convention produces the legal effects of a validly adopted reservation and that accordingly there has been no infringement of that provision as it is applicable to Switzerland."[91] The Court stated that "...it will examine the validity of the interpretative declaration in question, as in the case of a reservation in the context of Article 64 (now 57)..." The court also stated that it has jurisdiction to determine the validity under Article 64 of the Convention of a reservation, which is apparent from Articles 45 and 49 of the Convention and from Article 19.

**Interpreting and Regulating Interpretative Declarations:** For the method of distinguishing between reservations and interpretative declarations scholar A. Pellet suggests: "To determine the legal nature of a unilateral declaration formulated by a State or an international organization in respect of a treaty, it is appropriate to apply the general rule of interpretation of treaties set out in article 31 of the Vienna Convention on the Law of Treaties".[92] Article 31 of VCLT states that it shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. Therefore, the context of the interpretative declarations should be taken into consideration as well.

A recent example that illustrates the problematic nature of interpretative declarations in international treaty law is the declaration made by the Republic of Belarus in relation to Article 20(2 - 4) of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime. Belarus stated that it assumes these provisions should be interpreted in good faith as not obliging States Parties to accept the jurisdiction of the International Court of Justice (ICJ) if a dispute has already become the subject of peaceful settlement through negotiations or arbitration, particularly in cases where a reservation

90 *Ibid.*

91 *Ibid.*

92 Pellet, Alian. *Third Report on Reservations to Treaties*. A/CN.4/491. United Nations General Assembly, 1998. para. 4.

on non-recognition of the Court's jurisdiction has been withdrawn.[93] The Belarusian declaration received a series of formal reactions by other actors, demonstrating the sensitivity of such instruments within the treaty regime.[94] Each of these communications raised concerns that the Belarusian declaration, although framed as "interpretative," in substance operated as a reservation limiting the acceptance of compulsory ICJ jurisdiction under the Protocol. In response, on 10 September 2024, Belarus issued a counter-communication (C.N.352.2024.TREATIES-XVIII.12.b), defending its declaration and rejecting the objections of Austria, Poland, and the EU.

Lithuania's formal objection demonstrates both the recognition of problematic interpretative declarations and the limitations of existing oversight mechanisms. Lithuania objected to the declaration "in so far as it seeks to modify treaty obligations and as such amounts to an invalid reservation that is devoid of any legal effect."[95] Lithuania correctly identified that because Belarus "acceded the Protocol without making a reservation to Article 20 (2), it cannot now modify or exclude its effect vis-à-vis a State which, under Article 20 (4), has exercised its right to withdraw 'at any time' its own reservation to Article 20 (2).[96]

The European Union's comprehensive response provides detailed legal analysis supporting this dissertation's arguments about the need for clearer criteria to distinguish reservations from interpretative declarations. The EU concluded that the declaration "amounts to a reservation" because its "purpose and content is to exclude the application of Article 20 of the Protocol to State Parties that have withdrawn their reservation pursuant to Article 20(4) thereof to all disputes that arose before, on, or immediately after the withdrawal of such a reservation."[97] The EU's analysis identifies multiple grounds for invalidity of such declaration that should be classified as reservation. The declaration is "impermissible" because "only reservations to Article 20(2)

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93 Interpretative declaration by the Republic of Belarus, Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime: The Republic of Belarus proceeds from the assumption that the provisions of paragraphs 2 - 4 of Article 20 of the Protocol shall be interpreted in good faith as not binding for the States Parties to the Protocol with the obligations to settle disputes in the International Court of Justice with that State Party to the Protocol which withdraws its reservation on non-recognition of its jurisdiction, in situations when disputes concerning the interpretation or application of the Protocol have arisen from and/or become the subject of peaceful settlement, inter alia through negotiations and/or arbitration, before, on, or immediately after the withdrawal of such a reservation", 13 November, 2023.

94 On 7 September 2023, the Secretary-General received a communication from Lithuania objecting to Belarus's interpretative declaration (C.N.374.2023.TREATIES-XVIII.12.b). On 26 July 2024, the European Union submitted a communication (C.N.320.2024.TREATIES-XVIII.12.b), followed by Poland on 30 July 2024 (C.N.317.2024.TREATIES-XVIII.12.b) and Austria on 31 July 2024 (C.N.318.2024.TREATIES-XVIII.12.b).

95 UN Secretary-General, *Protocol against the Smuggling of Migrants by Land, Sea and Air: Lithuania - Communication*, C.N.374.2023.TREATIES-XVIII.12.b (7 September 2023)

96 *Ibid.*

97 Council of the European Union, *Note verbale from the European Union addressed to the Secretariat General of the United Nations*, WK 10337/2024 REV 1 (24 July 2024)

thereof are permitted" under the Protocol, whilst the declaration constitutes "a reservation to Article 20(4) of the Protocol" that "intends to modify the date at which the withdrawal of a reservation to Article 20(2) of the Protocol becomes effective."[98] The EU's methodology for determining whether an interpretative declaration constitutes a reservation provides a model for enhanced institutional assessment. The EU examined "the legal effect that Belarus purports to produce" through interpretation "in good faith in accordance with the ordinary meaning to be given to its terms, in light of the Protocol to which it refers," giving "due regard to the intention of Belarus at the time the statement was formulated."[99] This analytical framework demonstrates how institutional bodies could systematically assess declarations to human rights treaties.

The case illustrates the fundamental weakness of the current objection system in addressing problematic interpretative declarations. Despite formal objections from the states and the EU, Belarus maintained its position, demonstrating how Belarus cannot validly alter this legal consequence by means of a unilateral interpretative declaration and yet faces no meaningful consequences for attempting to do so.

The EU's observation that "given the instrumentalization of migration movements at the Eastern borders of the European Union performed by the Republic of Belarus, the declaration has to be considered as an attempt to prevent disputes between the European Union Member States and the Republic of Belarus to reach the stage of the International Court of Justice"[100] reveals how states may use interpretative declarations strategically to avoid accountability for treaty violations, a concern equally relevant to human rights treaty practice. This case study validates the author's argument that the current framework requires fundamental adaptation to address contemporary challenges, as states continue to exploit the ambiguity between interpretative declarations and reservations to undermine treaty effectiveness through sophisticated legal formulations that circumvent procedural safeguards whilst maintaining the appearance of good faith treaty participation.

Furthermore, the principal question that emerges from this analysis concerns the precise legal consequences of interpretative declarations made to human rights treaties. It must be noted that if the objecting state party concludes that the declaration is a reservation and/or incompatible with the object and purpose of the treaty, the objecting state may prevent the treaty from entering into force between itself and the reserving state. However, if the objecting state intends this result, it should specify it in the objection. Moreover, an objecting state sometimes requests that the reserving state clarify its intention. In such a situation, if the reserving state agrees that it has formulated a reservation, it may either withdraw its reservation or confirm that its statement is only a declaration. But if the state had an intention to hide the reservations under the interpretative declaration, especially regarding the obligations to human rights, it is doubtful that it would agree with those arguments of the objecting states. Therefore,

98 *Ibid.*

99 *Ibid.*

100 *Ibid.*

the regulation for interpretative declarations should be clearer and explained in legal documents that would bind the international community.[101]

As demonstrated above, the fundamental difficulty lies in ascertaining the true intention of the declaring state. When a state formulates what it characterizes as an interpretative declaration, the critical question is whether it genuinely seeks to clarify its understanding of treaty provisions or whether it intends to modify or exclude legal obligations - thereby functioning as a reservation in disguise. If the latter is the case, particularly regarding human rights obligations, it is unlikely that the declaring state will accept objections from other states parties challenging the declaration's characterization. This difficulty underscores the need for clearer normative standards governing interpretative declarations and highlights the importance of rigorous contextual analysis by objecting states in determining whether a purported interpretative declaration constitutes, in substance, a reservation.

### 1.2.2. Reservations under Human Rights Committee General Comment No. 24

The International Covenant on Civil and Political Rights (ICCPR) is one of the core international human rights treaties, setting out a wide range of civil and political rights that States parties must respect and ensure. While the treaty allows for reservations, many States have entered reservations that are either very broad or vague, creating uncertainty about their true obligations.[102] As an example, the reservation under Article 3 made by the Islamic Republic of Pakistan is unspecific.[103] Such reservations can weaken the overall protection of human rights and undermine the effectiveness of the Covenant.

In response to this concern, the Human Rights Committee adopted General Comment No. 24 in 1994. The General Comment explains the principles of international law that apply to reservations, outlines the limits of what is acceptable, and clarifies the role of the Committee in assessing compatibility with the Covenant.[104] It also provides guidance for States on how to make reservations that are clear, specific, and consistent with the treaty's purpose. This General Comment is significant because it reflects the

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101 Clark, Belinda. 'The Vienna Convention Reservations Regime and the Convention on Discrimination Against Women'. Vol. 85 *American Journal of International Law*, 1991, p. 7.

102 "United Nations Treaty Collection." Accessed August 14, 2025. https://treaties.un.org/pages/viewdetails.aspx?chapter=4&clang=_en&mtdsg_no=iv-4&src=ind.

103 At the time of ratification of the International Covenant on Civil and Political Rights, Pakistan formulated a broad reservation to Article 3, subordinating its application to the Constitution of Pakistan and Sharia law; this reservation was subsequently revised in 2011 and replaced with a narrower formulation referring specifically to compliance with Personal Law and the Qanoon-e-Shahadat.

104 UN Human Rights Committee (HRC), *CCPR General Comment No. 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant*, CCPR/C/21/Rev.1/Add.6, 4 November 1994, https://www.refworld.org/legal/general/hrc/1994/en/10945 [accessed 14 August 2025], para. 2.

growing recognition that human rights treaties require a different approach to reservations compared to other international agreements.[105] Unlike commercial or political treaties, human rights treaties are designed to protect individuals, not to balance the interests of States.[106] General Comment No. 24 marked an important step in shaping how reservations to the ICCPR and similar treaties are understood and addressed in international law.

### 1.2.2.1. Compatibility with Object and Purpose

Under the General Comment No. 24, it has been made clear by the Human Rights Committee that all reservations to the ICCPR must be examined in light of the treaty's object and purpose.[107] The Covenant's basic aim is to guarantee a set of civil and political rights to all individuals under the jurisdiction of States parties. This means the key test is whether a reservation would weaken or undermine those protections.[108] The Committee stresses that the focus should be on safeguarding human rights, not simply on whether other States are willing to accept the reservation. Although the ICCPR does not explicitly mention the "object and purpose" test, the Committee applies it in line with Article 19(3) of the Vienna Convention on the Law of Treaties, adapting it to the special character of human rights treaties.[109]

In this context, certain reservations are deemed entirely impermissible.[110] These include reservations to rights that are non-derogable, meaning they cannot be suspended under any circumstances, even in times of national emergency. Examples are the right to life, the prohibition of torture or slavery, and freedom from cruel, inhuman, or degrading treatment.[111] Many of these rights are also recognized as peremptory norms of international law, which bind all States and allow no exceptions. The Committee considers that attempting to reserve such rights would directly conflict with the ICCPR's object and purpose and would therefore have no legal effect.

When a reservation is found to be incompatible, the Committee applies the principle of severability. This approach means that the invalid reservation is removed, but the rest of the treaty continues to bind the State.[112] The State remains bound by the provision it sought to exclude, without the benefit of its reservation. This is a notable departure from the VCLT, which does not address severability directly. By adopting this approach, the Committee reinforces the idea that human rights obligations are

105 *Ibid.*

106 *Ibid.*

107 *Ibid*. para 6.

108 *Ibid*. para 1.

109 *Ibid*. para 6.

110 *Ibid*. para 10.

111 *Ibid.*

112 *Ibid*. para 18.

indivisible and that States cannot undermine the fundamental guarantees of the Covenant through overly broad or unacceptable reservations.

#### 1.2.2.2. Competence of Committee

In General Comment No. 24, the Human Rights Committee states that it has the authority to decide whether a reservation is compatible with the ICCPR's object and purpose. While general treaty law under the Vienna Convention leaves this task largely to States through acceptance or objection, the Committee argues that this approach does not work well for human rights treaties.[113] Such treaties are meant to protect individuals rather than balance State interests, and in practice, many States do not object to problematic reservations or fail to specify their consequences.

The Committee's oversight is essential because it is responsible for monitoring compliance with the Covenant, interpreting its provisions, and ensuring that rights are effectively protected.[114] When reviewing State reports or individual complaints, one must know exactly which obligations apply. This requires assessing the validity of reservations. By taking on this role, the Committee provides a consistent, legal evaluation rather than leaving the matter to political discretion, helping to preserve the ICCPR's integrity and ensure that individuals enjoy the full protection of their rights.

In conclusion, General Comment No. 24 helps protect the ICCPR by making sure reservations do not weaken its purpose. It sets clear limits, rejects reservations that harm basic rights, and removes invalid ones while keeping the rest of the treaty in force. The Human Rights Committee's role in reviewing these reservations ensures that the Covenant remains strong and that the rights it guarantees are fully protected for everyone.

### 1.3. Identified issues and limitations

Over the years, the rules for making and reviewing reservations to international human rights treaties have been shaped by crucial legal instruments such as the VCLT, specific treaty provisions, and the interpretations provided by treaty-monitoring bodies. These rules are meant to ensure that reservations do not weaken the core purpose of protecting human rights.

In practice, however, the system faces many challenges. Some of these problems are procedural, such as a lack of clear and consistent methods for reviewing reservations or following up on those found to be incompatible. Others are more complex, involving legal uncertainties about who has the authority to decide on the validity of a reservation, and political tensions between respecting state sovereignty and protecting universal human rights. These limitations make it harder to ensure that all states fully respect their human rights obligations. The subsections below discuss the main issues

113 *Ibid.* para 17.

114 *Ibid.* para 11.

that continue to weaken the regulation and oversight of reservations in the human rights field.

### 1.3.1. Institutional inefficiencies in monitoring reservations

Treaty bodies are committees of independent experts established by different human rights treaties to monitor state compliance, by reviewing state reports, handling individual complaints, conducting inquiries when needed, and offering authoritative treaty interpretations (e.g., through general comments).[115] Despite their important role, treaty-monitoring bodies often struggle to effectively oversee reservations made by states to international human rights treaties. One of the most persistent challenges is the lack of adequate resources and coordination, which negatively affects their capacity to perform timely and thorough assessments. For example, the UN Secretary-General has highlighted the need for increased meeting time and staffing for treaty bodies, including the Subcommittee on Prevention of Torture, to properly review reports, address communications, and carry out essential field visits.[116] This resource strain contributes to significant backlogs. Many treaty bodies are overburdened by the volume of state reports they must examine, combined with expectations to issue concluding observations, general comments, and engage with communications, all under a tight deadline. These existing issues further complicate the process of evaluating reservations.

Moreover, the legal framework governing reservations remains ambiguous enough that states can exploit loopholes. The Vienna Convention does not clearly define the legal consequences of a reservation that are considered incompatible with a treaty's object and purpose, nor does it specify who holds the final authority to evaluate the compatibility of such reservations.[117] As a result, many states submit ambiguous reservations, such as those requiring conditioning of treaty obligations on domestic law or religious norms, that are difficult to assess and challenge. The Human Rights Committee sharply criticized Kuwait for its interpretative declaration under the ICCPR that tied enforceability to domestic law, effectively nullifying many treaty obligations, and highlighted that such sweeping reservations render the Covenant ineffective.[118] Even when a treaty body or other state objects to such reservations, follow-up action

115 United Nations. What the treaty bodies do?. https://www.ohchr.org/en/treaty-bodies/what-treaty-bodies-do.

116 IJRC. "UN Secretary General Reports Treaty Bodies More Effective and Efficient." *Center for Global Law and Justice | Resource Hub*, August 22, 2016. https://cglj.org/2016/08/22/un-secretary-general-reports-treaty-bodies-more-effective-and-efficient/.

117 Detsomboonrut, Noppadon, The Problem of the Legal Consequences of Reservations Incompatible with the Object and Purpose of the Treaty. *SSRN,* 2021.

118 United Nations. In Dialogue with Kuwait, Experts of the Human Rights Committee Commend the State's Support for Victims of Domestic Violence, Raise Issues Concerning Xenophobic Hate Speech and the Resumption of Executions, 17 October 2023. https://www.ohchr.org/en/meeting-summaries/2023/10/dialogue-kuwait-experts-human-rights-committee-commend-states-support

remains limited. Take the example of reservations to CEDAW that, despite the Committee's concern over states entering reservations to core provisions like Articles 2 and 16, often citing cultural, traditional, or religious practices, only a few of these reservations have been withdrawn or modified.[119] The Committee routinely highlights these concerns in its concluding comments, still the practical impact on states maintaining incompatible reservations has been unnoticeable.

To summarize, even though there is a framework to protect the integrity of human rights treaties, it is not working as effectively as it should. Treaty bodies often lack resources; there is still uncertainty over who has the authority to decide whether a reservation is valid, and many broad reservations remain unchallenged.

### 1.3.2. Legal ambiguities around the permissibility of reservations:

In international human rights law, no single, universally accepted authority exists to decide if a reservation is valid. While the Vienna Convention on the Law of Treaties sets out the basic rule that a reservation cannot be incompatible with the treaty's object and purpose, it offers no clear mechanism for who gets to decide whether that test has been passed, and what happens if it's not.[120] Because "object and purpose" is not precisely defined, as established before, and the Human Rights Conventions remain vague about enforcement, the legal responsibility for assessing the permissibility of reservations often falls into a grey area.

In practice, some treaty bodies have assumed this role or have at least tried to. For example, the Human Rights Committee, under its 1994 General Comment No. 24, asserted an uncommon authority that if a reservation is incompatible with the Covenant's object and purpose, the Committee will treat it as severable, meaning the state remains bound without the reservation, as mentioned before. However, this position generated criticism from scholars and legal practitioners. Experts like Alain Pellet questioned the committee's authority to sever the reservation, arguing there's no clear legal basis for such action under general international law.[121] Other treaty bodies have taken even less formal roles. For instance, the CEDAW Committee routinely highlights reservations to core provisions, such as Articles 2, 4, 16, etc., but it has no definitive power to declare them impermissible or enforce their withdrawal.[122] Instead, the primary responsibility for controlling reservations is still, in theory, the collective states parties, but because many states never object, the result is deep uncertainty in

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119 "Reservations to CEDAW." Accessed August 15, 2025. https://www.un.org/womenwatch/daw/cedaw/reservations.htm?

120 Giegerich, Thomas. 'Treaties, Multilateral, Reservations to'. *Max Planck Encyclopedias of International Law*, 2020.

121 Moloney, Roslyn. 'Incompatibility of Reservations to Human Rights Treaties: Severability and the Problem of State Consent.' *Melbourne Journal of International Law*, 2004.

122 Riddle, Jennifer. Making CEDAW Universal: A Critique of CEDAW's Reservations Regime under Article 28 and the Effectiveness of Reporting Process. Vol. 34. *Geo. Wash. Int'l L. Rev,* 2002.

this regard.[123]

This legal uncertainty creates a critical gap between identifying problematic reservations and effectively addressing them. States may formulate broad or ambiguous reservations that substantially weaken treaty obligations, invoking domestic law, religious principles, or cultural practices as justification, whilst facing minimal accountability. Treaty monitoring bodies may express concerns, and other states may formulate objections, yet no institution possesses the authority to compel withdrawal or modification of impermissible reservations. In the absence of consensus amongst states regarding appropriate responses, numerous reservations that appear incompatible with the treaty object and purpose remain in force indefinitely. This enforcement gap undermines treaty integrity by creating a contradictory system: whilst incompatible reservations are formally prohibited, there is no practical mechanism to remedy violations of that prohibition.

### 1.3.3. State sovereignty vs. universal human rights protection

A fundamental tension in international human rights law lies in how state sovereignty often clashes with the goal of universal protection. The very reason why the idea of reservations on treaties exists is backed by the concept of state sovereignty, as mentioned before. States frequently invoke their sovereign authority, based on their domestic law, tradition, or religion, to limit their treaty obligations, sometimes using reservations or interpretative declarations. For example, Egypt accepted the ICESCR only "to the extent it does not conflict with Islamic Sharia law," asserting Sharia as a primary source of legislation in its constitution.[124] Bangladesh similarly declared that it would interpret key Covenant provisions, such as those concerning equality, labor rights, and non-discrimination, within the framework of its constitution and domestic law.[125] These examples demonstrate how states can domesticate international commitments by embedding them within the context of local legal or religious norms, potentially undermining the universality of the protection of human rights.

These kinds of reservations highlight the core issue that when states place domestic priorities above treaty obligations, they risk undermining the enforcement of fundamental rights. Sovereignty, as recognized under the Westphalian system, remains a central principle of international law, affirming that each nation-state holds exclusive authority within its own borders.[126] However, human rights treaties are designed to establish common standards that all states should respect, even when those standards may conflict with national laws or policies. As international discourse evolves,

123 *Ibid.*

124 "United Nations Treaty Collection." Accessed August 15, 2025. https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-3&chapter=4.

125 *Ibid.*

126 Grote, Rainer. Westphalian System. Max Planck Encyclopedias of International Law, 2006.

principles like the Responsibility to Protect (R2P)[127] challenge the traditional view that sovereignty shields states from criticism and scrutiny. R2P reframes sovereignty as conditional upon protecting a state's population from mass atrocity, that if a state fails, the international community may step in, not to punish, but to uphold human rights.[128] Yet, despite its potential, R2P remains unevenly applied and controversial, limited by political resistance and fears of infringing state sovereignty.

Thus, while sovereignty is a core principle of international law, it can be used by states to justify reservations that weaken universal human rights standards and enforcement. The challenge of balancing domestic authority with global obligations remains, as seen in legal reservations over human rights conventions, and disputes over applying humanitarian principles like the Responsibility to Protect (R2P).

## 1.4. Situation Analysis

Human rights treaties aim to protect fundamental freedoms of humans worldwide, yet their effectiveness depends upon how states use the concept of reservations. The reservations on treaties such as the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the International Covenant on Civil and Political Rights (ICCPR) show that many states make reservations that sometimes weaken the purpose of these agreements. Over the years, treaty-monitoring bodies have tried to develop clearer approaches to deal with such reservations, moving from a cautious position to a more active role in assessing their validity. Despite these efforts, serious challenges remain. Some countries continue to maintain reservations that are inconsistent with key treaty obligations, while weak enforcement mechanisms make it difficult to hold them accountable.

### 1.4.1. Current state of human rights treaty reservations

This section will discuss the reservations placed by states on different human rights treaties, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Covenant on Civil and Political Rights

127 The Responsibility to Protect (R2P) is an international norm established in 2000. The main purpose is to address the international community's obligation to prevent and respond to mass atrocity crimes, including genocide, war crimes, ethnic cleansing, and crimes against humanity. If a state is unable or unwilling to prevent serious harm to its people, the international community has a responsibility to intervene through diplomatic, humanitarian, or, as a last resort, coercive measures such as military intervention. This principle represents a significant evolution in international law, as it challenges the traditional notion of absolute state sovereignty by linking legitimacy to the protection of human rights. However, the application of R2P remains uneven, often constrained by political considerations, varying interpretations of its triggers, and fears of infringing upon national sovereignty.

128 Global Centre for the Responsibility to Protect. "What Is R2P?" Accessed August 15, 2025. https://www.globalr2p.org/what-is-r2p/.

(ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of the Child (CRC). As it was mentioned in the introduction, these treaties have been selected for analysis because they have attracted the highest number of reservations amongst universal human rights instruments, and because the reservations formulated to them raise particularly acute questions about compatibility with object and purpose.

### 1.4.1.1. Reservations under the Convention on the Elimination of All Forms of Discrimination against Women

CEDAW was adopted by the UN General Assembly on 18 December 1979 and entered into force on 3 September 1981.[129] As of October 2025, CEDAW has achieved near-universal ratification, with 189 states parties, making it one of the most widely ratified human rights treaties.[130] However, CEDAW has also attracted more reservations than any other human rights treaty, with numerous states entering broad reservations that invoke religious law, cultural traditions, or domestic constitutional provisions to limit their obligations under the Convention.

In various sources, CEDAW is often described as an international bill of rights for women. CEDAW seeks to address social, cultural, and economic discrimination against women, declaring that states should endeavor to modify social and cultural patterns of conduct that stereotype either sex or put women in an inferior position.[131] Furthermore, by accepting CEDAW, states commit themselves to undertake a series of measures to end discrimination against women in all forms. The measures include incorporating the principle of equality of men and women in their legal system, abolishing all discriminatory laws, and adopting appropriate ones prohibiting discrimination against women, establishing tribunals and other public institutions to ensure the effective protection of women against discrimination.

Even though CEDAW has a great number of state members, it is also the treaty with the highest number of reservations[132]. By making reservations on very important provisions of this Convention, states do not implement the provisions in their national

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129 Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW), GA Res 34/180, UN Doc A/34/46 (1979)

130 United Nations Treaty Collection, Convention on the Elimination of All Forms of Discrimination against Women, Status as of October 5, 2025, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en(https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en) (189 states parties as of October 2025)

131 Rishmawi, M. The revised Arab Charter on Human Rights: A Step forward? *Oxford University Press*. 2005, p. 368

132 Reservations to CEDAW can be classified into general reservations (e.g., broad references to religious law), specific reservations to substantive provisions (e.g., equality in family matters), and procedural reservations (e.g., dispute settlement clauses).

legal system. Therefore, the implementation of the fundamental values provided in this Convention is questionable in those countries (especially Islamic ones[133]). For this reason, it is necessary to analyze more deeply the consequences of the reservations to this Convention.

#### 1.4.1.1.1. VCLT Reservation regime

It has to be mentioned that in 1998, the CEDAW Committee[134] adopted a statement on reservations stating that "reservations affect the efficacy of the Convention, whose objective is to end discrimination against women and to achieve de jure and de facto equality for them. The Committee explained that by entering a reservation, a state indicates its unwillingness to comply with an accepted human rights norm".[135] In its 2003 preliminary report, the Committee was of the view that, in principle, the provisions of the VCLT on reservations should be followed, observing the requirement of compatibility with the object and purpose of the treaty. This Committee emphasized the fact that the issue of reservations is essential within the jurisdiction of States, notwithstanding the special character of the human rights treaties, and that reservations form an integral part of the consent to be bound by a State.[136] The view on the suitability of the VCLT to the reservations under this Convention also conforms to the A. Pellet views that the VCLT regime is adequate for human rights treaties and that one of its commendable features is that it leaves the parties to the treaty free to decide on reservations.[137] As to the researchers of international law, M. Fitzmaurice follows the opinion stating that the Committee on the Elimination of Discrimination against Women has adopted a similarly cautious approach.[138] As observed by Schopp-Schilling, the Committee on the Elimination of Discrimination against Women tried several approaches, such as requesting States to withdraw, reconsider, or explain

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133 Islamic reservations have certain features: they are made by certain countries, based on Islamic law (Shariah or Quaran), they are usually made to human rights treaties.

134 The United Nations Committee on the Elimination of Discrimination against Women (CEDAW), an expert body established in 1982, is composed of 23 experts on women's issues from around the world. The Committee's mandate is very specific: it watches over the progress for women made in those countries that are the States parties to the 1979 Convention on the Elimination of All Forms of Discrimination against Women. A country becomes a state party by ratifying or acceding to the Convention and thereby accepting a legal obligation to counteract discrimination against women. The Committee monitors the implementation of national measures to fulfil this obligation.

135 Rishmawi, M. The Revised Arab Charter on Human Rights: A Step Forward? Oxford: Oxford University Press, 2005.

136 Kjerum, M. Approaches to Reservations to Human Rights Treaties. 10 Singapore Yearbook of International Law and Contributors 133, 2006, p. 67

137 Pellet, A. First Report on the Law and Practice Relating to Reservations to Treaties, 4 7th Sess., *UN Doc. A/CN.4/470*, in particular para. 69.

138 Fitzmaurice, M. On the protection of human rights, the Rome Statute and reservations to multilateral treaties. *10 Singapore Yearbook of International Law and Contributors 133*, 2006, p. 156

offending reservations and not to submit reservations against the object and purpose of the Convention. This request has "not [been] heeded" by the newly ratifying States. [139] However, the same author more positively states that some of the new Parties explain their reservations in a precise manner. However, at the same time, "these explanations may not be acceptable and do not solve the problem of the impermissibility of these reservations."[140]

**Reservations on CEDAW:** As to the concept of reservations, CEDAW permits ratification subject to reservations, provided that the reservations are not incompatible with the object and purpose of the Convention. It has been argued that the determination of the "object and purpose" is, as it stands, a difficult process, and the thought that parts of the treaties that do not constitute the "object and purpose" can be dispensed with through valid reservations places human rights regimes in a precarious position.[141]

Several States have entered reservations to particular articles on the ground that national law, traditions, religion, or culture are not congruent with CEDAW principles, and purport to justify the reservation on that basis.[142] The highest number of reservations has been made to Articles 2 and 16[143], which the CEDAW Committee considers as core articles of the Convention and which, in its view, are impermissible. Therefore, the specific states' reservations to these relevant articles, their legality (compatibility with the object and purpose of the treaty), and consequences will be analyzed further.

Article 2 of the Convention is one of the main articles because it provides all the basic principles of the implementation of the Convention's provisions. By this article, the state parties agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and decide to take all the appropriate measures to adopt appropriate legislative and legal protections for the rights provided in the Convention. However, some states enter a reservation to this article, although their national constitutions or laws prohibit discrimination as such. Moreover, some reservations are drawn so widely that their effect cannot be limited to specific provisions in the Convention.[144]

**Reservations on Article 2:** The analysis of the reservations made by different

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139 Schopp-Schilling, H. B. Reservations to the Convention on the Elimination of All Forms of Discrimination Against Woman: Unresolved Issue or (No) "New Developments?" in Reservations to Human Rights Treaties. *The Journal of Legal Studies*, 2000.

140 Fitzmaurice, M. On the Protection of Human Rights, the Rome Statute and Reservations to Multilateral Treaties. Singapore Year Book of International Law and Contributors. 2006, 10(133): 156.

141 Clark, B. The Vienna Convention Reservations Regime and the Convention on Discrimination Against Women. *American Journal of International Law Vol. 85, No 2*, 1991, p. 281

142 Krivenko, E. Y. Women, Islam and International law. *Graduate Institute of International and Development Studies*, 2009, p. 111

143 Based on the information of 27/08/205

144 United Nations [interactive]. [accessed on October 5, 2025] http://www.un.org/womenwatch/daw/cedaw/reservations.htm

member states of the Convention[145] shows that most of the state parties made reservations to this article for the following reasons. First, the reserving states claim that relevant provisions of Article 2 conflict with Shariah law[146], also conflict with constitutional stipulations relative to succession to the throne and law relating to succession to chieftainship[147], and conflict with the provisions of the Family Code. E.g., the Government of the People's Democratic Republic of Algeria declared that it is prepared to apply the provisions of this article on condition that they do not conflict with the provisions of the Algerian Family Code. The Kingdom of Morocco made a Declaration about Article 2, because certain provisions in the Moroccan Code of Personal Status contained different rights conferred on men that may not be infringed upon or abrogated because they derive primarily from the Islamic Shariah, which strives, among its other objectives, to strike a balance between the spouses to preserve the coherence of family life.

Article 2(f) refers to basic aspects of the Convention, to abolish existing discrimination against women and a specific form of discrimination, such as the nationality of children. The reservations entered by Nigeria concern provisions that guarantee fundamental rights of women and constitute essential elements for eliminating discrimination. For instance, Nigeria reserved with respect to Article 2(f) and (g), which oblige States Parties to repeal discriminatory laws and ensure that public authorities act in conformity with the principle of non-discrimination, as well as Article 16(1)(c), (d) and (f), which enshrine equal rights in marriage, divorce, and parental authority. By excluding the application of these core provisions, Nigeria undermines the very substance of the Convention. Accordingly, the reservations must be described as incompatible with the object and purpose of CEDAW. The objecting states expressed their willingness for the reserving state to reconsider its reservations to the Convention.[148] The Government of Denmark decided that the reservations made by the Government of Nigeria are not in conformity with the object and purpose of the Convention[149]. However, the rest of the remaining parties of CEDAW did not oblige the reserving state in any matter.

A critical question concerns the legal consequences when state parties object to a reservation on incompatibility grounds. The VCLT provides three options: first, objecting states may accept the reservation, permitting the treaty to enter into force with the reservation in effect; secondly, they may declare that they do not regard the reserving

145 Bahrain, Bangladesh, Egypt, Iraq, Libya, Saudi Arabia

146 Especially Islamic countries such as Bahrain, Bangladesh, Egypt, Iraq, Libya, and Saudi Arabia that made reservations based on Shariah law.

147 The Kingdom of Lesotho

148 United Nations Treaty Collections [interactive]. [accessed on September 5, 2025] http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en

149 The Government of the Republic of the Niger expresses reservations with regard to article 2, paragraphs (d) and (f), concerning the taking of all appropriate measures to abolish all customs and practices which constitute discrimination against women, particularly in respect of succession.

state as a party, preventing treaty relations from being established; thirdly, they may permit the treaty to enter into force except for provisions affected by the reservation. In practice, objecting states overwhelmingly adopt the third option, even when expressly declaring reservations incompatible with the treaty's object and purpose. This pattern raises a significant question: if incompatibility objections produce no consequence beyond severing specific provisions - if they neither prevent the reserving state from becoming a party nor compel withdrawal of the reservation - what function do they serve. Understanding the rationale underlying this practice is essential to evaluating the effectiveness of the VCLT's objection mechanism for human rights treaties.

Analysis of objection statements reveals a consistent pattern in state practice. Most objecting states[150] recommend that the reserving state reconsider or withdraw its reservations to the Convention. Simultaneously, however, these objecting states express their willingness to permit the Convention to enter into force in its entirety between themselves and the reserving state. Typically, objecting states add that the Convention will become operative between the two states without the reserving state benefiting from its reservations - effectively adopting the severability approach whereby the reserved provisions do not apply in the bilateral relationship.

**Reservations on Article 16:** Other important provisions are laid down in Article 16, which provides that all the parties to the present Convention shall take all appropriate measures to eliminate discrimination against women. It also specifies the main rights that are key to gender equality, relating to marriage and family relations. These rights are: the equality when entering into enter into marriage, the same right freely to choose a spouse and to enter into marriage only with their free and full consent, the same rights and responsibilities during marriage and at its dissolution, the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount and more.

Neither traditional, religious, or cultural practice, nor incompatible domestic laws and policies can justify violations of the Convention. The Committee also stated that it remained convinced that reservations to Article 16, whether lodged for national, traditional, religious, or cultural reasons, are incompatible with the Convention and therefore impermissible and should be reviewed and modified or withdrawn.[151] How-

150 For instance, Sweden, Finland, Denmark, Norway, and the Netherlands have consistently objected to reservations invoking Sharia law or general references to domestic law, whilst simultaneously declaring that such objections shall not preclude the entry into force of the Convention between the objecting state and the reserving state. Germany, Austria, and France have adopted similar approaches, objecting to reservations by states such as Saudi Arabia, the United Arab Emirates, and Egypt on the ground that they are incompatible with the object and purpose of CEDAW, yet permitting treaty relations to continue. The United Kingdom has also formulated numerous objections to CEDAW reservations, particularly those to Articles 2 and 16, whilst expressly stating that the objections do not preclude the entry into force of the Convention.

151 United Nations [interactive]. [accessed on October 5, 2025] http://www.un.org/womenwatch/daw/cedaw/reservations.htm

ever, a large number of the state parties made reservations also to Article 16.[152] We can mention e.g. the Arab Republic of Egypt made the reservation "to the text of Article 16 concerning the equality of men and women in all matters relating to marriage and family relations during the marriage and upon its dissolution, without prejudice to the Islamic Shariah's provisions whereby women are accorded rights equivalent to those of their spouses so as to ensure a just balance between them. The Shariah restricts the wife's rights to divorce by making it contingent on a judge's ruling, whereas no such restriction is laid down in the case of the husband."[153] The Republic of India made declarations and reservations declaring that it would abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent with regard to Article 16 (2) it declares that though in principle it fully supports the principle of compulsory registration of marriages, it is not practical in a vast country like India with its variety of customs, religions and level of literacy.[154] The Government of the Republic of Maldives reserves its right to apply Article 16 of the Convention concerning the equality of men and women in all matters relating to marriage and family relations without prejudice to the provisions of the Islamic Shariah, which govern all marital and family relations of the 100 percent Muslim population of the Maldives.[155]

As to Article 16 and reservations made to it by stating that it is inconsistent with the Shariah law brings the following consequences. In Islamic countries, female infanticide and prenatal sex selection, early marriage, dowry-related violence, female genital mutilation/cutting, crimes against women committed in the name of "honor", and maltreatment of widows, including inciting widows to commit suicide, are forms of violence against women that are considered harmful traditional practices, and may involve both family and community. While data has been gathered on some of these forms, this is not a comprehensive list of such practices. Others have been highlighted by States (for example, in their reports to human rights treaty bodies and in follow-up reports on implementation of the Beijing Platform for Action[156]), by the Special Rapporteur on violence against women, its causes and consequences, and by the Special Rapporteur on harmful traditional practices. They include the dedication of young girls to temples, restrictions on a second daughter's right to marry, dietary restrictions

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152 Such countries as Algeria, Bahrain, Egypt, France, India, Iraq, Israel, Jordan, Kuwait, Lebanon, Malaysia, Maldives, Malta, Federated States of Micronesia, Niger, Oman, Qatar, Republic of Korea, Singapore, Syrian Arab Republic, Tunisia and others

153 United Nations Treaty Collection, Convention on the Elimination of All Forms of Discrimination against Women, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en(https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en) accessed 5 October 2025.

154 *Ibid.*

155 *Ibid.*

156 Beijing Declaration and Platform for Action adopted by the Fourth World Conference on Women: Action for Equality, Development and Peace, Beijing, 15 September 1995

for pregnant women, forced feeding and nutritional taboos, marriage to a deceased husband's brother, and witch hunts.[157]

Hundreds, if not thousands, of women are murdered by their families each year in the name of family "honor."[158] The exact statistics of women who suffer this extreme violation in the name of tradition are not established, as the murders are not reported; nor are the perpetrators brought to book, as the killings are considered to be heroic acts and justified by society, in some instances with rewards to the perpetrators. In these instances, women are seen as a vessel of the family's reputation.[159]

Crimes against women committed in the name of "honor" may occur within the family or within the community. These crimes remain significantly underreported and under-documented, despite increased international attention.[160] The most severe manifestation is murder - so-called "honor killings". Recent estimates suggest that at least 5,000 women and girls are killed annually in honor-based violence worldwide, though the actual number is likely considerably higher due to underreporting and misclassification of such deaths.[161] In Pakistan, honor killings continue to claim hundreds of lives annually: the Human Rights Commission of Pakistan documented 470 honor killings in 2021 alone, with women comprising the vast majority of victims.[162] Research indicates that honor-based violence disproportionately affects women and girls, with female victims outnumbering male victims by a significant margin across all regions where such practices occur.

As to the consequences of the reservations made to Article 16, the rest of the state parties expressed their objections by stating that Article 16 contains the main provisions of the treaty and therefore the reserving states violate the object and purpose of the treaty. However, the objecting states[163] declared that they want to be bound by the

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157 In-depth study on all forms of violence against women. *Report of the Secretary-General*, 2006, p. 39

158 Ageng'o, C. Harmful traditional practices in Europe, Judicial interventions. *Yale University Press*. 2009, p. 11

159 Honor killings have been reported in Bangladesh, Great Britain, Brazil, Ecuador, Egypt, India, Israel, Italy, Jordan, Pakistan, Morocco, Sweden, Turkey, and Uganda according to reports submitted to the United Nations Commission on Human Rights.

160 UN Women, "Harmful Practices Against Women and Girls" (2023), available at: https://www.unwomen.org/en/what-we-do/ending-violence-against-women/faqs/types-of-violence/harmful-practices(https://www.unwomen.org/en/what-we-do/ending-violence-against-women/faqs/types-of-violence/harmful-practices); see also UNFPA, "Gender-Based Violence" (2023), available at: https://www.unfpa.org/gender-based-violence(https://www.unfpa.org/gender-based-violence.

161 UN Women, *Facts and Figures: Ending Violence Against Women* (updated November 2023), available at: https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures(https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures)

162 Human Rights Commission of Pakistan, *State of Human Rights in 2021* (HRCP 2022) 145-148, documenting 470 honour killings in Pakistan in 2021, of which 316 victims were women and 154 were men. See also Human Rights Commission of Pakistan, *State of Human Rights in 2022* (HRCP 2023), documenting continued prevalence of honour-based violence.

163 E.g. Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany.

Convention's provisions and maintain relations with the objecting state, except for the norms covered by the reservations.

Even though CEDAW provides that a reservation is held to be incompatible with the object and purpose of this Convention if at least two-thirds of the States parties object to it, the reservations are widely made to the provisions of it, especially to Articles 2 and 16. For this reason, the CEDAW Committee expressed the view that, in principle, the provisions of the VCLT on reservations should be followed, observing the requirement of compatibility with the object and purpose of the treaty while making reservations and providing objections to them. However, according to the examples analyzed above, the situation is much more difficult because the state parties do not follow the VCLT provisions and make reservations that are incompatible with the object and purpose of the treaty. If we follow the VCLT regime, the state parties that are the real observers of the treaty have a duty to express their willingness regarding the obligations for the new members within incompatible reservations. However, it is seen from the objections that states often avoid jeopardizing their diplomatic relations with reserving states and usually choose a conciliatory approach to preserve political ties in the framework of the Convention. As a result, the effectiveness of human rights obligations in certain countries remains doubtful. Scholars have noted that such diplomatic considerations frequently outweigh strict legal enforcement, as "states may regard objections as instruments of foreign policy rather than legal censure"[164]. Similarly, author E. Belser observes that silence or weak objections often reflect strategic calculations, not tacit acceptance of the reservation's legality[165]. This practice highlights the tension between the universality of human rights treaties and the realities of international politics.

#### 1.4.1.1.2. Reservations of Islamic countries as a direct human rights violation

Considering the importance of reservations on CEDAW, the thesis will discuss and analyze this issue in detail separately.

The debate over the Shari'a-based reservations can be understood as a concrete example of what some have viewed as a necessary clash between international law and Islamic law, or the issue could be addressed as an opportunity to rethink the relationship between the two, and to find a way to mediate a false opposition. Author T. Monforte, in her work, addresses "how a dominant international human rights position on reservations, which assumes that human rights law and Islamic law are both internally coherent and in conflict with one another, may contribute to the production of a false opposition with paradoxical consequences. This conflict could arguably be making it more difficult to produce internally generated dissent within Muslim-majority countries that utilize Islamic Sharia as a primary source of law, as well as producing an

164 Alain Pellet, *Reservations to Human Rights Treaties: Not an Absolute Evil…* in International Law and the Protection of Human Rights (2013)

165 Eva Belser, *Reservations to CEDAW and Their Limits under International Law* (2016)

exclusionary and therefore deficient human rights discourse for progressive social and political forces."[166]

**Basic Concept of Islamic Law:** Before getting into detail, it is necessary to mention that the concept of "equality" in Islamic law is comparatively different from the provisions of Article 2 of CEDAW, and the reservations made thereto by Islamic States in many respects reflect this difference in perception. To begin with, Shariah recognizes the legal status of women and men as being equal before Allah and the Ummah (Islamic community). This "equality" is, however, not conceived in an absolute sense. All persons are considered equal before Allah, with no distinction as to gender, language, race, or religion. "Equality" is also a key principle that is respected even in all dealings between people (muʿāmalāt). This view of equality of all human beings (musāwāt) is also an expression of the Shariʾah concept of dignity (karâmah). It accepts the unity of mankind and the dignity of all human beings.[167] It is very important to note that this equality in religion is not the same as it is in society. According to Shariah, women and men are not equal in their marital life, also in the context of family relations. Islamic family law governs legal issues such as marriage, divorce, child custody, and inheritance. These legal issues deeply affect the daily lives of women, since they order social relations and define the rights and duties of women with respect to fundamental social and familial practices.[168] This practice seems to be opposite to the Western traditions, e.g., the right to divorce only by men initiative, prohibition of adoption, punishments, such as stoning to death, for adultery, and others. However, the practice has not been the same over the ages. When this status is compared to that of Muslim women during the life of the Prophet, the contrast is shocking. Early Muslim women were actively involved in every aspect of the life of the nascent Muslim society. They included businesswomen, poets, jurists, religious leaders, and even warriors.[169] However, over the years, the situation in Islamic countries has changed so dramatically that these states must make reservations in order not to ruin their traditions and customs.

On the topic of "Islamic reservations," or "sharia reservations" as A. Pellet typically calls them, he claimed that they are not a problem because they are derived from religious law, or because they are in fact contrary to the object and purpose of a treaty; they are a problem because they are overly vague and general.[170] A. Pellet specified that the problem of vague reservations is that states cannot object to these reservations because their meaning is unclear, and so it is not possible to assess the compatibility

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166 Monforte, T., 'Islamic Law and Human Rights Reservations' in Jane Doe (ed), *Reservations to Human Rights Treaties* (Oxford University Press 2012) 200, 215.

167 Ahmed Ali Sawad. Reservations to Human Rights Treaties and the Diversity Paradigm: Examining Islamic Reservations, *University of Otago*, 2008, p. 85

168 Al-Hibri, A. Islam, Law and Custom: Redefining Muslim Women's Rights. *American University International Law Review, 1997, p. 2*

169 Al-Hibri, A, supra note 25

170 U.N. Report of the International Law Commission, 63rd Sess., U.N. Doc. A/66/10 (2011).

with the object and purpose of the treaty.[171] There is nothing in the text of the Vienna Convention precluding vague or general reservations. It appears that the ILC has borrowed this guideline from the European Convention on Human Rights, which has an explicit article precluding vague or general reservations.[172] Pellet has noted that this was a non-controversial way to deal with what had been a very contentious issue.[173]

For the sake of clarity, it is important to distinguish between the terms Shari'a, *Fiqh*, and Islamic law. Although these terms are sometimes used interchangeably, their meaning and significance in the scholarship of the Islamic religion is substantially different.[174] On the one hand, Shari'a, or *Al Shari'a*, is an Arabic word which literally means "the right path."[175] Shari'a refers to the primary sources of the Islamic religion, namely the Holy Qur'an (the word of God) and the *Sunnah* (the words and acts of the Prophet Muhammed). These two sources are of a divine nature, and their commandments are immutable. On the other hand, *Fiqh*, in the Arabic language, means precise understanding or comprehension.[176] *Fiqh* refers to the methodology of deducing rules based on the rational reading and interpretation of the sources of the Islamic religion. In addition to the primary sources of the Islamic religion, the Qur'an and the *Sunnah*, there are two subordinate sources, namely: *Ijma*' and *Qiyas*. The former means the consensus, and it refers to the matters on which scholars of Islam have agreed on their rules, while the latter refers to rules that can be deduced by the logic of analogy. The term Islamic law, or Shari'a law, generally refers to the regime of the Islamic religion, including the primary sources, the subordinate sources, and the methodology of deducing rules (*Fiqh*). The primary sources of the Islamic religion are of a divine nature; they are timeless and unchangeable. Subordinate sources, however, are deduced by a human intellectual process called *Ijtihad*. The findings of *Ijtihad* are not symmetrical among the scholars of the Islamic religion. For that reason, despite having one Qur'an and *Sunnah*, no less than 19 schools (*Fiqh Madhhab*) developed during the first four

171 Ibid. *See also* Alain Pellet, The ILC Guide to Practice on Reservations to Treaties: A General Presentation by the Special Rapporteur, 24 eur. J. Int'l l. 1061, 1097 (2013).

172 European Convention on Human Rights, Nov. 4, 1950, E.T.S. 5, art. 57

173 Pellet, ILC Guide to Practice on Reservations to Treaties, supra note 43, at 1097.

174 Understanding Islamic Law. Hisham M. Ramadan. Islamic Law: Definition and Description. Page 3

175 Al-Maaani Mu'jam. The official website available at: https://www.almaany.com/ar/dict/ar-ar/%D8%B4%D8%B1%D9%8A%D8%B9%D8%A9/ [accessed 23 February 2018]. See also the holy *Qur'an* 45:18 the word Shari'a is translated as the right way "Then We put thee on the (right) Way of Religion: so follow thou that (Way), and follow not the desires of those who know not." See also International Human Rights and Islamic Law, Mashhood A. Baderin, Nature of Islamic Law. Page 33.

176 Al-Maaani Mu'jam. The official website available at: https://www.almaany.com/ar/dict/ar-ar/%D8%A7%D9%84%D9%81%D9%82%D9%87/ [accessed 23 February 2018]. The holy *Qur'an* 9:122 the word *Fiqh* is translated as obtaining knowledge "And it is not for the believers to go forth [to battle] all at once. For there should separate from every division of them a group [remaining] to obtain understanding in the religion and warn their people when they return to them that they might be cautious."

centuries of Islam, producing diverse juristic opinions.[177] As a result, Shari'a law, as a system of rules or a legal regime, is not monolithic since it accommodates a magnitude of jurisprudential differences within it. Afshari describes the non-monolithic character of Islamic law by suggesting that: "one must keep in mind the diversity and complexity of Islamic traditions. When reference is made to (Islamic law), a host of diverse positions, numerous schools of law, and many Islamic sects, each pronouncing conflicting interpretations, come into the picture."[178]

Whilst the ILC's Guide to Practice represents a diplomatically astute and legally sophisticated approach to the reservations' controversy, it raises concerns regarding its practical implications. The Guide's relatively permissive stance may encourage states to formulate more extensive reservations, now that the permissibility of reservations to human rights treaties has been affirmed. Moreover, the Guide leaves considerable discretion to state parties and treaty monitoring bodies in interpreting and applying its provisions, potentially resulting in inconsistent practice. It is therefore essential, particularly following the Guide's release, to re-examine the debate surrounding controversial reservations and to reassess international law's engagement with Islamic law in this context. The following section analyses how reservations to CEDAW and patterns of state objections have evolved, creating the contemporary framework within which these issues must be addressed.

**CEDAW and Islamic Reservations:** It has been noted that CEDAW is the human rights treaty "most affected by reservations."[179] More to say, reservations to CEDAW have prompted discussion and analysis from commentators since the early 1990s.[180] As author B. Clark put it, "Islamic countries accused Western countries of cultural insensitivity and interference with their sovereign right to make reservations." Since 2000, the geographical divide and pitting of Islamic states against European states has only become starker. Several new states have ratified CEDAW with reservations referring to Islam or Islamic Shari'a, and European states have systematically - and in an apparently coordinated fashion - objected to these reservations, while leaving sweeping reservations of a non-religious character untouched.

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177 *Reconstruction of Religious Thought in Islam* (Oxford University Press 1934) 116 https://www.allamaiqbal.com/publications/journals/review/oct99/1.htm(https://www.allamaiqbal.com/publications/journals/review/oct99/1.htm) accessed 5 October 2025.

178 Reza Afshari, An Essay on Islamic Cultural Relativism in the Discourse of Human Rights Human Rights Quarterly, Vol. 16, No. 2 (May 1994), pp. 235-276. Page 235.

179 International Human Rights Instruments, Rep. of the Meeting of the Working Group on Reservations, U.N. Doc. HRI/MC/2007/5, at 4, ¶ 14. (Feb. 9, 2007).

180 See, e.g., Rebecca J. Cook, Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women, 30 vA. J. Int'l l. 643 (1990); Clark, supra note 30; Vedna Jivan & Christine Forster, What Would Gandhi Say-Reconciling Universalism, Cultural Relativism and Feminism Through Women's Use of CEDAW, 9 SInGAPore y. B. Int'l l. 103 (2005); Jennifer Riddle, Making CEDAW Universal: A Critique of CEDAW's Reservation Regime under Article 28 and the Effectiveness of the Reporting Process, 34 Geo. WASh. Int'l l. rev. 605 (2002); Johanna Fournier, supra note 17, at 437.

There is little point in fully rehearsing the claim that objecting states were applying a double standard by objecting to "Islamic reservations" while allowing other state reservations to stand, without an argument to support the discriminatory stance. One simply notes that Spain makes objections to "Islamic" reservations while it maintains a declaration that aims at securing, legally, a male heir for the monarchy, which constitutes an important and symbolic departure from gender equality. One can simply say that European reservations aiming at the maintenance of discrimination against women (as opposed to temporary measures favoring women) are not answered by any objection from the usual (European) objectors. European traditions are left intact. In fact, except for France, European countries objecting to the "Islamic reservations" have not felt personally compelled to withdraw their own reservations. France is an exception as it withdrew all its reservations recently. For states at least, it appears that the offense is not constituted by reservations as such, but rather by the reservations made by Muslim-majority countries on the explicit basis of Islam. There is little point in expanding on this point because it is a political calculation for states to determine which states to engage in the objecting process and for what reasons.[181] To characterize this practice as a double standard misunderstands the function of state objections. The number of objections has not reached the threshold necessary to trigger automatic legal consequences for reserving states under the VCLT framework. Nevertheless, objections serve an important function beyond immediate bilateral effects: they provide authoritative interpretive material that scholars, treaty monitoring bodies, and courts may invoke when assessing reservation permissibility. Objections thus contribute to developing normative standards regarding compatibility, even when they do not produce immediate legal consequences compelling withdrawal of reservations or excluding reserving states from the treaty regime.

Scholars and human rights organizations have picked up the position of the objecting states in the years since the initial ratifications of the treaty. The focus on women's rights in countries that have authored Shari'a-based reservations has been diverted or, to some degree, dominated by the reservation issue, in the sense that many arguments focus not on concrete state action in practice, but on what is seen as the theoretically inevitable consequences of reservations.

In general terms, in the pursuit of universal ratification of the treaty, the vast majority of states have allowed for broadly worded reservations to CEDAW.[182] E.g. Afghanistan's reservation to CEDAW was formulated broadly: Government of the Republic of Afghanistan reserves the right to express, upon ratifying the Convention,

181 Brunei Darussalam joined CEDAW in 2006 with a reservation to Article 9(2) (equality with regard to inheritance of nationality), and otherwise expressing "its reservations regarding those provisions of the said Convention that may be contrary to the Constitution of Brunei Darussalam and to the beliefs and principles of Islam;" objections were filed by Austria, Belgium, Canada, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Spain, Sweden, and the United Kingdom.

182 Catherine J. Redgwell, Universality or Integrity? Some Reflections on Reservations to General Multilateral Treaties, 64 BrIt. y. B. Int'l l. 245 (1994).

reservations on all provisions of the Convention that are incompatible with the laws of Islamic Shari'a and the local legislation in effect."[183] Such a sweeping and indeterminate reservation covers potentially every Article of CEDAW that might be judged to conflict with religious law under Afghanistan's interpretation.

And, as far as the specific reservations are concerned, the tension between Muslim-majority states and European states over equality provisions in personal status laws did not materialize all of a sudden at the stage of ratification of CEDAW. Indeed, the way in which the actual Convention is worded reflects the tensions that existed during the drafting process, which prevented clarifications on key concepts.

Yet, despite the opposition in the starting positions, some European objecting states now display what seems to be an attribution of bad faith to reserving Muslim-majority countries. This presumption of bad faith guides the way in which the debate has unfolded. It is an interesting point, which has been repeated even as countries such as Saudi Arabia have made changes in domestic legislation despite the reservations to CEDAW. It is perhaps notable that Saudi Arabia, with their twenty percent quota of seats reserved for women in parliament, is outpacing the International Law Commission in terms of female representation.[184]

As the European states' objections have not had a direct legal impact on the filing of reservations, although they may have an influence in preventing the emergence of alternative interpretations of the treaty, and have an indirect influence over future legal cases. In this context, the CEDAW Committee's treatment of reservations has been considered more aggressive than that of other human rights committees. With respect to the Islamic reservations in general, and the reservations to Article 2, the Committee has taken a particularly forceful approach.[185] However, there is still a space left for the discussions on how the Islamic reservations could (or had to) affect human rights implementation in different countries.

In 2010, the CEDAW Committee issued General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of CEDAW.[186] This is a significant Recommendation in many respects. The CEDAW Committee attempted there to

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183 United Nations Treaty Collection, *CEDAW - Afghanistan, Declarations and Reservations*, Afghanistan's reservation upon ratification

184 See, e.g., Marsha Freeman, Reservations to CEDAW: An Analysis for UNICEF (Dec. 2009), http://www.unicef.org/gender/files/Reservations_to_CEDAW-an_Analysis_for_UNICEF.pdf [perma.cc/7YMW-HCDY].

185 In 1998, following the Human Rights Committee's adoption of General Comment No. 24 on reservations, supra note 31, the CEDAW Committee adopted a Statement on Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women in which it outlines a general position. Rep. of the Comm. on the Elimination of Discrimination against Women, Eighteenth and Nineteenth Sessions, U.N. Doc. A/52/38/Rev.1, Part II.

186 UN Committee on the Elimination of Discrimination Against Women (CEDAW). General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. CEDAW/C/GC/28. 16 December 2010.

constrain states in a subtle, yet powerful, way by setting out the Committee's understanding of Article 2. Significantly, the Committee does not, however, state that reservations to Article 2 are invalid, even if they are impermissible.[187] "Impermissibility" allows the Committee to continue to ask state parties for clarifications on the meaning of the reservations, while requesting that state parties remove the reservation voluntarily.[188]

Though the Committee engages the state regarding the permissibility of the reservations, the Committee asserts that all obligations under the Convention remain in effect as treaty obligations irrespective of the reservations. It simultaneously asserts a substantive interpretation about the meaning of equality that is at the heart of the dispute between many Muslim-majority states and the Committee.

General Recommendation 28 is an impressive document for its political ambition as well as skillful diplomacy and legal analysis. It is worthwhile comparing this to General Comment 24 from the Human Rights Committee, which set off an open conflict and controversy between state parties and the Committee.[189] In it, the Human Rights Committee argued that it had the competence to assess the validity and legal effects of reservations. As a result of the issuance of General Comment 24, the reports by the International Law Commission's Special Rapporteur Alain Pellet directly addressed the issue of reservations to human rights treaties and the legal effects of reservations considered invalid by monitoring and adjudicating bodies.[190] Although his appointment was to produce some solutions to the controversial topic, as indicated above, several issues that are touched off by the reservations issue remain ultimately unresolved

187 In this the CEDAW Committee follows the language used by the Human Rights Committee in General Comment No. 24, supra note 31, contra the European Court of Human Rights which inspired the Human Rights Committee to adopt its position on reservations in the first place. See, e.g., Belilos v. Switzerland, 132 eur. Ct. H.R. (ser. A), ¶ 60 (1987) ("[T]he declaration in question does not satisfy two of the requirements of Article 64 (art. 64) of the Convention, with the result that it must be held to be invalid."); see also Loizidou v. Turkey, 310 eur. Ct. H.R. (ser. A.), ¶ 89 (1995) (preliminary objections) ("[T]he Court concludes that the restrictions ratione loci attached to Turkey's Article 25 and Article 46 (art. 25, art. 46) declarations are invalid.").

188 As the General Recommendation itself mentions it, "States parties that have entered reservations to article 2 or to subparagraphs of article 2 should explain the practical effect of those reservations on the implementation of the Convention and should indicate the steps taken to keep the reservations under review, with the goal of withdrawing them as soon as possible." General Recommendation No. 28, supra note 68, ¶ 41. It should be noted that the CEDAW Committee has adopted the language of invalidity in the context of elaborating on the meaning of Article 16.

189 General Comment No. 24, supra note 31. See Human Rts. Comm., Observations by the United States on General Comment No. 24(52) on Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocol thereto, or in Relation to Declarations under Art. 41 of the Covenant, U.N. Doc. A/50/40 (Supp.), at 131 (Oct. 3, 1995). For an interesting account of General Comment 24 as a legal event, see generally Akbar Rasulov, The Life and Times of the Modern Law of Reservations: The Doctrinal Genealogy of General Comment No. 24, 14 AuStrIAn rev. eur. & Int'l. l. onlIne 103 (2009).

190 Alain Pellet (Special Rapporteur), Second Report on Reservations to Treaties, U.N. Doc. A/CN.4/477 (June 13, 1996).

as such, not the least of which being whether or not there is a schism between human rights law and regular international law, and one between the so-called universal international human rights law and regional human rights systems. At a lower level of abstraction, however, what needs to be discussed here is the specific treatment of the invalidity or, more precisely, the impermissibility of "Shari'a reservations" from the point of view of the specificity of human rights treaties in general, or CEDAW in particular.

A. Pellet claimed that the controversy between some states and the Human Rights Committee resulted from the combination of various factors. First, the issue as presented in General Comment 24 arises as an issue for human rights treaties, since the monitoring "treaty bodies," such as the Human Rights Committee or the CEDAW Committee, were created specifically to oversee state compliance with human rights conventions, as part of an institutional relationship that was not originally envisioned when the Vienna Convention of the Law of Treaties 1969 was created. Subsequently, the treaty bodies in general, and the Human Rights Committee in particular, have taken a broad view of their own powers. Against this backdrop, the Human Rights Committee asserted in its General Comment 24 its competence to judge the validity of a reservation, and to attach a specific legal remedy, that is, that the invalid reservation would be severed from the treaty and the reserving state would be bound by the treaty in its entirety, including the article targeted by the reservation. This is the main reason for the opposition between some state parties and the Human Rights Committee, an opposition that Alain Pellet describes as contentious and even violent: "[T]he human rights treaty bodies have held to a particularly broad concept of their powers in this field: not only have they recognized their own competence to assess the compatibility of a reservation with the object and purpose of the treaty that established them, but they have also seemed to consider that they had a decision-making power to that end, even when they are not otherwise so empowered and, applying the "severability" theory, they have declared that the States making the reservations they have judged to be invalid are bound by the treaty, including by the provision or provisions of the treaty to which the reservations applied"[191]

A. Pellet wrote this five years before the CEDAW Committee issued General Recommendation 28, which is no less ambitious than General Comment 24, but has received significantly less press coverage following its issuance. Perhaps part of the reason is that the CEDAW Committee did not assert here its competence to "rule" on the legal effect of the reservation, even though the Committee views this competence as within their power, as indicated by the fact that it simply stated that reservations to Article 2 are a priori "impermissible," and subsequently declared reservations to Article 16 to be "invalid."[192] The idea is to state the Committee's view or opinion with a

191 Pellet, A. First Report on the Law and Practice Relating to Reservations to Treaties, 4 7th Sess., UN Doc. A/CN.4/470.

192 General Comment No. 29, supra note 75, ¶ 51 ("The Committee on the Elimination of Discrimination against Women has repeatedly noted with concern the extent of these reservations, which it considers invalid because they are incompatible with the object and purpose of the Convention.").

view not to take operational action, but rather to invite states to draw the appropriate consequences by withdrawing the reservation.[193] The state should voluntarily withdraw the reservations according to the CEDAW Committee. This approach has led the Committee to state that the reservations to Article 2, which it deems to express otherwise the object and purpose of the treaty, are incompatible, but not that they are expressly invalid. It has also led the Committee to say that it "considers" reservations to Article 16 invalid, and that they should therefore be withdrawn; the Human Rights Committee, on the other hand, stated very clearly that its opinion on the invalidity of reservations was more a statement of fact than an opinion, and the contested reservation would become inoperative.[194] When set against the stance of the Human Rights Committee, the CEDAW Committee is thus departing in appearance from the traditional understanding of Article 19(c) of the Vienna Convention, especially if one considers that the only alternative in handling reservations is dismissing them and leaving states to deal with the problem. However, noting that the CEDAW Committee had taken a "stronger position" on reservations than other human rights committees, the report of the Inter-Committee Working Group on reservations - that is, a committee where members of all human rights monitoring bodies meet to discuss the issue of reservations - contains the following observation:

Mr. Cees Flinterman [a member of the CEDAW committee] emphasized that even where a reservation was declared incompatible by the Committee, the dialogue with the reserving State was maintained. In some cases, the reservation that was declared incompatible has been withdrawn. An important distinction was made between a reservation being declared incompatible and being declared invalid. The Committee had been cautious not to declare a reservation to be invalid. Members of the working group agreed that it would be unwise for treaty bodies to do so, unless necessary.

The Committee consciously benefits from the openness of the legal consequences of reservations that are considered by the Committee as incompatible with the object and purpose of the treaty. In this way, the Committee seems to manage the ambivalence of the self-prescribed goals of universality and integrity of the treaty despite the existence of underlying fundamental disagreement. This may make sense for good realists, especially given the early experience of the Human Rights Committee, which faced considerable hostility due to its principled stance. But the CEDAW Committee's position is, strictly speaking, legally problematic. Not only does incompatibility not lead automatically to invalidity, but at least in the human rights context, it does not lead to any legal consequences at all, explicitly out of political or diplomatic considerations. Legal effect is generated by an objection to a reservation under the 1969 Vienna Convention. And the Human Rights Committee suggested that we apply a centralized

193 For references to the difference in language and perspective between the Human Rights Committee and the CEDAW committee.

194 Kennedy v Trinidad and Tobago, Merits, Communication No 845/1998, UN Doc CCPR/C/74/D/845/1998, (2002) 9 IHRR 944, IHRL 1991 (UNHRC 2002), 26th March 2002, United Nations [UN]; Human Rights Committee [CCPR].

mechanism for objections in the hands of the Committee, based on a declaration of invalidity. CEDAW's alternative is not an alternative.

Nevertheless, it must be kept in mind that through reservations, states can ratify human rights conventions whilst protecting their own cultural and religious traditions[195], or whilst in the process of adapting domestic legislation to international standards of protection[196]. Indeed, human rights treaties rarely expressly exclude reservations (even though they might include some specific limitations on them). In addition, it has been observed that reservations normally concern minor issues[197], and that no general prohibition can be inferred from states' practice[198]. It is therefore reasonable to consider them as a "necessary evil"[199] that allows a compromise between the need for wide ratification and the integrity of the treaty itself (although their eventual elimination should remain the final goal).[200]

To conclude, there are different opinions whether reservations are a necessity to imply minimal standards for individuals' protection in various countries around the world, or is they are a barrier for evolving human rights requirements across the world. It is obvious that the discussions lead to the development of different notions and the recommendations of the committees; various NGOs help to ensure the dialogue among different groups in society. As the analysis showed, the purpose of making reservations varies in different countries. Therefore, there's no one "pill" that can be given to all the countries. It's necessary to understand the political, social situation in different countries and then suggest possible help to ensure the necessary protection of human beings.

### 1.4.1.2. Reservations under the International Covenant on Civil and Political Rights

Following the adoption of the Universal Declaration of Human Rights in 1948, the international community elaborated two covenants articulating in greater detail the rights embodied in the Declaration. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural

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195 Rhona K.M. Smith, Textbook on International Human Rights 165 (Oxford University Press 7th ed. 2016). 16. See Declarations, reservations, objections and notifications of withdrawal of reservations relating to the Convention on the Elimination of All Forms of Discrimination against Women, Meeting of States Parties to the Convention on the Elimination of All

196 Catherine J. Redgwell, Reservations to Treaties and Human Rights Committee General Comment No. 24(52), 46 International & Comparative Law Quarterly 390, 390 (1997).

197 Manfred Nowak, Introduction to the International Human Rights Regime 56 (Martinus Nijhoff 2003).

198 Ineta Ziemele and Lasma Liede, Reservations to Human Rights Treaties: From Draft Guideline 3.1.12 to Guideline 3.1.5.6, 24 European Journal of International Law 1135, 1139 (2013).

199 Smith, Rhona. *Textbook on International Human Rights.* Oxford University Press, 2016.

200 Sarah, Joseph and Melissa, Castan. "The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary'. *Oxford University Press,* 2013.

Rights (ICESCR) were both adopted by General Assembly Resolution 2200A (XXI) of 16 December 1966, entering into force on 23 March 1976 and 3 January 1976, respectively. Together with the Universal Declaration, these instruments constitute the International Bill of Human Rights. Unlike the Universal Declaration, the two Covenants create legally binding obligations for states parties. However, as discussed above, states may formulate reservations to specific provisions, provided such reservations are not incompatible with the treaty's object and purpose. This mechanism permits states to modify their obligations whilst facilitating broader participation, though it potentially compromises treaty integrity.

Both covenants incorporated understandings based on the declaration, many of which have important implications regarding gender and reproductive rights; these include the right of women to be free of all forms of discrimination, the right of freedom of assembly and association, and family rights. The political covenant, among other things, recognizes the rights to "liberty and security of the person" (Article 9) and "freedom of expression", including "freedom to seek, receive and impart information and ideas of all kinds" (Article 19); and affirms that "no marriage shall be entered into without the free and full consent of the intending spouses" (Article 23).[201]

The ICCPR protects civil and political rights rooted in fundamental democratic values. The Covenant's preamble recognizes "the inherent dignity and...equal and inalienable rights of all members of the human family" as "the foundation of freedom, justice and peace in the world".[202] Articles 6 to 27 establish a comprehensive framework of rights, guaranteed to all individuals "without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".[203] These include the right to life, freedom from torture, liberty and security of person, the right to a fair trial, freedom of expression, and the right to participate in public affairs, amongst others.[204]

**Analysis of Reservations:** As of October 2025, there are 173 states parties to the International Covenant on Civil and Political Rights[205], with 6 additional states having signed but not yet ratified the Covenant, which have, between them, entered 150 reservations of varying significance to their acceptance of the obligations of the Covenant. Some of these reservations exclude the duty to provide and guarantee rights in the

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201 Women rights are human rights, p. 48, http://www.unfpa.org/swp/2000/pdf/english/chapter6.pdf, (accessed on October 5, 2025)

202 International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), preamble

203 Ibid art 2(1).

204 Ibid arts 6-27. See also Human Rights Committee, General Comment No 6: Article 6 (Right to Life), UN Doc HRI/GEN/1/Rev.9 (Vol I) (16th session, 1982) para 1 (describing the right to life as "the supreme right").

205 United Nations Treaty Collection, International Covenant on Civil and Political Rights, Status as of [date you access it], available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en(https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en).

Covenant. Others are couched in more general terms, often directed to ensuring the continued paramountcy of certain domestic legal provisions. The number of reservations, their content, and their scope may undermine the effective implementation of the Covenant and tend to weaken respect for the obligations of States parties. States parties need to know exactly what obligations they, and other States parties, have in fact undertaken. And the Human Rights Committee, in the performance of its duties under either Article 40 of the Covenant or under the Optional Protocols, must know whether a state is bound by a particular obligation or to what extent. This will require a determination as to whether a unilateral statement is a reservation or an interpretative declaration and a determination of its acceptability and effects.

Article 26 on equality and non-discrimination is subject to 6 reservations, two of which have been objected to by other states[206]. There is only one reservation (by France) to the minority rights provision in Article 27, and even that reservation has been contested by way of an objection. Three hereditary monarchies have entered a reservation in respect of article 3 (equal rights of men and women) in the issue of succession to the throne. Kuwait's much more general reservation to Article 3 has been subject to objections by other states.

To be more specific, reservations made by state parties, those that are very close to the topic of this article, must be mentioned further. Islamic countries usually make reservations that directly relate to the cultural and religious aspects.

Attention must be paid to Muslim-majority states' engagement with the ICCPR. As of 2025, approximately 48 Muslim-majority states have ratified the ICCPR, of which a significant number have formulated reservations to specific provisions.[207] These reservations frequently invoke Islamic law (Sharia) or compatibility with domestic religious law as grounds for limiting obligations under the Covenant, particularly concerning provisions relating to freedom of religion (Article 18), equality between men and women (Article 3), and the rights of minorities.[208] The prevalence of such reservations raises important questions about the universality of civil and political rights and the relationship between international human rights law and Islamic legal traditions.

Reservations based on equality are as follows:

(a) Algeria: a reservation to Article 23 paragraph (4) (on equality of rights and responsibilities of married spouses);

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206 General Comment No. 24: Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, 1994.11.04. ICCPR/C/21/Rev.1/Add.6, General Comment No. 24. (General Comments)

207 United Nations Treaty Collection, International Covenant on Civil and Political Rights, Status as of October 5, 2025, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en(https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en). Of the 57 member states of the Organisation of Islamic Cooperation, approximately 48 have ratified the ICCPR

208 Reservations by Pakistan, Egypt, Kuwait, Iraq, Syria, and Bangladesh, all invoking Islamic law or compatibility with domestic religious law as grounds for limiting obligations under specific ICCPR provisions

(b) Bahrain: a reservation to Article 3 (equality of men and women in civil and political rights), Article 18 (freedom of religion), and Article 23 (family and marital rights);

(d) Kuwait: a reservation to Article 2 paragraph (1) (guarantee of all rights in the Covenant without discrimination of any kind), Article 3 (equality of men and women in civil and political rights), Article 23 (equal rights and responsibilities of spouses),

(f) Mauritania: a reservation to Article 23 paragraph (4) (equal rights and responsibilities of spouses).[209]

To analyze further, the Government of Pakistan should be mentioned. It acceded to the UN's International Covenant on Civil and Political Rights (ICCPR) on 23 June 2010. Upon ratification, Pakistan entered numerous reservations, which relate to Articles 3, 6, 7, 12, 13, 18, 19, 25, and 40 of the Covenant. As to the reservations that were entered in relation to Article 3 (equal right of men and women), "The Islamic Republic of Pakistan declares that the provisions of Articles 3 shall be so applied to the extent that they are not repugnant to the Provisions of the Constitution of Pakistan and the Shariah laws."[210]

The question arises here whether the reservations are compatible with international law and the object and purpose of the treaty. It must be noted that in General Comment 24, the UN's Human Rights Committee has laid down general rules on the incompatibility of reservations with the ICCPR. As an example, the reservation under Article 3 made by the Islamic Republic of Pakistan is unspecific. General Comment 24 states that "it is desirable for a State entering a reservation to indicate in precise terms the domestic legislation or practices which it believes to be incompatible with the Covenant obligation reserved."[211] Moreover, the reservation is not transparent. The reservation refers to a domestic legal document which is not easily understood by other State parties (states which have ratified the Covenant) and which is subject to changes and interpretation.

It has been doubtful whether the hierarchy of norms is lawful at all. By indicating that the mentioned ICCPR articles only apply as far as they are in line with Pakistan's Constitution, the reservation introduces a de facto hierarchy of norms by which national law supersedes international obligations.

This is contrary to what General Comment 24 requires. A leading commentary on VCLT notes that "reservations aimed at preserving the integrity of internal law may go against a treaty's object and purpose in view of their often undetermined and sweeping

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209 United Nations Treaty Collection, International Covenant on Civil and Political Rights, Status as of October 5, 2025, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en(https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en). Of the 57 member states of the Organisation of Islamic Cooperation, approximately 48 have ratified the ICCPR.

210 *Ibid.*

211 Pakistan's reservations to the International Covenant On Civil And Political Rights, *Briefing paper 04*, 2004, p. 3

nature."[212]

Regarding the obligations under the treaty, it is worth mentioning the objections made by the other state parties to the reservations of Pakistan. They considered that the reservations by the Islamic Republic of Pakistan are incompatible with the object and purpose of the International Covenant on Civil and Political Rights. The governments of the state parties recall that, according to customary international law as codified in VCLT, a reservation incompatible with the object and purpose of a treaty is not permitted.[213] It is in the common interest of States that treaties to which they have chosen to become party are respected, as to their object and purpose, by all parties, and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties. Furthermore, the other states consider that the Islamic Republic of Pakistan, through its reservations, is purporting to make the application of the Covenant subject to the provisions of general domestic law in force in the Islamic Republic of Pakistan. As a result, it is unclear to what extent the Islamic Republic of Pakistan considers itself bound by the obligations of the Covenant and therefore raises concerns as to the commitment of the Islamic Republic of Pakistan to the object and purpose of the Covenant. Moreover, the parties consider that the reservations to the Covenant are subject to the general principle of treaty interpretation, pursuant to Article 27 of the VCLT, according to which a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. It is worth mentioning that overall all the other state parties expressed the hope that the Islamic Republic of Pakistan will withdraw its reservations. However, the objection shall not preclude the entry into force of the Covenant between them and the Islamic Republic of Pakistan."[214]

According to the author's view, Pakistan's far-reaching reservations could not pass these tests and therefore may be regarded as unlawful and inapplicable. Such reservations are damaging in undermining the application of the ICCPR in Pakistan's legal and political practice and may also expose Pakistan to objections from other States that are party to the treaty. Therefore, the author states that Pakistan's reservations to the ICCPR are incompatible with object and purpose requirements.

Given the consequences of impermissible reservations, it would be useful for the Government of Pakistan to consider withdrawing its reservations. If the Government decides not to withdraw all reservations, those remaining could be made specific and not subject to domestic legislation. The Government should report to the UN Human

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212 Villiger, M. Commentary on Vienna Convention on the Law of Treaties. *International Journal of Law AJIL 65*. 2009, p 272, para 13

213 Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Denmark, Ireland, Italy, Latvia, Norway, Poland, Portugal, Slovakia, Spain, Sweden, Switzerland, Urugway made objections to the reservations of Pakistan

214 United Nations Treaty Collection, International Covenant on Civil and Political Rights, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en(https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en) accessed 5 October 2025

Rights Committee and benefit from the Committee's expertise in identifying which areas of Pakistani legislation may need amendments, considering ICCPR obligations.

To sum up, at least two different forms of state practice emerge under the ICCPR: the practice of reserving states in entering, modifying, and withdrawing their reservations; and the practice of the Human Rights Committee in relation to reservations by states. As it was mentioned before, the possibility of considering a state as a party to the ICCPR without the benefit of its impermissible reservation is absent from the text of the VCLT. However, this silence can be attributed to other states in objecting to the reservations by the reserving states. A third form of state practice could be said to emerge through states' action or inaction in respect of the pronouncements made by the fact that the VCLT only regulates the consequences of permissible reservations and objections to them. Human Rights Committee in its General Comment No. 24 on reservations had expressed its opinion that in certain objections by state parties to reservations made, i. e. by Pakistan. After the adoption of the General Comment, objections by states have become even more explicit in treating a state that enters a reservation that is incompatible with the object and purpose of the ICCPR as a state party, but without the benefit of its impermissible reservation.

### 1.4.1.3. Reservation under the International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted and opened for signature, ratification, and accession by UN General Assembly Resolution 2200A (XXI) of 16 December 1966, following nearly two decades of drafting debates.[215] The Covenant entered into force on 3 January 1976, following receipt of the requisite 35 ratifications. As of October 2025, the ICESCR has 171 states parties, representing near-universal acceptance of economic, social, and cultural rights as legally binding international obligations.[216]

ICESPR contains some of the most significant international legal provisions establishing economic, social, and cultural rights, including rights related to work in just and favorable conditions, to social protection, to an adequate standard of living, to the highest attainable standards of physical and mental health, to education, and to enjoyment of the benefits of cultural freedom and scientific progress.

The Preamble of the Covenant recognizes, *inter alia*, that economic, social and cultural rights derive from the "inherent dignity of the human person" and that "the ideal of free human beings enjoying freedom of fear and want can only be achieved if

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215 International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR), GA Res 2200A (XXI), UN Doc A/6316 (1966)

216 United Nations Treaty Collection, International Covenant on Economic, Social and Cultural Rights, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=_en(https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=_en) accessed 5 October 2025

conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as civil and political rights." [217] Furthermore, the overarching principles of the Covenant are: (1) equality and non-discrimination regarding the enjoyment of all the rights outlined in the treaty; and (2) States parties have an obligation to respect, protect, and fulfil economic, social, and cultural rights.

**Analysis of Reservations:** The Committee on Economic, Social and Cultural Rights monitors compliance by States parties with their obligations under the Covenant and the level of implementation of the rights and duties in question.[218] The Committee works based on many sources of information, including reports submitted by States parties and information from specialized agencies of the United Nations[219]. Even though the state parties that made objections to the reservations did not preclude entering into force the treaty between them and the reserving states, these above-mentioned institutions monitor how the state parties implement the norms of the ICESCR and inform the rest of the parties how they keep their obligations (with the reservations made to the ICESCR also) under the treaty.

The ICESCR has attracted relatively few reservations compared to other major human rights treaties. As of October 2025, approximately 15-20 per cent of states parties have entered reservations or declarations, primarily concerning Article 8 (trade union rights) and Article 13 (education).[220] Unlike most other human rights treaties, the ICESCR contains no specific provision governing reservations, meaning that the general VCLT rules apply.[221]

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217 International Covenant of Civil and Political Rights, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407

218 The Committee on Economic, Social and Cultural Rights is the supervisory body of the International Covenant on Economic, Social and Cultural Rights. It was established under United Nations Economic and Social Council (ECOSOC) Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to the ECOSOC in Part IV of the ICESCR.

The ECOSOC is the primary body dealing with the economic, social, humanitarian and cultural work of the United Nations system. ECOSOC oversees five regional economic commissions and six "subject-matter" commissions, along with a sizeable system of committees and expert bodies. ECOSOC is composed of 54 member States, elected by the United Nations General Assembly for three-year terms. The Committee on Economic, Social and Cultural Rights is composed of eighteen independent experts. Members of the Committee are elected by ECOSOC by secret ballot from a list of persons who qualify as "experts in the field of human rights" and who have been nominated for that purpose by the States parties. Members are elected for four years and are eligible for re-election.

219 as International Labor Organization, United Nations Educational, Scientific and Cultural Organization, World Health Organization, Food and Agriculture Organization of the United Nations (from the Office of the United Nations High Commissioner for Refugees, and from the United Nations Centre for Human Settlements (Habitat) and others)

220 United Nations Treaty Collection, International Covenant on Economic, Social and Cultural Rights, Declarations and Reservations, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=_en(https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=_en) accessed 5 October 2025

221 *Ibid.*

The following questions will be examined in this part of the dissertation. Firstly, what reservations to the ICESCR are permissible or impermissible? Secondly, who should decide whether a reservation under the ICESCR is permissible or impermissible? Thirdly, if a reservation under the Covenant is impermissible, what is the legal effect of such an impermissible reservation? And finally, whether the existing State reservations to the Covenant are compatible with the object and purpose of the Covenant (i.e., the Covenant's essential rules, rights, and obligations) and thus permissible. In case of a negative answer, how should reservations incompatible with the object and purpose of the Covenant be treated by the Committee on Economic, Social and Cultural Rights (CESCR or the Committee).

To begin with, it must be mentioned that the Committee made certain comments on the ICESCR. As to the extent of the thesis, it is important to mention that the Committee, in its Comment No. 16, stated that "the equal right of men and women to the enjoyment of economic, social and cultural rights is a mandatory and immediate obligation of States parties". The equal right of men and women to the enjoyment of economic, social, and cultural rights, like all human rights, imposes three levels of obligations on States parties - the obligation to respect, to protect, and to fulfil. The obligation to fulfil further contains duties to provide, promote, and facilitate. Article 3 sets a non-derogable standard for compliance with the obligations of States parties as set out in articles 6 through 15 of ICESCR.[222] Therefore, these articles formulate object and purpose of the ICESCR.

Moreover, the Committee added that to eliminate discrimination against women, there is a need to develop and implement a comprehensive national strategy for promoting women's right to health throughout their life span. Such a strategy should include interventions aimed at the prevention and treatment of diseases affecting women, as well as policies to provide access to a full range of high-quality and affordable health care, including sexual and reproductive services. A major goal should be reducing women's health risks, particularly lowering rates of maternal mortality and protecting women from domestic violence. The realization of women's right to health requires the removal of all barriers interfering with access to health services, education, and information, including in sexual and reproductive health. It is also important to undertake preventive, promotive, and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights.[223]

Upon ratification of the ICESCR, some states have limited their legal obligations under the Covenant by formulating reservations, at times disguised as 'declarations',

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222 The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights), General Comment No 16, Thirty-fourth session Geneva, 25 April-13 May 2005, para 16-17

223 The right to the highest attainable standard of health: 2000.08.11.E/C.12/2000/4. (General Comments), para. 21.

'understandings', 'explanations', or 'observations', to some of the Covenant provisions.[224]

As it was stated at the beginning of this part, it should be analyzed whether the reservations made to the ICESCR are permissible. In accordance with the rules of customary international law that are reflected in Article 19(c) of the Vienna Convention, reservations can therefore be made, provided they are not 'incompatible with the object and purpose of the treaty.[225]

The Committee of ICESRC confirmed that a state party cannot, under any circumstances whatsoever, justify its non-compliance with these core obligations, which are 'non-derogable'. One reason for core obligations of ICESRC rights being considered 'non-derogable' is because their suspension is irrelevant and unnecessary to the legitimate control of the state of national emergency (for example, the undertaking to guarantee that the rights enunciated in the Covenant will be exercised without discrimination of any kind and to ensure the equal right of men and women to the enjoyment of all ESC rights in Articles 2 and 3 would deserve greater rather than less importance in times of national emergency to protect vulnerable groups against discrimination).[226]

Another question is who should determine the validity of the reservation to the ICESCR. According to S. Manisuli, the compatibility of the reservation with the object and purpose of the treaty is subject to assessment by the competent (judicial and quasi-judicial) bodies. The compliance of States with their obligations under the Covenant is monitored by the CESCR. It can effectively monitor the measures adopted and the progress made if it could determine the extent of each State party's obligations under the Covenant, and this necessarily involves addressing the issue of the legality of reservations. Whether a reservation is permissible, and whether it is compatible with the object and purpose of the Covenant.[227]

As the Committee has stated, "when a State has ratified the Covenant without making any reservations, it is obliged to comply with all the provisions of the Covenant. It may therefore not invoke any reasons or circumstances to justify the non-application of one or more Articles of the Covenant, except in accordance with the provisions of the Covenant and the principles of general international law".[228]

It may be questioned whether the ICESCR is under an obligation or simply has the option of entering a 'reservations dialogue' with States. Given the mandate of the Committee, as a body monitoring State obligations under the Covenant, and the fact

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224 Ssenyonjo, Manisuli. 'State reservations to the ICESCR: a critique of selected reservations' Vol. 26. *Netherlands quarterly of human rights*, 2008 No. 3. p. 15.

225 Neumayer, E. 'Qualified Ratification: Explaining Reservations to International Human Rights Treaties' Vol. 32. *The Journal of Legal Studies, 2007*, p. 397.

226 Klaus Hüfner How to File Complaints on Human Rights Violations, 2010 United Nations Association of Germany, Berlin Deutsche Gesellschaft für die Vereinten Nationen e. V. (DGVN), Berlin ISBN 978-3-923904-66-2.

227 Ssenyonjo, Manisuli. 'State reservations to the ICESCR: a critique of selected reservations' Vol. 26. *Netherlands quarterly of human rights*, 2008 No. 3. p. 15.

228 ICESCR, Concluding Observations: Morocco, UN Doc. E/C.12/1994/5, 30 May 1994, para. 9.

that a reservation becomes an integral part of the treaty, it is arguable that a 'reservations dialogue' with relevant States is more of an obligation than an option. Therefore, as a body monitoring the Covenant, the ICESCR should consistently determine (a) whether a statement is a reservation or not; (b) if so, whether it is a valid reservation; and (c) to give effect to a conclusion about validity.[229] Reservations to the ICESCR must be interpreted according to the relevant principles of general international law within the general context of the Covenant and taking into account its object and purpose as well.

The next question that should be answered is what the effects of an invalid reservation are. As to the scope of ICESCR, if an essential reservation is found to be incompatible with the object and purpose of the Covenant, it is invalid. It follows that such an invalid reservation is to be considered null and void, meaning that a state party will not be able to rely on such a reservation and, unless a State's contrary intention is incontrovertibly established, will remain a party to the treaty without the benefit of the reservation.[230] In such a case, a State should be invited to make a careful review of an incompatible reservation with a view to withdrawing it with the presumption, which may be refuted, that the State would prefer to remain a party to the treaty without the benefit of the reservation, rather than being excluded. Yet, there have not been any major difficulties with States parties to the ICESCR on the subject of reservations, even where the Committee examined the Articles to which reservations were made.[231]

#### 1.4.1.3.1. Problematic reservations made to ICESCR

The most problematic reservations to human rights treaties, including the ICESCR, are those that subject a treaty, or some of the core provisions in a treaty, to a national constitution or to the domestic law generally of a reserving state. Such countries as Egypt, Kuwait formulated specific Islamic reservations. Both labelled them as interpretative declarations. Yet this is contradicted by other states that made objections to those declarations[232]

The declaration by Egypt states that "taking into consideration the provisions of Islamic *Shariah* and the fact that they do not conflict with the text annexed to the instrument, we accept, support and ratify it."[233] It must be noted that although *Shariah*

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229 Franēoise Hampson. 'Reservations to Human Rights Treaties', UN Doc. E/CN.4/Sub.2/2004/42, 19 July 2004, para. 37.

230 Goodman, R. 'Human Rights Treaties, Invalid Reservations, and State Consent' Vol. 96. *The American Journal of International Law*, 2002. p. 53.

231 Ssenyonjo, Manisuli. 'State reservations to the ICESCR: a critique of selected reservations' Vol. 26. *Netherlands quarterly of human rights*, 2008 No. 3. p. 15.

232 Eva Brems. Human rights-universality and diversity. Kluwer Law International, 2001, p. 274

233 Egypt, Declaration made upon ratification, 14 January 1982, United Nations Treaty Collection, International Covenant on Civil and Political Rights, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en(https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en) accessed 5 October 2025

makes extensive provisions for economic, social, and cultural rights, it is far from complying with international human rights standards regarding equality between men and women, which is one of the key obligations States have to fulfil under the ICESCR.[234] Kuwait made interpretative declaration regarding Article 2, paragraph 2, and Article 3, stating that although the Government of Kuwait endorses the worthy principles embodied in Article 2, paragraph 2, and Article 3 as consistent with the provisions of the Kuwait Constitution in general and of its Article 29 in particular, it declares that the rights to which the articles refer must be exercised within the limits set by Kuwait law.

As it was mentioned in the first part, first it must be decided whether such interpretative declarations are not reservations by their nature, and they do not violate the object and purpose of the treaty.

About the declarations and the reservation made by Kuwait upon accession, the governments of other state parties in their objections noted that, according to the interpretative declaration regarding Article 2, paragraph 2, and Article 3, the application of these articles of the Covenant is, in a general way, subjected to national law. Other state parties consider this interpretative declaration as a reservation of a general kind. The Governments are of the view that such a general reservation raises doubts as to the commitment of Kuwait to the object and purpose of the Covenant and would recall that a reservation incompatible with the object and purpose of the Covenant shall not be permitted. They also noted that it is in the common interests of States that all parties respect treaties to which they have chosen to become parties, as to their object and purpose, and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties. However, the other states do not preclude the entry into force of the Covenant between Kuwait and them." As it was mentioned above, if the state party makes interpretative declarations, the other state parties can object to it and express their opinion if they think it is a reservation, and is this reservation is covered under an interpretative declaration, is compatible with the object and purpose of the treaty.

Although there is no legal obligation under the ICESCR, and no express provision for the withdrawal of reservations, it would be in accordance with the Covenant's object and purpose, and the spirit of the VCLT to envisage that laws and practices which necessitated existing reservations in some states would be examined carefully, progressively amended or repealed to ensure that the states parties complied, without reservation, with all the Covenant's provisions. This has certainly happened on some occasions[235], and some of the reservations withdrawn appear clearly to have been

234 Danwood Mzikenge Chirwa, 'An overview of the impact of the International Covenant on economic, social and cultural rights in Africa'.

235 The States which have withdrawn some reservations to the ICESCR (on the dates shown in the brackets) include Belarus (30 September 1992); Denmark (14 January 1976); Democratic Republic of Congo (21 March 2001); Malta (upon ratification 13 September 1990); New Zealand (5 September 2003)

incompatible with the object and purpose of the Covenant.[236] Indeed, it is pointless to maintain reservations, which are incompatible with the object and purpose of the Covenant, since these reservations are invalid in law. However, the formal removal of such reservations is still useful as an indicator of a state's commitment to its human rights obligations.

### 1.4.1.4. Reservations to human rights treaties and their impact on the implementation

The implementation challenges arising from reservations to human rights treaties are particularly evident in the case of the Convention on the Rights of the Child (hereinafter - CRC)[237] . The possibility of adopting this instrument was first raised by the government of Poland in 1978 as United Nations (hereinafter referred to as UN) member states planned activities and programs that would take place during the International Year of the Child in 1979. The Convention was adopted by UN General Assembly Resolution 44/25 of 20 November 1989 and entered into force on 2 September 1990, following receipt of the requisite 20 ratifications.[238] As of October 2025, the CRC has achieved near-universal ratification, with 196 states parties - more than any other human rights treaty.[239]

Nearly all states of the international community are state parties to the Convention

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236 For example on 21 March 2001, the Government of the (Democratic Republic of the) Congo informed the Secretary-General that it had decided to withdraw its reservation made upon accession which read as follows: 'Reservation: The Government of the People's Republic of the Congo declares that it does not consider itself bound by the provisions of Article 13, paragraphs 3 and 4 (...) In our country, such provisions are inconsistent with the principle of nationalization of education and with the monopoly granted to the State in that area'.

237 The Convention has two optional protocols that provide specific protections for children: (1) the Optional Protocol on the Involvement of Children in Armed Conflict; and (2) the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. Though both Optional Protocols operate under CRC, they are independent multilateral agreements under international law. The Optional Protocol on Children in Armed Conflict limits the recruitment of children under the age of 18 for armed conflict and requires parties to provide children who have participated in armed conflict with appropriate physical and psychological rehabilitation. It entered into force in 2002 and has been ratified by 142 countries. The Optional Protocol on the Sale of Children requires parties to criminalize child pornography and prostitution, close establishments that practice such activities, and seize any proceeds entered into force in 2002 as well, and has been ratified by 145 countries, see Luisa Blanchfield The United Nations Convention on the Rights of the Child: Background and Policy Issues, Congressional Research Service 7-5700, 2011, p. 4

238 Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC), GA Res 44/25, UN Doc A/44/49 (1989).

239 United Nations Treaty Collection, Convention on the Rights of the Child, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en(https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en) accessed 5 October 2025.

on the Rights of the Child[240], making it a strong tool for holding governments accountable on human rights issues.[241] In addition to upholding specific rights of children, it reaffirms, for example, the right to family planning services, recognized by prior conventions and conferences. Article 24 obligates states "to ensure appropriate prenatal and post-natal health care for mothers". It also calls on them to take "all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children"; this is an explicit recognition of the deleterious effects of such practices as female genital mutilation. Article 34 says that states must "undertake to protect the child from all forms of sexual exploitation and sexual abuse". Article 17 states that the child should have access to information "aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health".

A significant area of debate among the CRC supporters and opponents is the effectiveness of the Convention, particularly in countries that have already ratified it. Some critics agree with the CRC's overall goal of protecting children's rights internationally, but they do not believe that the treaty is an effective mechanism for achieving this goal. As evidence of this, they emphasize those countries that many regard as abusers of children's rights - including "Sudan, Democratic Republic of Congo, and China - are parties to the Convention"[242].

Some argue that "instead of helping children, ratification of the CRC may serve as a facade for governments that abuse children's rights. Critics have also asserted that reservations and declarations that some countries attached to the Convention are at odds with the purpose of the treaty, possibly undermining its intent and effectiveness"[243].

Applying the Convention, the Committee on the Rights of the Child, which is established for monitoring how the state parties implement the CRC in their own countries, has for example recommended that specific laws be enacted and enforced to prohibit Female gender mutilation (1997), called on Kuwait to take action to prevent and combat early marriage (1998), and called on Mexico to raise and equalize the minimum legal ages for marriage of boys and girls (1999).[244] Even though those problems are not new, they are still relevant. These harmful practices will be analyzed later in this part in the context of reservations made to CRC.

Even though everyone accepts that the CRC is the most universally accepted human rights treaty, notably, "this convention is the only international treaty that includes

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240 It has to be noted that the United States has signed but not ratified the Convention.

241 The CRC provisions discussed here are examined in this dissertation because reservations to these provisions disproportionately affect girls and women, illustrating broader patterns of gender-based reservations that constitute a significant category of problematic reservations to human rights treaties.

242 William A. Schabas. 'Reservations to the Convention on the Rights of the Child' Vol. 18. *Human Rights Quarterly,* 1996, p. 472-491.

243 Luisa Blanchfield. The United Nations Convention on the Rights of the Child: Background and Policy Issues' *Congressional Research Service*, 2011, p. 4.

244 Women rights are human rights, p. 48, http://www.unfpa.org/swp/2000/pdf/english/chapter6.pdf, accessed on October 5, 2025

an explicit reference to 'Islamic law'."[245] Moreover, Article 51 of CRC allows making reservations to the CRC; however, it is noted that a reservation incompatible with the object and purpose of the treaty shall not be permitted.

#### 1.4.1.4.1. Specific reservations to CRC based on Shariah or Islamic law

In this part of the thesis, the author will analyze the reservations that are based on Shariah or Islamic law that some Muslim states have entered. These reservations either affect the entire regime of the treaty (General Shariah-Based Reservation) or are made to its specific articles (Specific Shariah-Based Reservation). All fifty-seven Muslim states are signatories to the CRC, including the twenty-two states that entered reservations or declarations. Algeria, Djibouti, and Kuwait have declarations on the CRC. Bangladesh, Bosnia and Herzegovina, Brunei Darussalam, Egypt, Indonesia, Iran, Iraq, Jordan, Maldives, Mali, Morocco, Oman, Qatar, Saudi Arabia, Syria, Turkey, and the United Arab Emirates entered reservations to the convention. Finally, Malaysia and Tunisia have entered both declarations and reservations. Yet, as will be discussed further, "not all of these reservations or declarations are necessarily ones based on Shariah"[246]. Qatar, Iran, Saudi Arabia, Brunei Darussalam, Syria, and Oman are states with General Shariah reservations, among which Brunei Darussalam, Syria, and Oman have also specified in their General Shariah reservation some articles of the Convention, including Articles 14 and 21, as the focus of their general reservations. As an example, the reservation of Qatar states that it "enters a general reservation by the state of Qatar concerning provisions incompatible with Islamic Law"[247].

"In these Islamic countries where the culture and religion have a great influence, reservations to the core provisions of CRC might open the gates to the harmful practice towards girls, young women, such as early marriage, female genital mutilation, and others."[248] Several articles within the CRC hold relevance to child marriage. It is Article 3: In all actions concerning children, the best interests of the child shall be a primary consideration. Article 19 provides the right to protection from all forms of physical or mental violence, injury or abuse, maltreatment or exploitation, including sexual abuse, while in the care of parents, guardians, or any other person. Article 24 states that the right to health, and to access to health services, and to be protected from harmful traditional practices. Articles 28 and 29 ensure the right to education based on equal opportunity. Article 34 guarantees the right to protection from all forms of

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245 Kamran Hashemi. 'Religious Legal Traditions, Muslim States and the Convention on the Rights of the Child: An Essay on the Relevant UN Documentation' Vol. 29. *Human Rights Quarterly, The Johns Hopkins University Press*, 2007 p. 197

246 Ibid. p. 198.

247 Reservations, Declarations, and Objections Relating to the Convention on the Rights of the Child, Committee on the Rights of the Child, UN Doc. CRC/C/2/Rev.5 (1996).

248 Krivenko, Ekaterina Yahyaoui. Women, Islam and International law. Geneva: Graduate Institute of International and Development Studies, 2009, p. 45

sexual exploitation and sexual abuse. Article 36 ensures the right to protection from all forms of exploitation prejudicial to any aspect of the child's welfare. The harmful practices that will be analyzed further are still relevant issues for the whole international community. In the authors' view, those practices are closely linked to the consequences of the reservations made by states based on cultural aspects.

As to the reservations made to the whole CRC, certain issues must be noted. Firstly, such countries as the Islamic Republic of Iran "reserve the right not to apply any provisions or articles of the Convention that are incompatible with Islamic Laws and the international legislation in effect". The other state parties made objections stating that "this reservation poses difficulties for the states parties to the CRC in identifying the provisions of the CRC which the Islamic Government of Iran does not intend to apply and consequently makes it difficult for States Parties to the Convention to determine the extent of their treaty relations with the reserving State. Moreover, other state parties consider 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 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."[249]

The analysis of this practice gives the impression that most objecting states are making perfunctory objections with no discernible policy. The perception confirms "the observations of the Human Rights Committee, outlined in its General Comment Number 24, of an 'unclear' pattern of objections that have only been 'occasional[ly], made by some states but not others, and on grounds not always specified"[250].

#### 1.4.1.4.2. Harmful practices in the context of reservations

Invalid reservations to the CRC, as well as other international human rights treaties, have significant implications for the protection of children from harmful practices. When states make reservations to the essence of the Convention, two problematic consequences arise. Firstly, reserving states can invoke these reservations to justify violations of CRC norms, arguing that such norms conflict with Islamic law and cannot be applied domestically. Secondly, objecting states fail to demand the withdrawal of reservations that are incompatible with the object and purpose of the treaty, thereby allowing conditions under which harmful practices can persist. The following analysis examines specific harmful practices that continue in the context of such invalid

249 Several of the general reservations to the CRC have provoked objections, but a limited number of states are responsible for the objections. One or more of the following countries - Austria, Belgium, Finland, Germany, Ireland, Norway, Portugal, Slovakia and Sweden - have challenged reservations made by Indonesia, Qatar, Syria, Iran, Bangladesh, Djibouti, Jordan, Kuwait, Tunisia, Pakistan, Malaysia and Myanmar.

250 William A. Schabas. 'Reservations to the Convention on the Rights of the Child' Vol. 18. *Human Rights Quarterly,* 1996, p. 473.

reservations.

"Early marriages involve the marriage of a child, i.e., a person below the age of 18. Minor girls have not achieved full maturity and capacity to act and cannot control their sexuality. When they marry and have children, their health can be adversely affected, their education impeded, and economic autonomy restricted."[251] Such marriages take place all over the world, but are most common in sub-Saharan Africa and South Asia, where more than 30 per cent of girls aged 15 to 19 are married. "In Ethiopia, it was found that 19 per cent of girls were married by the age of 15, and in some regions, such as Amhara, the proportion was as high as 50 per cent. In Nepal, 7 per cent of girls were married before the age of 10 and 40 per cent by the age of 15. A UNICEF global assessment found that in Latin America and the Caribbean, 29 per cent of women aged 15 to 24 were married before the age of 18."[252]

"A forced marriage is one lacking the free and valid consent of at least one of the parties."[253] In its most extreme form, forced marriage can involve threatening behavior, abduction, imprisonment, physical violence, rape, and, in some cases, murder. There has been little research on this form of violence. "A recent European study confirmed the lack of quantitative surveys in Council of Europe countries. One study of 1,322 marriages across six villages in Kyrgyzstan found that one-half of ethnic Kyrgyz marriages were the result of kidnappings, and that as many as two-thirds of these marriages were non-consensual."[254] "In the United Kingdom of Great Britain and Northern Ireland, a Forced Marriage Unit established by the Government intervenes in 300 cases of forced marriage a year."[255]

"The right to marry only with one's free and full consent is reflected in the Universal Declaration of Human Rights and in several subsequent international human rights treaties."[256]

The issue of forced and early marriages illustrates how state reservations to human rights treaties can undermine their effectiveness in practice. Forced and early marriages are recognized as human rights violations. "Numerous international and regional legal instruments condemn the practices of forced and early marriage. Many of these documents mandate consent of both parties, recommend a minimum marriage age, and require that the marriage be registered to better review the occurrences

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251 Committee on the Elimination of Discrimination against Women general recommendation No. 21.

252 In-depth study on all forms of violence against women Report of the Secretary-General,2006, p 39.

253 Article 16 (1) (b) of the Convention on the Elimination of All Forms of Discrimination against Women requires that States parties ensure to women "the same right freely to choose a spouse and to enter into marriage only with their free and full consent".

254 Kleinbach, R. 'Frequency of Non-Consensual Bride Kidnapping in the Kyrgyz Republic' Vol. 8. *International Journal of Central Asian Studies*, 2003.

255 Home Office, 'Dealing with Cases of Forced Marriage: Guidance for Education Professionals' (London, Foreign and Commonwealth Office, 2005).

256 Status of Women Fifty-second session 25 February-7 March 2008 Forced marriage of the girl child Report of the Secretary-General

of forced and early marriages and to ensure that both partners receive equal rights and protection. Although most countries have signed onto these documents, many countries lack adequate implementation of the treaties."[257] According to Ch. Thomas, "despite the recommendations to set the minimum age to marry to 18, many countries lack domestic laws specifying 18 as the minimum age to marry as a means of preventing early marriages"[258]. This gap between formal treaty commitments and actual implementation often stems from reservations that allow states to avoid full compliance with their international obligations.

It also should be noted that such conventions as the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (hereinafter - The Convention on Consent to Marriage), as well as the CEDAW, contain all three principles articulated above. They require the consent of both parties. In addition, both Conventions mandate that all State Parties take legislative action to set a minimum age to marry, and both Conventions direct that marriages be registered. Neither Convention, however, suggests what that minimum age should be.

"While the CEDAW warns that the betrothal and marriage of a child will have no legal effect, the Convention on Consent to Marriage allows for exceptions to whatever minimum age is set. "[259]

Although CRC does not contain the specific principles related to marital consent and registration, "it does specifically define children as people under the age of 18"[260]. Regional legal instruments such as the Council of Europe Parliamentary Assembly Resolution 1468 and the African Charter on the Rights and Welfare of the Child have taken a strong position on the age of consent to marry and recommend that 18 be the minimum age of marriage. "In 2005, the Council of Europe adopted Resolution 1468 on forced marriages and child marriages. The resolution defines forced marriage as "the union of two persons at least one of whom has not given their full consent to the marriage." It defines child marriage as "the union of two persons at least one of whom is under 18 years of age." Among other things, Resolution 1468 urges the national parliament of the Council of Europe member states to set the minimum age for marriage at 18 for women and men, to make it a requirement that every marriage be declared

257 Cheryl Thomas. 'Forced and early marriage: a focus on Central and Eastern Europe and former Soviet Union countries with selected laws from other countries'. *United Nations Division for the Advancement of Women United Nations Economic Commission for Africa Expert Group Meeting on good practices in legislation to address harmful practices against women, United Nations Conference Centre Addis Ababa, Ethiopia,* 2009, p. 2.

258 Ibid. p. 3

259 Ibid. P.4

260 The Convention on the Rights of the Child, G.A. res. 44/24, annex, 44 UN GAOR Supp. (No. 49) at 167, UN Doc. A/44/49 (1989), entered into force Sept. 2, 1990, in accordance with article 49

and officially registered, and to consider criminalizing acts of forced marriage."[261] However, it should be noted that not all marriages below the age of 18 are forced and should not be criminalized. The national laws provide that people who want to marry before 18 should be emancipated. The international documents deal with the situation where girls marry without their consent and before the age of 18.

In this regard, forced marriage has been consistently recognized in international jurisprudence as a violation of fundamental human rights, particularly the right to freely marry, the right to equality, and the prohibition of inhuman or degrading treatment. For instance, the European Court of Human Rights has emphasized that consent constitutes an essential element of marriage under Article 12 of the European Convention on Human Rights, while the absence of genuine consent renders a marriage contrary to the Convention's guarantees.[262] Similarly, the Human Rights Committee has affirmed that forced marriage is incompatible with Article 23 of the International Covenant on Civil and Political Rights, which safeguards the free and full consent of intending spouses.[263] Furthermore, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) has reiterated that child and forced marriages constitute a harmful practice and a severe form of discrimination against women, violating their rights to health, education, and development.[264] Importantly, international criminal tribunals have gone further by characterizing forced marriage as a crime against humanity. The Special Court for Sierra Leone, in the *AFRC* and *RUF* cases, held that forced marriage constitutes an "inhumane act" under Article 2(i) of its Statute, distinct from sexual slavery and carrying its own gravity of harm.[265] Likewise, the Extraordinary Chambers in the Courts of Cambodia recognized forced marriage under the Khmer Rouge regime as a crime against humanity, underscoring the coercive nature and the severe suffering imposed on victims.[266] Therefore, international jurisprudence frames forced marriage as not only a cultural or social issue

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261 Cheryl Thomas. Forced and early marriage: a focus on Central and Eastern Europe and former Soviet Union countries with selected laws from other countries, United Nations Division for the Advancement of Women United Nations Economic Commission for Africa Expert Group Meeting on good practices in legislation to address harmful practices against women, United Nations Conference Centre Addis Ababa, Ethiopia 2009, p. 9

262 *European Court of Human Rights, O'Donoghue and Others v. the United Kingdom*, App. No. 34848/07, Judgment of 14 December 2010.

263 *Human Rights Committee, General Comment No. 19: Protection of the family, the right to marriage and equality of the spouses* (Art. 23), 27 July 1990, para. 4.

264 *CEDAW Committee, General Recommendation No. 21: Equality in marriage and family relations* (1994), para. 16; see also *General Recommendation No. 35 on gender-based violence against women* (2017)

265 *Special Court for Sierra Leone (SCSL), Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu (AFRC case)*, Case No. SCSL-04-16-A, Judgment, 22 February 2008; *Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao (RUF case)*, Case No. SCSL-04-15-A, Judgment, 26 October 2009

266 *Extraordinary Chambers in the Courts of Cambodia (ECCC), Case 002/02, Judgment*, 16 November 2018 (recognition of forced marriage as a crime against humanity).

but a grave human rights violation and, in certain contexts, a crime against humanity, thereby triggering states' positive obligations to prevent, criminalize, and effectively remedy such practices.

"Where forced marriage involves the girl child who is 14 or even younger, and especially in those countries where poverty is very significant, a range of her rights are affected, including the right to education, the right to life and physical integrity, and the right not to be held in servitude or perform forced or compulsory labor."[267]

The situation in Afghanistan since the Taliban's return to power in August 2021 provides a stark contemporary illustration of how systematic restrictions on women's rights can exacerbate child marriage practices and their devastating consequences.[268]

A number of states registered formal objections. France described the reservation as so general that it undermines the Convention's legal effect and is inconsistent with Article 19(c) of VCLT.[269] The Netherlands similarly argued that the reservation effectively allows Afghanistan to opt out of core obligations of the Convention, degrading its object and purpose.[270] Germany, Sweden, and Finland have also expressed concern, stating that such reservations could amount to a de facto exemption from the Convention's fundamental norms.[271]

The real-world consequences of this legal posture have been tragically illustrated in recent events. In the aftermath of the devastating earthquake in eastern Afghanistan in September 2025, reports revealed that Taliban-imposed gender restrictions. Particularly, the rule forbidding men from touching unrelated women led to delays and denials of rescue and medical care for women trapped under rubble.[272] Due to the shortage of female healthcare providers (a result of bans on women's education and employment), many injured women awaited treatment, sometimes under dangerous conditions, until a female responder or a male relative was present.[273]

Following the Taliban's takeover, Afghanistan has witnessed an unprecedented rollback of women's and girls' rights, including the closure of secondary schools for girls, the prohibition of women from most forms of employment, and severe restrictions

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267 United Nations Children's Fund, The State of the World's Children, 2006: Excluded and Invisible (New York, UNICEF, 2006), p. 45

268 UNICEF. (2019). *Child Marriage: Latest Trends and Future Prospects*. New York: UNICEF, pp. 23-34

269 Objection by France (2003) to Afghanistan's reservation, in: UN Treaty Collection, *Declarations and Reservations under CEDAW*.

270 Objection by the Netherlands (2003), Ibid.

271 Objections by Germany, Sweden, and Finland (2003), Ibid.

272 "Taliban's 'no skin contact with males' rule leaves Afghan women under quake rubble" – *India Today*, September 5, 2025, https://www.indiatoday.in/amp/world/story/taliban-gender-restrictions-delay-rescue-efforts-afghanistan-women-earthquake-2782694-2025-09-05?fbclid=IwdGRleAM8zQ5leHRuA2FlbQIxMQABHhutc5eN6gZ-XMEZmWyr1F708unUYhdQWptkWCvWo7tBRM3GxcYPPCTvNqCJn_aem_vLnzkOuzFYJ1j3-1qvPtlw

273 "Taliban Restrictions Delay Medical Help For Women In Quake-Hit Areas: Report", *NDTV*, September 8, 2025.

on freedom of movement[274]. These policies have created conditions that significantly increase the vulnerability of girls to forced and early marriage[275]. UNICEF reported a dramatic increase in child marriage cases in Afghanistan, with families increasingly viewing marriage as the only viable option for their daughters' survival in the face of economic collapse and legal restrictions[276]. The organization documented cases of girls as young as 12 being sold into marriage to alleviate family debt, highlighting how economic desperation compounds existing cultural practices[277].

The intersection of educational deprivation and child marriage in Afghanistan demonstrates the cascading effect of rights violations. With girls banned from attending secondary school since September 2021, and subsequently prohibited from university education in December 2022, millions of Afghan girls face a future without formal education[278]. This educational exclusion not only violates their fundamental right to education but also increases their vulnerability to early marriage, as families see no alternative pathway for their daughters[279]. The UN Special Rapporteur on human rights in Afghanistan has characterized these restrictions as constituting crimes against humanity, particularly noting how the denial of education perpetuates cycles of poverty and gender-based violence[280]. Furthermore, the Taliban's restrictions on women's employment have created severe economic hardship for female-headed households, forcing many families to consider child marriage as an economic survival strategy[281]. Human Rights Watch has documented numerous cases where families have been compelled to marry off daughters to secure necessities, effectively treating girls as economic commodities[282]. This contemporary crisis in Afghanistan illustrates how systematic gender discrimination can rapidly deteriorate into widespread violations of children's rights, demonstrating the interconnected nature of human rights and the vul-

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274 Human Rights Watch. (2023). *"I Would Like Four Walls and a Roof": Women's Rights to Adequate Housing in Afghanistan*. New York: Human Rights Watch, pp. 15-28

275 Save the Children. (2022). *Struggling to Survive: How Restrictions on Women Are Driving Afghanistan's Humanitarian Crisis*. London: Save the Children International

276 UNICEF. (2023). *Afghanistan: Children Bearing the Brunt of Economic Collapse and Restrictions on Women*. Press Release, 15 August 2023

277 *Ibid.*

278 UNESCO. (2023). *Afghanistan: Two Years of Ban on Girls' Education*. Paris: United Nations Educational, Scientific and Cultural Organization

279 Malala Fund. (2023). *Afghanistan: Education in Crisis - Two Years Under Taliban Rule*. London: Malala Fund, pp. 12-25

280 UN Human Rights Council. (2023). *Situation of Human Rights in Afghanistan: Report of the Special Rapporteur*. A/HRC/52/84, para. 67

281 UN Office for the Coordination of Humanitarian Affairs. (2023). *Afghanistan Humanitarian Response Plan 2023*. Geneva: OCHA, pp. 34-45

282 Human Rights Watch. (2023). *"Hopeless Future": The Impact of Taliban Policies on Women and Girls in Afghanistan*. New York: Human Rights Watch, pp. 67-89

nerability of girl children in contexts of legal, economic, and social marginalization[283].

The systematic violation of girls' rights through practices such as child marriage, as exemplified by the contemporary situation in Afghanistan, demonstrates the fundamental incompatibility between cultural or religious justifications for gender discrimination and the object and purpose of international human rights treaties[284]. When states enter reservations to human rights instruments such as CEDAW, the Convention on the Rights of the Child, or the International Covenant on Civil and Political Rights based on traditional, cultural, or religious grounds that permit or facilitate child marriage, they effectively undermine the core protective framework these treaties are designed to establish[285]. VCLT prohibits reservations that are incompatible with the object and purpose of a treaty, and the systematic denial of girls' fundamental rights through child marriage practices clearly contravenes the essential aims of human rights protection. The UN Committee on the Rights of the Child has consistently held that reservations permitting child marriage violate the Convention's object and purpose, as they deny children- particularly girls- their fundamental rights to education, health, protection from violence, and development[286]. Similarly, the CEDAW Committee has determined that broad reservations based on religious or customary law that allow discriminatory practices against women and girls, including child marriage, are impermissible as they negate the treaty's central commitment to eliminating all forms of discrimination[287]. The Afghan case illustrates how cultural relativist arguments used to justify reservations can serve as legal cover for systematic human rights violations, demonstrating why international law requires that treaty reservations must not undermine fundamental human rights protections[288]. This principle reflects the understanding that a certain scope of human rights, including children's rights to protection, education, and development, is so fundamental to human dignity that they cannot be subject to cultural or religious exceptions that would render treaty protections meaningless[289].

In response to the practice of forced marriage of the girl child, human rights treaty

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283 Amnesty International. (2023). *Death in Slow Motion: Women and Girls Under Taliban Rule*. London: Amnesty International Publications, pp. 78-95

284 Cook, R. J. (1990). "Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women." *Virginia Journal of International Law*, 30(3), 643-716

285 Schabas, W. A. (2019). "Reservations to Human Rights Treaties: Time for Innovation and Reform." *Canadian Yearbook of International Law*, 32, 39-81

286 UN Committee on the Rights of the Child. (2013). *General Comment No. 14 on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration*. CRC/C/GC/14, paras. 56-59

287 UN Committee on the Elimination of Discrimination against Women. (2010). *Statement on Reservations to the Convention on the Elimination of All Forms of Discrimination against Women*. A/53/38/Rev.1, paras. 6-18

288 Higgins, R. (2017). "Derogations Under Human Rights Treaties." *British Yearbook of International Law*, 48(1), 281-320.

289 Shelton, D. (2020). "Prohibited Reservations to Human Rights Treaties." *International Legal Materials*, 59(4), 892-934

bodies have requested States to raise the legal age for marriage. According to the Committee on the Elimination of Discrimination against Women, the minimum age for marriage should be 18 years for both men and women because the important responsibilities of marriage require maturity and the capacity to act. The Human Rights Committee emphasized that "age for marriage should be such as to enable reach of the intending spouses to give his or her free and full personal consent in a form and under conditions prescribed by law"[290]. The Committee on Economic, Social and Cultural Rights has recommended that States parties raise and equalize the minimum age for marriage for boys and girls, as well as the age of sexual consent. These mentioned acts are important in the scope of the issues that CRC does not cover directly. Therefore, the acts are *lex specialis* with the CRC and help to reduce harmful practices that were mentioned before.

Regional bodies have also taken up the issue of forced marriage. "The Parliamentary Assembly of the Council of Europe focused on forced marriage that arose chiefly in immigrant communities, and those primarily affected were young women and girls."[291]

In most countries where there is no specific criminal offense for forced or early marriage, other crimes related to the act can be used to hold perpetrators accountable. While categorized differently in various counties, typical offenses include, among others, "rape, attempted rape, physical and psychological violence, sexual violence, bodily harm, threatening with a weapon or dangerous object, ill-treatment, trespass to the person, indecent assault, false imprisonment, infringement of freedom and integrity, psychological duress, sexual duress, kidnapping and abduction, offenses against the person, infringement of sexual integrity, and honor crimes."[292] The protection of these abuses is formulated in CRC as well. Therefore, states making reservations to the whole treaty leave the possibility of the crimes.

Another harmful practice made to girls is female genital mutilation (hereinafter referred to as FGM), or female circumcision as it is sometimes erroneously referred to, which involves the surgical removal of parts or all the most sensitive female genital organs. It is an age-old practice that is perpetuated in many communities around the world simply because it is customary, even if officially prohibited by the states. FGM forms an important part of the rites of passage ceremony for some communities, marking the coming of age of the female child. "It is believed that, by mutilating the female's genital organs, her sexuality will be controlled; but above all, it is to ensure a woman's virginity before marriage and chastity thereafter."[293] In fact, FGM imposes on women and the girl child a catalogue of health complications and untold psychological

290 General comment No. 19 (1990) of the Human Rights Committee (Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40 (A/45/40 (vol. I)), annex VI, Sect. B), para. 4; see also general comment No. 28 (2000), para. 23.

291 Resolution 1468 of 5 October 2005

292 Rude-Antoine, Edwige, ed. Forced Marriages in Council of Europe Member States. Council of Europe, 2005, p. 42

293 Fact Sheet No.23, Harmful Traditional Practices Affecting the Health of Women and Children, p. 3

problems. "The practice of FGM violates, among other international human rights laws, the right of the child to the "enjoyment of the highest attainable standard of health", as laid down in article 24 (paras. 1 and 3) of the CRC."[294]

One of the main forms of discrimination is the preference accorded to the boy child over the girl child. This practice denies the girl child good health, education, recreation, economic opportunity and the right to choose her partner, violating her rights under articles 2, 6, 12, 19, 24, 27 and 28 of the Convention on the Rights of the Child. It may mean that a female child is disadvantaged from birth; it may determine the quality and quantity of parental care and the extent of investment in her development; and it may lead to acute discrimination, particularly in settings where resources are scarce. Although neglect is the rule, in extreme cases son preference may lead to selective abortion or female infanticide. As to the reservations made to the articles, the reserving states formulate their reservations as follows: "provisions shall be applicable only if they are in conformity with the Constitution, national laws and national policies of the Government of Malaysia". As to the objections, the states refer that these reservations remain unclear and unspecific. However, objecting states express their opinion that they want to maintain relations with the reserving state and indirectly prevent the reserving state not to keeping the obligations under CRC.

It also should be mentioned that some states, such as Qatar, People's Republic of China, Egypt, Dijibouti have withdrawn certain reservations. This fact clearly shows that some states react to the objections of other state parties and want to be bound by the provisions of the CRC.

An examination of the long list of reservations submitted to the CRC reveals that these reservations and declarations represent strongly entrenched positions of States parties. This is evident from the fact that, so far, only a handful of States parties have completely withdrawn their reservations to the CRC. These strong positions, often led by religious justification, raised certain issues and violations of human rights.

Harmful practices against children remain a critical concern, and reservations to the CRC grounded in cultural or religious justifications may perpetuate such practices by limiting states' obligations to protect children from harm. To enhance the effectiveness of the objection mechanism, objecting states should formulate objections more robustly: clearly articulating why specific reservations are incompatible with the CRC's object and purpose, identifying the harmful practices that such reservations may perpetuate, and expressly calling for immediate withdrawal. Coordinated objections by multiple states would carry greater normative weight and exert stronger diplomatic pressure on reserving states to reconsider their positions. However, even strengthened objection practice faces inherent limitations under the VCLT framework, as objections cannot compel withdrawal, and reserving states often face genuine domestic constraints preventing immediate action.

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294 Javaid Rehman. 'The Shariah, Islamic family laws and international human rights law: examining the theory and practice of polygamy and talaq.' Vol. 23. *International Journal of Law, Policy and the Family*, 2007, p. 3.

### 1.4.1.5. Religion-based reservations across treaties: comparative analysis

Having examined reservations to specific treaties in the preceding sections, including the influence of Islamic law on certain conventions, this section broadens the analytical scope to provide a systematic, empirically grounded comparative analysis of religion-based reservations across international human rights treaties. Drawing on comprehensive mapping data from the Universal Rights Group, this section quantifies the prevalence of religion-based reservations, identifies which treaties attract such reservations and why, and examines patterns across different religious traditions beyond Islam alone.

Between 2014-2016, the Universal Rights Group (hereinafter as URG)[295] led a major international project to map all reservations to the core human rights conventions, and to better understand the extent and nature of these key checks on the universality of human rights. As part of the project, the URG was particularly interested in identifying and analyzing reservations that are - or appear to be - motivated by doubts, on the part of the reserving State, as to the compatibility of the treaty in question with certain religious or belief systems. This analysis showed that compatibility of treaties or treaty provisions with religious belief, doctrine or dogma is by far the most frequent reason, justification, or basis for States' decisions to enter reservations to the UN human rights treaties. Indeed, religion-based or religion-influenced reservations account for over 40% of all reservations to the core international human rights treaties.

For the report of URG, it was a broad definition and approach were adopted. Their counting protocol considered both an expressive approach to religion adopted by States themselves, and a reasonable presumptive approach in cases where the State does not expressly indicate that the motivation behind a reservation is wholly or partly religious.

Under this chosen methodology, the URG considers a reservation to be based on religion when[296]:

1. The reservation explicitly refers to a religion either as a stand-alone normative order or as part of the constitution or domestic law.

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295 The Universal Rights Group is an independent international non-governmental organization based in Geneva, Switzerland, which focuses on research, policy analysis, and advocacy relating to the United Nations human rights system. Founded in 2013, the URG works closely with UN member states, national human rights institutions, and civil society organizations to strengthen the effectiveness and universality of international human rights protection. The organization is particularly recognized for its expertise in analyzing state engagement with UN human rights mechanisms, including treaty reservations.

296 alı, Başak, and Mariana Montoya. *The March of Universality? Religion-Based Reservations to the Core UN Human Rights Treaties and What They Tell Us About Human Rights and Religion in the 21st Century*. Geneva: Universal Rights Group, May 2017. https://www.universal-rights.org/urg-policy-reports/march-universality-religion-based-reservations-core-un-human-rights-treaties-tell-us-human-rights-religion-universality-21st-century-2/.

2. The reservation is based on domestic law or constitutional law without explicit reference to religion, but religion is explicitly the main source of legislation (i.e. reservations based on family law or criminal procedural law that are themselves explicitly based on precepts of religious rules).
3. The reservation is based on domestic law without direct reference to religion, but there is a strong presumption, beyond a reasonable doubt, that religion is implicitly the main source of legislation.
4. The reservation is based on customs or traditions, but there is a reasonable connection between customs and traditions, and the religions practiced in those States.

As it was mentioned in the dissertation already, there are several human rights treaties with the highest number of reservations made to them. The treaties that have attracted both the highest number of overall normative reservations and the highest number of religion-based reservations are as follows: CEDAW (440 reservations, over 60% of which are inspired by religion or belief) and the CRC (425 reservations, almost 50% of which are religion-based). The ICCPR has the third largest total number of reservations (354), but, unlike the CEDAW and CRC, only a small number of those (10%) are motivated by religious considerations. Muslim-majority States are most likely to enter religion-based reservations; however, they are far from alone: such reservations have also been entered by Catholic-majority States from Western Europe, Eastern Europe, Latin America, and the Pacific, as well as by Jewish-majority, Hindu-majority, and Buddhist-majority countries from Asia and the Middle East.[297]

The author finds it important that URG's analysis reveals two interesting patterns. First, there is a close relationship between the issue area of a treaty and the prevalence of reservations based on religion. Treaties that penetrate more squarely into societal issues and/or the private sphere, for example, the CEDAW, CRC, and CRPD, have attracted most religion-based reservations. Reservations to the CAT are the possible exception to this pattern. Here, religion-based reservations deal mainly with different religious-cultural views on punishment. Second, there is a correlation between the type of treaties and the prevalence of religion-based reservations. The CEDAW, CRC, CAT, and CRPD are often regarded as 'implementing treaties' as they include more detailed provisions about the general ideals and principles already present in the ICCPR, ICESCR, and Universal Declaration of Human Rights. Whilst States have not entered any reservations to the general ideas of equality between men and women in the ICCPR and the ICESCR, for example, more granular pronouncements of the same ideals in the CEDAW, i.e., equality in the family sphere, have attracted a significant number of religion-based reservations.

297 *Ibid.*

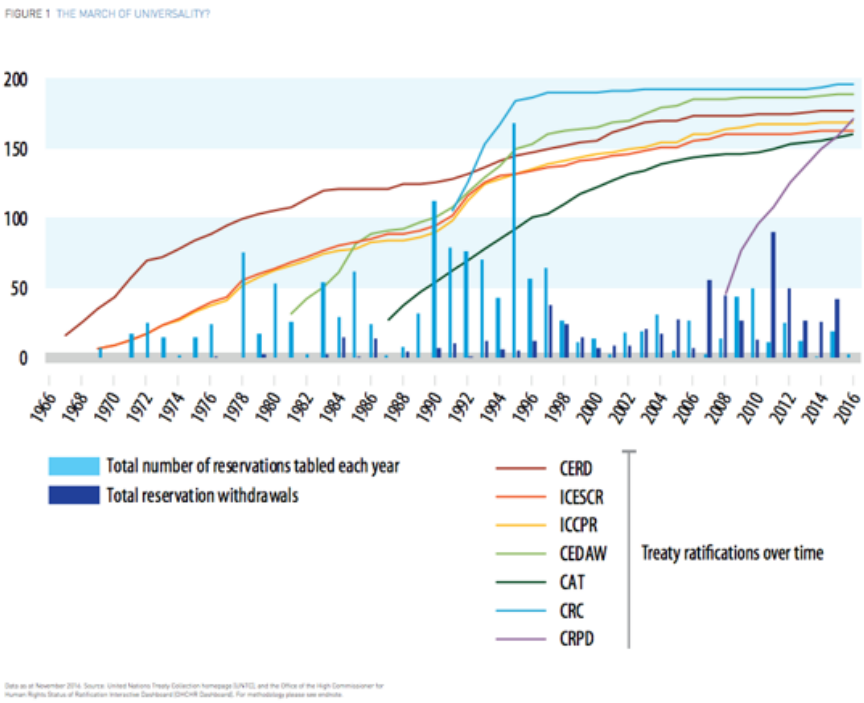


**Figure 1.** Reservations on Human Rights Treaties (1966-2016)

#### 1.4.1.5.1. General religion-based reservations:

As these examples demonstrate, general reservations have particularly malign consequences for the integrity of a treaty and its domestic application, because they limit or modify all the obligations acquired by the reserving state under the instrument.

Like reservations generally, the CRC and CEDAW are a particular 'target' for general reservations, and a significant proportion of those (86% and 66%, respectively) are inspired or based on religion or belief.

In the case of the CRC, religiously motivated general reservations have been submitted by 12 states: Afghanistan, Brunei, Djibouti, the Holy See, Iran, Kuwait, the Maldives, Mauritania, Pakistan, Singapore, Saudi Arabia, and Qatar. With two exceptions, these are all members of the Organization of Islamic Cooperation (OIC). Djibouti, Mauritania, Singapore, and Qatar have subsequently lifted their general reservations to the CRC.

The CEDAW has, since its adoption, received general religion-based reservations from 10 States: Brunei, Libya, Malawi, the Maldives, Mauritania, Oman, Pakistan, Saudi Arabia, Singapore, and Tunisia. All are members of the OIC, except for Malawi and Singapore (which withdrew their reservations in 1991 and 2007, respectively). All

OIC member States' general reservations (except Pakistan) make direct reference to religion. Indeed, these reservations are all based on very similar wording - apparently based, originally, on Saudi Arabia's general reservation to the CEDAW, which excludes the application of the treaty 'in case of contradiction between any term of the Convention and the norms of Islamic law. Malawi, Pakistan, and Singapore have subsequently lifted their general reservations to the CEDAW.

Pakistan's general reservation to the CEDAW (now withdrawn) is the exception among OIC States, in that it refers to domestic law rather than 'Islamic law'. The reservation reads: 'the accession by [the] Government of the Islamic Republic of Pakistan to the [said Convention] is subject to the provisions of the Constitution of the Islamic Republic of Pakistan'. Notwithstanding, because Islam / Islamic law is a source of Pakistan's Constitution, this general reservation is 'religion-based'.

Malawi's general reservation (later withdrawn) excluded the implementation of the provisions of the Convention, as it requires the immediate eradication of such traditional customs and practices that are incompatible with the CEDAW.

In the case of the CAT, ICCPR, CRPD, and ICERD, the use of general reservations is comparatively limited, though where they do exist or have existed, religion or belief has been one of the main motivations. Regarding the CAT, only Qatar and the Holy See (a permanent observer State of the UN) have ever entered general religious reservations to the treaty - Qatar subsequently withdrew its reservation in 2012. In the case of the ICCPR, religion-based general reservations have been put forward by Egypt, Israel, and Yemen. Saudi Arabia is the only country with a general reservation to the ICERD.

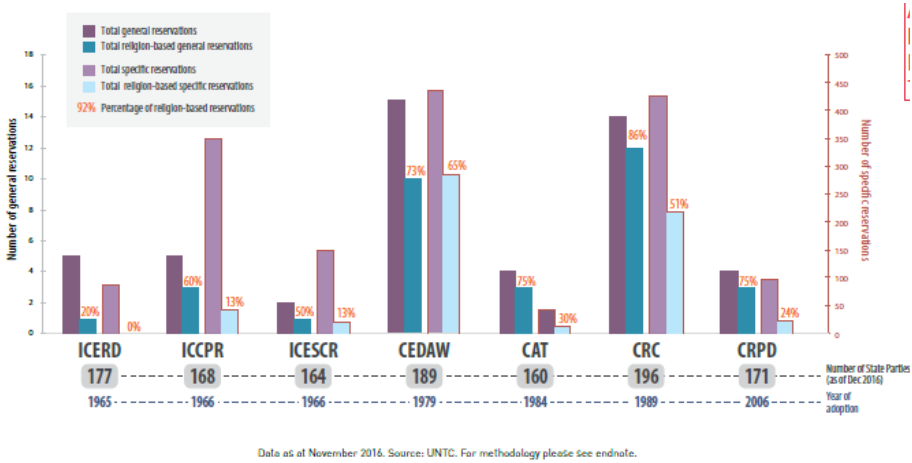


**Figure 2.** General Reservations to Human Rights Treaties

#### 1.4.1.5.2. Specific religion-based reservations:

Religion-based reservations can be categorized into two types: general and specific. General reservations, discussed above, apply to the treaty, making the state's acceptance of all treaty obligations conditional upon compatibility with religious law (e.g. "subject to Islamic Shariah"). Specific reservations, by contrast, identify and exclude or modify treaty provisions that the state considers religiously problematic, whilst accepting the remaining provisions unconditionally.

Turning to those religion-based reservations that focus on articles or paragraphs of the relevant treaty (and therefore limit or modify only certain specific obligations, as acquired by the State), URG's mapping exercise shows that, like general reservations, specific reservations are distributed extremely unevenly both between and within the core conventions. In other words, certain treaties and, within those treaties, certain articles, attract far more religion-based reservations than do others. Indeed, a review of URG's reservations map shows that some articles and provisions of certain treaties are veritable 'lightening rods' for religion-based reservations.

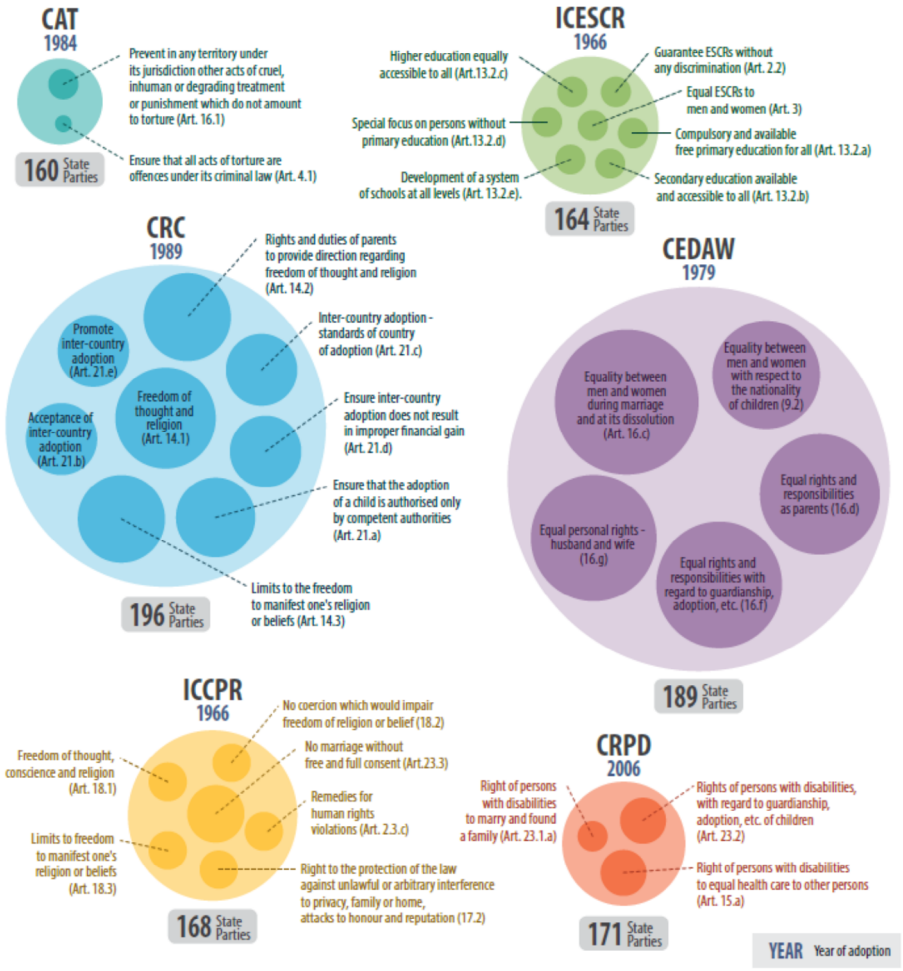


**Figure 3.** Core Provision of Human Rights Treaties[298]

### 1.4.1.5.3. Withdrawal of religion-based reservations

In a trend with important positive implications for the universality of human rights and the determination of States to strengthen their commitments and obligations

298 alı, Başak, and Mariana Montoya. *The March of Universality? Religion-Based Reservations to the Core UN Human Rights Treaties and What They Tell Us About Human Rights and Religion in the 21st Century*. Geneva: Universal Rights Group, May 2017. https://www.universal-rights.org/urg-policy-reports/march-universality-religion-based-reservations-core-un-human-rights-treaties-tell-us-human-rights-religion-universality-21st-century-2/.

under international human rights law, between 1991 and 2015, 22 States (all of them OIC member States, except for Mauritius and Singapore) withdrew 127 religion-based reservations to the core human rights treaties. Nine of the lifted reservations were general reservations, and the rest were specific to certain treaty provisions.[299]

Regarding specific reservations (see Figure 4), 17 States Parties have lifted 118 religion-based reservations - nearly all of them reservations to the CEDAW or CRC (the exceptions being Pakistan's withdrawal of nine reservations to the CAT and to the ICCPR, in 2011). All but two (Singapore and Mauritius) of the 17 lifting States are members of the OIC. The CRC has been the treaty with the largest number of lifted specific religion-based reservations (over 60), followed by the CEDAW (over 40 withdrawals). Only four specific reservations to the ICCPR and nine specific reservations to the CAT have been lifted. No specific religion-based reservation to the CRPD or the ICESCR has, to date, been withdrawn.

FIGURE 7. WITHDRAWAN SPECIFIC RELIGION-BASED RESERVATIONS BY COUNTRY

| Country | Year of withdrawal (specific reservations) | Treaty |
|---|---|---|
| Algeria | 2009 | CEDAW |
| Bangladesh | 1997 | CEDAW |
| Brunei Darussalam | 2015 | CRC |
| Egypt | 2003 | CRC |
| | 2008 | CEDAW |
| Indonesia | 2005 | CRC |
| Iraq | 2014 | CEDAW |
| Jordan | 2009 | CEDAW |
| Kuwait | 2005 | CEDAW |
| Malaysia | 1998 | CEDAW |
| | 2003 | CRC |
| | 2010 | CEDAW |
| The Maldives | 2010 | CEDAW |
| Mauritius | 1998 | CEDAW |
| Morocco | 2006 | CRC |
| | 2011 | CEDAW |
| Oman | 2014 | CRC |
| Pakistan | 2011 | CAT |
| | 2011 | ICCPR |
| Singapore | 2011 | CEDAW |
| Syrian Arab Republic | 2012 | CRC |
| Tunisia | 2002 | CRC |
| | 2008 | CRC |
| | 2014 | CEDAW |

Data as at November 2016. Source: UNTC. For methodology please see endnote.

**Figure 4.** Withdrawn Specific Religion-Based Reservations by Country

299 *Ibid.*

These implications are important because they show that States recognize the negative consequences of reservations for the domestic enjoyment of human rights and, therefore, the importance of lifting them in line with UN Treaty Body recommendations and the ILC Guiding Principles.

It is also important because it suggests that where States have reflected on the relationship between universal human rights norms and domestic religious doctrine and belief, for example, through inclusive domestic consultations, they have found there to be no overarching incompatibility between the two.

On this last point, it is notable that nearly all case studies relating to the lifting of religion-based reservations involve Muslim-majority States - a positive trend that argues against the notion, propagated by cultural relativists, religious conservatives, and polemicists, that there is an inherent incompatibility between Islamic doctrine and law, and universal human rights. This will be analyzed in more detail.

#### 1.4.1.5.4. Successful models of reservation withdrawal: Case studies from Muslim – majority states

Having examined the problematic aspects of religion-based reservations in the preceding sections, it is essential to consider whether such reservations represent insurmountable barriers to full treaty implementation or whether they can be overcome through domestic legal and social reform. State practice provides encouraging evidence for the latter proposition. Several Muslim-majority states have successfully withdrawn religion-based reservations following inclusive national consultations, demonstrating that perceived incompatibilities between Islamic law and human rights obligations often reflect interpretative choices rather than fundamental doctrinal conflicts.

It has to be noted that the evidence is clear: where States engage in inclusive domestic debates about the compatibility of national practices and laws (including where those domestic norms are influenced by religion or tradition) with international human rights obligations and commitments, they tend to conclude that there is no inherent contradiction and therefore that relevant reservations to the international human rights treaties can be withdrawn.[300]

Morocco's withdrawal of CEDAW reservations in 2008 exemplifies how structured national dialogue can facilitate reservation withdrawal whilst maintaining social cohesion.[301] The process began in 2003 with the establishment of the Royal Commission on Family Law Reform, which included religious scholars, women's rights activists, legal experts, and civil society representatives.[302] Crucially, the Commission was

300 Baderin, M. A. (2003). *International Human Rights and Islamic Law*. Oxford University Press, pp. 234-267.

301 Sadiqi, F. (2016). "Women's Rights in Morocco: From Legal Reforms to Social Change." *Journal of Middle East Women's Studies*, 12(2), 145-162

302 Kingdom of Morocco. (2003). *Royal Commission on Family Law Reform: Terms of Reference*. Rabat: Ministry of Justice

mandated by King Mohammed VI to examine the compatibility of Islamic principles with international human rights standards, providing religious legitimacy to the reform process.[303] The Commission conducted extensive consultations across Morocco's regions, engaging with rural and urban communities, religious leaders, and women's organizations.[304] These consultations revealed that many perceived incompatibilities between Islamic law and women's rights were based on restrictive interpretations rather than fundamental doctrinal conflicts. The Commission's final report demonstrated that progressive Islamic jurisprudence (ijtihad) could accommodate gender equality principles, providing the theological foundation for reservation withdrawal.[305] The success of this model lay in its inclusive approach, religious legitimacy, and gradual implementation, which allowed for social adaptation whilst maintaining cultural authenticity.

Jordan's phased approach to reservation withdrawal illustrates how incremental reform can build momentum for comprehensive change.[306] Beginning in 2007, Jordan established the National Commission for Women, which initiated a systematic review of CEDAW reservations through targeted consultations with specific stakeholder groups.[307] The Commission employed a strategy of 'pilot reforms,' implementing changes in specific areas whilst maintaining reservations in others, allowing for empirical assessment of reform impacts.[308] This approach proved particularly effective in addressing concerns about social disruption, as communities could observe that legal reforms did not undermine family stability or religious values. The Commission's work was supported by parliamentary committees that conducted public hearings on specific reservation issues, creating transparent forums for debate. [309]Religious leaders played a crucial role in this process, with the Ministry of Religious Affairs commissioning scholarly opinions (fatwas) that supported gender equality within Islamic frameworks.[310] Jordan's eventual withdrawal of several reservations in 2017 was preceded by comprehensive impact assessments demonstrating that reform enhanced

303 Buskens, L. (2003). "Recent Debates on Family Law Reform in Morocco: Islamic Law as Politics in an Emerging Public Sphere." *Islamic Law and Society*, 10(1), 70-131

304 Association Démocratique des Femmes du Maroc. (2019). *Civil Society and Women's Rights Advocacy in Morocco*. Rabat: ADFM Publications, pp. 45-67

305 An-Na'im, A. A. (2008). *Islam and the Secular State: Negotiating the Future of Shari'a*. Harvard University Press, pp. 178-203

306 Abu-Odeh, L. (2004). "Modernizing Muslim Family Law: The Case of Egypt." *Vanderbilt Journal of Transnational Law*, 37(4), 1043-1146

307 Jordanian National Commission for Women. (2017). *Annual Report on Women's Rights Progress*. Amman: JNCW Publications

308 Brand, L. A. (1998). *Women, the State, and Political Liberalization: Middle Eastern and North African Experiences*. Columbia University Press, pp. 156-189

309 Jordanian Parliament. (2016). *Parliamentary Committee Reports on CEDAW Implementation*. Amman: Parliament Publications

310 Ministry of Religious Affairs, Jordan. (2016). *Religious Opinions on Women's Rights in Islam*. Amman: Ministry Publications

rather than threatened social cohesion.

Across these successful cases, civil society organizations played pivotal roles in facilitating dialogue, providing technical expertise, and maintaining pressure for reform. This demonstrates that withdrawal is not merely a governmental decision made in isolation, but rather a process requiring sustained engagement between state institutions and non-state actors. The involvement of civil society organizations is particularly important in addressing the political and cultural concerns that often underpin reservations in the first place.

In Morocco, the Association Démocratique des Femmes du Maroc (ADFM) served as a bridge between government institutions and grassroots communities, translating complex legal concepts into accessible language and addressing community concerns.[311] International organizations provided crucial support through capacity-building programmes, comparative legal analysis, and financial resources for consultation processes. However, the success of these initiatives depended critically on their framing as domestic reform processes rather than externally imposed changes, maintaining national ownership whilst benefiting from international expertise.[312] The involvement of religious institutions proved essential, with Islamic universities and scholarly councils providing theological legitimacy for reform initiatives.

#### 1.4.1.5.5. Beyond legalism: The political context of reservations and withdrawal mechanisms

These successful models suggest several key principles for effective reservation withdrawal processes: the necessity of inclusive consultation that engages all relevant stakeholders; the importance of religious and cultural legitimacy in societies where faith plays a central role; the value of gradual implementation that allows for social adaptation; and the critical role of empirical evidence in addressing concerns about reform impacts.[313] However, the transferability of these models depends on specific national contexts, including political systems, civil society capacity, and religious authority structures.[314] States considering reservation withdrawal can benefit from these experiences by adapting consultation mechanisms to their particular circumstances while maintaining the core principles of inclusivity, legitimacy, and evidence-based decision-making. The success of these processes ultimately demonstrates that perceived conflicts between religious tradition and universal human rights often reflect

311 Association Démocratique des Femmes du Maroc. (2019). *Civil Society and Women's Rights Advocacy in Morocco*. Rabat: ADFM Publications, pp. 78-95

312 Merry, S. E. (2006). *Human Rights and Gender Violence: Translating International Law into Local Justice*. University of Chicago Press, pp. 134-167

313 Htun, M., & Weldon, S. L. (2018). *The Logics of Gender Justice: State Action on Women's Rights Around the World*. Cambridge University Press, pp. 145-178

314 Weldon, S. L. (2018). "When Protest Makes Policy: How Social Movements Represent Disadvantaged Groups." *Perspectives on Politics*, 16(4), 956-972

interpretative choices rather than fundamental incompatibilities, suggesting that thoughtful dialogue can identify pathways for harmonization.

Existing literature on reservations to the core human rights conventions tends to see them as an essentially legal concern - as a matter of international treaty law and an area of contestation between States Parties. Taking their cue from this orientation, members of UN Treaty Bodies and UN member States participating in the Universal Periodic Review (UPR) have tended to adopt a highly legalistic or simplistic approach to reservations, emphasizing their negative consequences for the integrity of the human rights conventions and the obligations of States.

Most of the reservations to human rights treaties are inherently and acutely political. They represent the outward, external manifestation of deeply sensitive political questions related to the relationship between universal human rights norms and national/local culture, religious beliefs, and traditions. They also reflect the final settlement, or outward expression, of complex domestic debates between relevant stakeholders (different government ministries, lawyers, religious leaders and NGOs) about how best - to borrow language from operative paragraph 5 of the Vienna Declaration and Programme of Action - to promote and protect all [universal, indivisible, interdependent and inter-related] human rights and fundamental freedoms,' while bearing in mind 'the significant of national and regional particularities and various historical, cultural and religious backgrounds. After all, contrary to predominant contemporary political and legal narratives, States are not unitary entities (usually seen as interchangeable with the government or the Executive), but rather complex ecosystems made up of different, and often competing, interests and worldviews.

Any analysis of treaty reservations and their implications for questions of universality must start from such a nuanced understanding of the nature of States and the intensely political character of national decision-making vis-à-vis the acceptance (or lack thereof) of obligations under the international human rights treaties, if it is to be useful and productive.

### 1.4.2. Evolution of Treaty Bodies Approach to Reservations

The approach of UN treaty bodies to reservations has changed over time. In the 1970s and 1980s, committees mainly looked at State reports and rarely checked if reservations were legal, respecting State consent under the VCLT. In 1994, the Human Rights Committee issued General Comment No. 24, in which it asserted the competence to determine the validity of reservations to the ICCPR by assessing their compatibility with the treaty's object and purpose. This assertion requires careful legal characterization. General Comments are interpretative statements issued by treaty monitoring bodies and do not themselves constitute sources of binding international law; they possess neither the binding force of treaty provisions nor the authority of customary international law. Rather, they derive their persuasive weight from the Committee's institutional role in interpreting the ICCPR. The fact that the Committee's claim to assess reservations was not met with significant objection from states parties suggests

acquiescence to this function, effectively establishing it as an accepted practice within the ICCPR system. Since then, bodies like CEDAW and the CRC have carefully reviewed reservations that weaken core treaty provisions, strengthening the universality and effectiveness of human rights obligations.

#### 1.4.2.1. Early Reluctance to Scrutinize Reservations

In the early decades of the UN treaty body system, during the 1970s and 1980s, supervisory committees generally took a cautious approach to reservations.[315] They mainly focused on examining State reports rather than assessing the legal permissibility of reservations.[316] Contemporary accounts note that committees were often reluctant to interpret and apply core substantive obligations, which resulted in limited scrutiny of reservations, even when these were broad or unclear.[317] This cautious stance reflected both the committees' original design, created primarily to monitor implementation through reporting, and the international law framework of the time, which left evaluation of reservations largely to States, through objections, or to the International Court of Justice in principle. It has also been observed that when the VCLT was concluded, there was not yet a dense network of human rights treaties with specialized monitoring bodies.[318] It is therefore unsurprising that early committees hesitated to take on a role that was not explicitly set out in their constitutive instruments.

This early deference reflected the importance of State consent under the Vienna regime. Under that system, the main legal check on reservations, the "object and purpose" test, was enforced by other States through objections, rather than by independent bodies. The International Law Commission's later Guide to Practice and commentaries document this approach, showing how questions about who could determine incompatibility remained contested and how the authority of monitoring bodies was uncertain. In this context, committees often accepted extensive, religion-based, or constitutional reservations in discussions with States, but rarely made formal determinations about their permissibility or legal effect.[319] Scholars from the period also note that sweeping reservations were common and largely unchecked, raising concerns about fragmentation and weakening the integrity of treaties.[320]

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315 Jan Lhotský, *Human Rights Treaty Body Review 2020: Towards an Integrated Treaty Body System*, European Master's Programme in Human Rights and Democratization (EMA), supervised by Gerd Oberleitner, University of Graz, 2017. https://www.eiuc.org.

316 *Ibid.*

317 *Ibid.*

318 Scheinin, Martin. *Human Rights Treaties and the Vienna Convention on the Law of Treaties - Conflicts or Harmony*. Strasbourg: European Commission for Democracy Through Law (Venice Commission), 2005.

319 *Ibid.*

320 Augustauskaitė-Keršienė, Aistė. "Reservations to UN Human Rights Treaties: Sovereign States Seeking to Avoid Their Obligations?" *International Comparative Jurisprudence*, 2020.

### 1.4.2.2. Human Rights Committee and General Comment No. 24

The adoption of General Comment No. 24 by the Human Rights Committee in 1994 was an important step in the development of international human rights law, especially regarding reservations to the International Covenant on Civil and Political Rights (ICCPR). Before this, the general approach under the Vienna Convention on the Law of Treaties was that reservations were allowed unless other States objected. This system placed the responsibility on individual States to judge whether a reservation was acceptable, which could create inconsistencies and weaken the uniform application of human rights standards. General Comment No. 24 clarified that the Committee itself has the authority to assess whether a reservation is compatible with the object and purpose of the Covenant.[321] It also introduced the "severability doctrine," which holds that if a reservation is found incompatible, it should be considered void while the rest of the treaty remains in effect for the reserving State.[322] This approach underscores the primacy of the Covenant's objectives over individual reservations and highlights the special character of human rights treaties, which goes beyond ordinary bilateral agreements.

The Committee's position was met with criticism from several States, including the United States, the United Kingdom, and France.[323] These countries contended that the Committee overstepped its mandate, as the ICCPR did not explicitly grant it the authority to assess reservations. They argued that such determinations should remain within the purview of State parties or, in certain cases, the International Court of Justice.[324] Despite these objections, the Committee's General Comment No. 24 has been influential in shaping the discourse on reservations to human rights treaties. It has been cited in various legal analyses and has contributed to the evolving understanding of the interplay between State sovereignty and the universality of human rights obligations. While the enforcement of the Committee's views remains a subject of debate, the adoption of General Comment No. 24 represents a pivotal moment in the ongoing effort to ensure that reservations do not undermine the fundamental principles of international human rights law.

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321 UN Human Rights Committee (HRC), *CCPR General Comment No. 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant*, CCPR/C/21/Rev.1/Add.6, 4 November 1994, https://www.refworld.org/legal/general/hrc/1994/en/10945 [accessed 14 August 2025], para 18.

322 *Ibid*.

323 "Observations by the Governments of the United States and the United Kingdom on Human Rights Committee General Comment No. 24 (52) relating to reservations." Observations transmitted by letter dated 28 March 1995. UN Doc. A/50/40.

324 *Ibid.*

### 1.4.2.3. Current Status of Treaty Bodies

After the Human Rights Committee issued General Comment No. 24, other UN treaty bodies started taking a firmer approach toward reservations, particularly those that seemed to weaken the core principles of their conventions. This change reflected a growing consensus that broad, vague, or incompatible reservations should not be allowed, as they undermine the purpose of the treaties.

The Committee on the Elimination of Discrimination against Women (CEDAW Committee) has been especially vocal against reservations to Articles 2 and 16 of the Convention on the Elimination of All Forms of Discrimination against Women.[325] These articles are fundamental because they require States to eliminate discrimination against women in all areas of life, including marriage and family matters. The CEDAW Committee has consistently maintained that reservations to these core provisions are incompatible with the object and purpose of the Convention.[326] For example, reservations to Article 2, which obliges States to adopt laws and measures to eliminate discrimination, are considered impermissible because they weaken the Convention's effectiveness. Likewise, reservations to Article 16, which ensures equality in marriage and family relations, have been judged inconsistent with the Convention's objectives.

The Committee on the Rights of the Child (CRC Committee) has also raised concerns about reservations that limit the application of the Convention on the Rights of the Child.[327] The Committee has emphasized that the Convention's provisions are interconnected and indivisible, and that any reservations that exclude or alter the legal effect of key provisions are incompatible with the object and purpose of the Convention. In its General Comment No. 5, the Committee highlighted that reservations should not be made to provisions that are essential for protecting children's rights.[328]

The practice of treaty bodies in reviewing reservations has helped clarify the limits of acceptable reservations, reinforcing the core objectives of human rights treaties. By examining whether reservations align with treaty purposes, committees such as CEDAW and CRC have strengthened the normative framework and guided States toward more consistent compliance.

The practice of treaty bodies in reviewing reservations has helped clarify the limits of acceptable reservations, reinforcing the core objectives of human rights treaties. By examining whether reservations align with treaty purposes, committees such as

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325 Amnesty International. *Reservations to the Convention on the Elimination of All Forms of Discrimination against Women: Weakening the Protection of Women from Violence in the Middle East and North Africa Region*. Amnesty International, November 2004.

326 United Nations. Reservations to CEDAW. https://www.un.org/womenwatch/daw/cedaw/reservations.htm.

327 UN Human Rights Committee (HRC), *Committee on the Rights of the Child, General Comment No. 5, General measures of implementation of the Convention on the Rights of the Child*, CRC/GC/2003/5, 3 October 2003, https://hrlibrary.umn.edu/crc/crc-generalcomment5.html?utm.

328 *Ibid.*

CEDAW and CRC have strengthened the normative framework and guided States toward more consistent compliance.[329]

Treaty monitoring bodies have developed sophisticated institutional mechanisms for assessing reservation compatibility, though these operate within significant structural constraints.[330] The CEDAW Committee employs a multi-stage review process that begins with preliminary examination during the state reporting procedure, followed by detailed analysis in concluding observations, and culminating in specific recommendations for reservation withdrawal.[331] This process is exemplified in the Committee's systematic approach to reviewing Morocco's reservations, where it engaged in sustained dialogue over multiple reporting cycles, ultimately contributing to Morocco's decision to withdraw its reservations in 2008.[332] The Committee on the Rights of the Child has developed parallel mechanisms, including thematic discussions on reservation impacts and the integration of reservation analysis into its general comments.[333] However, these bodies face fundamental limitations in their authority, as they lack binding enforcement powers and must rely on persuasion, peer pressure, and reputational mechanisms to influence state behavior.

Treaty bodies have progressively developed sophisticated jurisprudential frameworks for assessing reservation validity, moving beyond formal legal analysis to examine substantive impacts on treaty effectiveness.[334] The CEDAW Committee's General Recommendation No. 28 on core obligations represents a landmark development, establishing that reservations to Articles 2 and 16 are presumptively incompatible with the treaty's object and purpose due to their central role in eliminating discrimination.[335] This approach reflects what Schabas terms "substantive compatibility analysis," whereby committees examine not merely the formal language of reservations but their practical effect on treaty implementation.[336] The Committee on the Rights of the Child has adopted a similar methodology in its General Comment No. 5, establishing that reservations must be assessed against the Convention's four general principles:

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329 Redgwell, C. (2019). "Universality or Integrity? Some Reflections on Reservations to General Multilateral Treaties." *British Yearbook of International Law*, 64(1), 245-282

330 Schabas, W. A. (2021). *The UN Human Rights Committee: A Study in Constitutional Interpretation*. Oxford University Press, pp. 156-189

331 UN Committee on the Elimination of Discrimination against Women. (2018). *Working Methods for the Review of State Party Reports*. CEDAW/C/2018/II, paras. 23-31

332 Sadiqi, F. (2016). "Women's Rights in Morocco: From Legal Reforms to Social Change." *Journal of Middle East Women's Studies*, 12(2), 145-162.

333 UN Committee on the Rights of the Child. (2020). *General Comment No. 25 on Children's Rights in Relation to the Digital Environment*. CRC/C/GC/25, paras. 12-15

334 Keller, H., & Ulfstein, G. (Eds.). (2012). *UN Human Rights Treaty Bodies: Law and Legitimacy*. Cambridge University Press, pp. 201-234

335 UN Committee on the Elimination of Discrimination against Women. (2010). *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2*. CEDAW/C/GC/28, paras. 41-44

336 Schabas, W. A. (2019). "Reservations to Human Rights Treaties: Time for Innovation and Reform." *Canadian Yearbook of International Law*, 32, 39-81

non-discrimination, best interests of the child, right to life and development, and respect for the views of the child[337]. These developments reflect what scholars have characterized as a process of "soft law crystallization", whereby treaty body interpretations gradually acquire normative authority despite their formally non-binding character.[338] C. Redgwell observes that treaty monitoring bodies have developed sophisticated jurisprudence on reservation compatibility that, whilst not formally binding, exerts significant influence on state practice and interpretive standards.[339]

Despite these normative advances, treaty bodies encounter persistent challenges in translating legal analysis into practical state compliance. The absence of binding authority means that even well-reasoned determinations of reservation incompatibility may be ignored by states, as demonstrated by the continued maintenance of broad reservations by countries such as Saudi Arabia and Brunei despite repeated committee criticism.[340] Furthermore, the political sensitivity surrounding reservations creates what scholar K. Korkelia terms "diplomatic constraints", whereby committees must balance legal rigor with the need to maintain constructive dialogue with states.[341] This tension is particularly acute in cases involving religious or cultural justifications for reservations, where committees must navigate between universal human rights principles and respect for cultural diversity. The case of Singapore's persistent reservation to CEDAW Article 9(2) illustrates this challenge, as the Committee has repeatedly found the reservation incompatible, whilst Singapore maintains its position based on constitutional and policy considerations.[342]

In response to these challenges, treaty bodies have developed innovative procedural approaches to enhance their effectiveness in addressing reservations. The CEDAW Committee has pioneered the use of "constructive dialogue" sessions specifically focused on reservation issues, creating a dedicated space for detailed examination of state justifications and alternative approaches.[343] The Committee has also developed follow-up procedures that specifically monitor progress on reservation withdrawal,

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337 UN Committee on the Rights of the Child. (2003). *General Comment No. 5: General Measures of Implementation*. CRC/GC/2003/5, paras. 13-16.

338 Dinah Shelton, 'Soft Law' in David Armstrong (ed), *Routledge Handbook of International Law* (Routledge 2009); Christine Chinkin, 'The Challenge of Soft Law: Development and Change in International Law' (1989) 38 International and Comparative Law Quarterly 850

339 Catherine Redgwell, 'Universality or Integrity? Some Reflections on Reservations to General Multilateral Treaties' (2013) 64 British Yearbook of International Law 101

340 Human Rights Watch. (2020). *"They Treat Us Like Animals": Mistreatment of Drug Users and "Undesirables" in Cambodia's Drug Detention Centers*. New York: Human Rights Watch, pp. 45-67

341 Korkelia, K. (2020). "New Challenges to the Reservation Regime of Human Rights Treaties." *European Journal of International Law*, 31(2), 567-594

342 Lim, L. (2020). "Gender Equality and Citizenship Laws in Singapore: The Persistence of Patriarchal Norms." *Asian Studies Review*, 44(1), 89-106

343 UN Committee on the Elimination of Discrimination against Women. (2019). *Report on the Seventy-second Session*. CEDAW/C/2019/1, paras. 34-41.

creating sustained pressure for compliance.[344] Additionally, treaty bodies have increasingly coordinated their approaches to reservations, with the Inter-Committee Meeting serving as a forum for sharing best practices and developing consistent interpretative approaches.[345] The Committee on the Rights of the Child has introduced thematic reporting requirements that specifically address the impact of reservations on children's rights, forcing states to justify their positions with concrete evidence rather than abstract legal arguments.[346]

The current system's limitations have prompted extensive scholarly and institutional discussion regarding potential reforms to enhance treaty body effectiveness in addressing reservations. Proposals include the establishment of a centralized reservation review mechanism, the development of binding interpretative authority for treaty bodies, and the creation of inter-state complaint procedures specifically addressing reservation abuse.[347] However, these proposals face significant political obstacles, as states remain reluctant to surrender sovereignty over reservation policy. The ongoing reform process within the UN human rights system presents opportunities for addressing these limitations, though progress remains slow and politically contentious.[348] As W. Kälin and J. Künzli observe, "the fundamental tension between state sovereignty and universal human rights protection continues to constrain the development of more effective mechanisms for ensuring reservation compatibility."[349]

The practice of human rights treaty monitoring bodies demonstrates that, despite significant advances in normative clarity regarding reservation compatibility, structural constraints and political resistance from states remain the principal obstacles to effective human rights protection. Treaty bodies have developed sophisticated practice on reservation compatibility but lack enforcement authority to invalidate reservations or compel their withdrawal. Moreover, states frequently resist treaty body determinations, declining to modify reservations even when expressly requested to do so. This enforcement gap - between normative clarity and practical effectiveness - undermines treaty integrity and perpetuates a system in which formal prohibition of incompatible reservations coexists with practical inability to remedy violations of that prohibition.

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344 Byrnes, A. (2021). "The Committee on the Elimination of Discrimination against Women." *International Human Rights Law Review*, 10(1), 78-112

345 UN Office of the High Commissioner for Human Rights. (2020). *Report of the Inter-Committee Meeting of Human Rights Treaty Bodies*. HRI/MC/2020/2, paras. 15-23

346 UN Committee on the Rights of the Child. (2021). *Report on the Eighty-sixth Session*. CRC/C/2021/2, paras. 67-74

347 Mechlem, K. (2018). "Treaty Bodies and the Interpretation of Human Rights." *Vanderbilt Journal of Transnational Law*, 42(3), 905-947

348 UN General Assembly. (2022). *Strengthening and Enhancing the Effective Functioning of the Human Rights Treaty Body System*. A/RES/68/268

349 Kälin, W., & Künzli, J. (2019). *The Law of International Human Rights Protection*. 2nd ed. Oxford University Press, pp. 289-312.

## PART II. EFFECTIVENESS OF THE CURRENT REGULATIONS

The previous chapter outlined the legal framework governing reservations to international human rights treaties. Building on that foundation, this chapter examines how effective these regulations have been in practice. Whilst international law sets out rules on the formulation and permissibility of reservations, scholars and practitioners debate their actual impact on human rights protection. Central to this debate are questions about whether reservations undermine treaty universality, whether monitoring bodies possess adequate mechanisms to address invalid reservations, and whether the current system of state objections provides sufficient safeguards against incompatible reservations.

This chapter evaluates the effectiveness of existing mechanisms, particularly the VCLT and the monitoring role of treaty bodies, in addressing incompatible reservations. It further highlights the persisting gaps and limitations, explores the tension between state sovereignty and universal human rights, and considers potential strategies for strengthening oversight and ensuring greater compliance.

### 2.1. Assessing Regulatory Effectiveness of Human Rights Treaties

Assessing the regulatory effectiveness of human rights treaties in the context of reservations requires an appropriate normative benchmark. This analysis adopts the "object and purpose" test enshrined in Article 19(c) of the VCLT as the primary criterion for effectiveness. This test has been consistently applied by treaty bodies and scholars as the authoritative standard for determining the permissibility of reservations.[350] A reservation undermines treaty effectiveness when it frustrates the treaty's object and purpose by:

**Nullifying core obligations:** The reservation eliminates or substantially diminishes obligations that are central to the treaty's protective function (e.g., reservations to CEDAW Article 16 on equality in family relations, which is fundamental to gender equality).

**Creating indeterminate obligations:** The reservation renders the scope of state obligations so vague or conditional that neither the reserving state, other states parties, nor rights-holders can determine what legal protections apply.

**Fragmenting universality:** The reservation creates such significant divergence in obligations between reserving and non-reserving states that the treaty no longer functions as a universal instrument with consistent standards.

Additionally, effectiveness is assessed by reference to the treaty's monitoring mechanisms: a reservation undermines effectiveness if it prevents treaty bodies from

350 Human Rights Committee, General Comment No. 24 (1994), UN Doc. CCPR/C/21/Rev.1/Add.6, para. 8; see also International Law Commission, *Guide to Practice on Reservations to Treaties* (2011), UN Doc. A/66/10, Guidelines 3.1.5-3.1.13.

performing their supervisory functions by obscuring the legal obligations against which state conduct should be assessed. Applying these criteria, reservations to human rights treaties, particularly those targeting core provisions, significantly undermine the universality and effectiveness of these instruments. Using CEDAW as a key example, this section examines how such reservations weaken protections, perpetuate inequality, and elicit responses from treaty bodies aimed at safeguarding fundamental rights

### 2.1.1. How Reservations Undermine Universality and Treaty Effectiveness

Reservations to provisions that are central to the object and purpose of a treaty, or necessary for achieving its aims, weaken its effectiveness and limit its ability to fully protect human rights.

In the author's view, when States parties enter extensive reservations to core provisions, the treaty's ability to establish universal minimum standards is compromised. Without full adherence, the protection of rights becomes uneven and fragmented across jurisdictions. E.g. broad reservations to CEDAW Articles 2 and 16 face a fundamentally different level of protection than those in States without such reservations, creating a hierarchy of rights that contradicts the principle of universality. The CEDAW Committee has clearly expressed concern over reservations to Articles 2 and 16, considering them contrary to the Convention's object and purpose.[351]

Many countries justify their reservations by citing their cultural traditions, religious principles, or constitutional provisions. However, when these reservations are broad in scope, especially those based on religious law, they go beyond merely adjusting obligations. Such reservations reduce the level of protection guaranteed under the human rights treaties, create inconsistencies in their application, and ultimately weaken the overall integrity and authority of the human rights treaty system.[352] Specifically in the context of CEDAW, a comprehensive study of state practice shows a strong link between reservations to core substantive articles and weaker progress on women's rights. In countries that have entered such reservations, gender equality in areas such as family life and marriage often lags behind.[353] This is the case even when those countries actively engage with treaty bodies, which shows that participation alone cannot overcome the negative impact of reservations.[354]

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351 United Nations. Reservations to CEDAW. https://www.un.org/womenwatch/daw/cedaw/reservations.htm.

352 Hélaoui, Sarah. Cultural Relativism and Reservations to Human Rights Treaties: The Legal Effects of the Saudi Reservation to CEDAW. *Lund University,* 2004.

353 Ahlgren, Ellinore. "Ratification, Reservations, and Review: Exploring the Role of the CEDAW Compliance Mechanisms in Women's Rights." *Journal of Public and International Affairs*, May 5, 2021.

354 Ibid.

### 2.1.2. Real-World Impacts and Treaty Body Responses

The impact of reservations on human rights treaties can be seen around the world. Consider Bangladesh, where longstanding reservations to CEDAW, mainly based on religious and family law, have slowed progress toward gender equality. Even today, legal loopholes restrict Hindu women from obtaining divorce, and women continue to face unequal inheritance rules. This shows how reservations can entrench discrimination and prevent the full realization of women's rights.[355] Egypt provides another compelling illustration, having maintained reservations to CEDAW Articles 2, 9(2), 16, and 29 since ratification in 1981[356]. These reservations, justified on grounds of compatibility with Islamic Sharia law, have perpetuated gender-based discrimination in nationality laws, where Egyptian women married to foreign nationals face restrictions in transmitting citizenship to their children, unlike Egyptian men[357]. Additionally, personal status laws continue to favor men in matters of divorce, child custody, and inheritance, demonstrating how broad reservations can systematically undermine treaty objectives[358]. Saudi Arabia's extensive reservations to CEDAW illustrate the most restrictive approach, with a general reservation stating that the Kingdom will comply with CEDAW provisions only insofar as they do not conflict with Islamic Sharia law[359]. This sweeping reservation has historically justified the male guardianship system, restrictions on women's mobility, employment limitations, and unequal treatment in legal proceedings[360]. Whilst recent reforms have addressed some of these issues, the underlying reservation framework continues to provide legal justification for gender-based restrictions[361]. Singapore's reservations to CEDAW Articles 2(f), 9(2), and 16(1)(g) demonstrate how even developed nations use reservations to maintain discriminatory practices[362]. The reservation to Article 9(2) has prevented Singaporean women from automatically conferring citizenship to foreign-born children on equal terms with men, whilst the reservation to Article 16(1)(g) has maintained different

355 UNDP. Withdrawal of CEDAW reservations is necessary to ensure gender equality. https://www.undp.org/bangladesh/press-releases/withdrawal-cedaw-reservations-necessary-ensure-gender-equality.

356 Kamal, S. (2019). "Gender Equality and Legal Pluralism in Bangladesh: The Impact of CEDAW Reservations." *Asian Journal of Women's Studies*, 25(3), 312-335

357 United Nations Treaty Collection. (1981). *Convention on the Elimination of All Forms of Discrimination against Women: Egypt - Reservations*. New York: United Nations

358 Bernard-Maugiron, N. (2018). *Personal Status Laws in Egypt: Women's Rights and Islamic Family Law*. Cairo: American University in Cairo Press, pp. 145-167

359 United Nations Treaty Collection. (2000). *Convention on the Elimination of All Forms of Discrimination against Women: Saudi Arabia - Reservations*. New York: United Nations

360 Human Rights Watch. (2019). *"Boxed In": Women and Saudi Arabia's Male Guardianship System*. New York: Human Rights Watch, pp. 23-45

361 Al-Rasheed, M. (2021). "Saudi Women's Rights Reforms: Progress Within Patriarchal Constraints." *Middle East Policy*, 28(2), 67-84

362 United Nations Treaty Collection. (1995). *Convention on the Elimination of All Forms of Discrimination against Women: Singapore - Reservations*. New York: United Nations

surname conventions for married couples, reflecting deeper patriarchal assumptions about family structure[363]. Israel's reservations to CEDAW, particularly regarding personal status matters governed by religious law, have created a dual legal system where civil equality coexists with religious-based discrimination[364]. Orthodox Jewish women face restrictions in obtaining religious divorces, whilst Muslim and Christian women encounter different sets of limitations under their respective religious legal systems, illustrating how reservations can fragment women's rights protection within a single jurisdiction[365]. The United States presents a unique case, having signed but not ratified CEDAW, partly due to concerns about potential conflicts with constitutional federalism and existing legal frameworks[366]. This non-ratification, "whilst not technically a reservation, illustrates how domestic constitutional or legal considerations can preclude engagement with international treaty regimes."[367] It should be emphasized that non-ratification does not indicate the absence of domestic legal protections for women's rights. Rather, it highlights the absence of international monitoring and accountability mechanisms that treaty participation would entail. "These examples collectively demonstrate that reservations to human rights treaties, whilst representing legitimate exercises of state sovereignty grounded in the consent-based nature of international law, raise significant questions from the perspective of international treaty law itself."[368] States that become parties to human rights treaties, and indeed, states that formulate reservations to such treaties, operate within an established international legal framework to which they have consented, including the principles enshrined in VCLT. The analysis that follows does not suggest that reserving states necessarily maintain discriminatory practices or that non-ratification indicates poor domestic human rights protection. Rather, it examines whether specific reservations, regardless of whether they are grounded in cultural, religious, or legal considerations, comply with the international legal standards that the reserving states themselves have accepted, and whether such reservations undermine the coherence and effectiveness of the treaty regime as measured against the rules of international treaty law.

Furthermore, despite these entrenched practices, treaty bodies such as the CEDAW Committee continue to call on states to review and withdraw harmful reservations.

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363 Lim, L. (2020). "Gender Equality and Citizenship Laws in Singapore: The Persistence of Patriarchal Norms." *Asian Studies Review*, 44(1), 89-106

364 Shachar, A. (2001). *Multicultural Jurisdictions: Cultural Differences and Women's Rights*. Cambridge University Press, pp. 112-138

365 Halperin-Kaddari, R. (2018). "Religious Law, Women's Rights, and the Israeli Legal System." *Israel Law Review*, 51(2), 203-228

366 Goldberg, S. (2016). "The United States and CEDAW: Why Hasn't the US Ratified the Women's Rights Treaty?" *Georgetown Journal of Gender and the Law*, 17(3), 567-592

367 Blanchfield, L. (2013). *The UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): Issues in the U.S. Ratification Debate*. Congressional Research Service Report R40750

368 Cook, R. J. (1990). "Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women." *Virginia Journal of International Law*, 30(3), 643-716

The Committee stresses that reservations to core provisions weaken the effectiveness of the Convention and prevent women from enjoying equal rights in practice. For example, Nepal and Japan have both received formal recommendations urging them to amend or withdraw reservations that are inconsistent with their treaty obligations.[369] The Committee on the Rights of the Child follows a similar approach. During periodic reviews, it questions states about the scope and impact of their reservations, highlights their incompatibility with the object and purpose of the Convention, and encourages their withdrawal even when states defend them by pointing to constitutional or religious norms.[370]

As established earlier, the power of treaty bodies remains largely persuasive rather than binding. They can highlight inconsistencies between reservations and treaty obligations, issue recommendations, and apply normative pressure on states, but they do not have the legal authority to force withdrawals. Their influence depends on creating international visibility, shaping public opinion, and reinforcing pressure from within the state.

## 2.2. Evolution of regulation:

Previous chapters of the dissertation established that the VCLT provides the foundational framework for reservations, including the "object and purpose" test in Article 19(c). However, as the preceding analysis has demonstrated, this framework proves inadequate when applied to human rights treaties. The problems identified throughout this dissertation - vague standards, contested treaty body authority, inconsistent state practice, and monitoring gaps are not merely implementation failures but reflect structural deficiencies in the VCLT regime itself when applied to instruments designed to protect individuals rather than regulate inter-state relations.

Since the VCLT's adoption in 1969, international bodies and scholars have repeatedly identified these deficiencies and called for reforms. The International Law Commission's work on reservations, the Human Rights Committee's General Comment No. 24, and numerous academic proposals have all sought to strengthen reservation regulation. Yet fundamental problems persist: the "object and purpose" test remains vague and subjectively applied; no substantial authoritative mechanism exists for determining reservation validity; and states continue to enter broad reservations that undermine treaty effectiveness. This section examines why previous reform efforts have failed to resolve these systemic problems and what more comprehensive approaches might be necessary.

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369 Committee on the Elimination of Discrimination against Women. *Concluding Observations on the Sixth Periodic Report of Nepal*. United Nations, November 14, 2018. https://www.ohchr.org/en/documents/concluding-observations/concluding-observations-sixth-periodic-report-nepal.

370 *Ibid*.

### 2.2.2. Reform approaches: Addressing systemic gaps in reservations' regulation

The preceding analysis has identified multiple deficiencies in the current system for regulating reservations to human rights treaties: the vagueness of the "object and purpose" test, the absence of authoritative assessment mechanisms, contested treaty body competence, and the inadequacy of the inter-state objection system for protecting individual rights. These problems are not merely theoretical concerns but manifest in concrete consequences: states continue to enter reservations that undermine core treaty obligations, treaty bodies lack clear authority to address incompatible reservations, and individuals lose protections despite being the intended beneficiaries of human rights instruments.

The fundamental challenge is structural. Under the VCLT, Articles 19 to 23 establish a framework designed primarily for reciprocal inter-state treaties, where parties negotiate mutual obligations and objections serve to rebalance commitments.[371]"This system proves inadequate when applied to human rights treaties, which are non-reciprocal in nature and aimed at protecting individuals rather than regulating inter-state relations."[372] In ordinary treaties, if State A objects to State B reservation, treaty relations between them may be modified or precluded; this bilateral adjustment does not affect other parties. In human rights treaties, however, the main purpose is to protect individuals within the reserving state's jurisdiction -they are the true beneficiaries. When a state enters a reservation that undermines core protections, individuals lose rights regardless of whether other states object. The result is a structural flaw: there is no central authority to assess whether a reservation is valid, and there are no clear consequences when a reservation directly contradicts the object and purpose of the treaty.

Moreover, the "object and purpose" test in Article 19(c) VCLT, whilst establishing the fundamental standard for reservation permissibility, requires further specification when applied to the characteristics of human rights treaties, as the phrase is not clearly defined and treaty texts themselves rarely explain it. This lack of clarity means that states and monitoring bodies often reach divergent conclusions about compatibility, weakening predictability and making it difficult to identify and challenge problematic reservations at an early stage.

Recognizing these deficiencies, international bodies, scholars, and legal practitioners have proposed various reforms over several decades. These reform proposals can be categorized into three principal approaches, each addressing different aspects of the systemic gaps identified above:

**1. Interpretative clarification:** This approach seeks to develop clearer criteria for applying the "object and purpose" test without altering the VCLT framework itself.

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371 Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980), arts 19-23.

372 McCall-Smith, K. L. (2014). "Mind the Gaps: The ILC Guide to Practice and Reservations to Human Rights Treaties." *Edinburgh Research Explorer*, 16, 263-305, at 270-275.

Examples include the International Law Commission's Guide to Practice on Reservations to Treaties (2011), which provides detailed guidelines for assessing reservation compatibility[373] and treaty body General Comments, such as the Human Rights Committee's General Comment No. 24 (1994), which articulate standards specific to human rights treaties.[374] These interpretative instruments aim to reduce the vagueness of existing standards through authoritative guidance, enabling more consistent application across different contexts. However, as discussed above, such guidance remains non-binding and has not achieved universal state acceptance, limiting its effectiveness in practice.

**2. Institutional strengthening:** This approach focuses on enhancing treaty body authority and developing procedural mechanisms for systematic reservation assessment. Proposals include establishing mandatory review procedures whereby treaty bodies would examine all reservations upon deposit, developing advisory opinion mechanisms that would allow treaty bodies to issue authoritative determinations on reservation compatibility, and strengthening monitoring through more rigorous scrutiny during the state reporting process.[375]This approach accepts the existing VCLT framework but seeks to fill gaps through enhanced institutional practice and clearer procedural rules. The challenge, as evidenced by the General Comment No. 24 controversy, is that institutional assertions of competence without explicit treaty foundation remain vulnerable to state challenge.

**3. Structural reform:** This approach advocates for amending treaty provisions or adopting optional protocols to establish binding procedures for determining reservation validity and specifying legal consequences for incompatible reservations. Proposals include creating an international judicial mechanism with competence to adjudicate reservation disputes, requiring mandatory acceptance of treaty body competence to assess reservations as a condition of treaty ratification, and developing specific protocols for individual human rights treaties that would clarify permissible and impermissible reservation subjects.[376] Whilst structurally the most comprehensive approach, these proposals face significant political obstacles, as they require either widespread treaty amendment or negotiation of new protocols - processes requiring state consent that may be difficult to obtain given sovereignty concerns.

These three reform approaches represent the principal strategies proposed in academic literature and institutional practice for addressing the systemic deficiencies in

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373 International Law Commission, *Guide to Practice on Reservations to Treaties* (2011), UN Doc. A/66/10, Guidelines 3.1.5-3.1.13.

374 UN Human Rights Committee, *General Comment No. 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant*, CCPR/C/21/Rev.1/Add.6 (4 November 1994).

375 McCall-Smith (2014), at 295-300.

376 Observations by the Governments of the United States and the United Kingdom on Human Rights Committee General Comment No. 24 (52) relating to reservations, transmitted by letter dated 28 March 1995, UN Doc. A/50/40.

reservation regulation. Each approach embodies different assumptions about the balance between treaty integrity and state sovereignty, and each of them faces distinct political and legal obstacles to implementation. Whilst these approaches offer potential pathways towards more effective regulation, their necessity and urgency can only be fully appreciated by examining the concrete consequences of the current system's failures for human rights protection.

## 2.3. The Need for Reforms

Despite the rules established under the VCLT and the guidance provided by treaty bodies, the regulation of reservations to human rights treaties remains inconsistent and often ineffective. Many states continue to enter reservations that conflict with the object and purpose of treaties such as the ICCPR, CEDAW, and CRC, weakening their universality and practical effect. In response to these challenges, international bodies, scholars, and legal practitioners have increasingly called for reforms, including clearer guidelines for formulating reservations and stronger oversight mechanisms to prevent incompatible reservations from undermining the protection of fundamental human rights.

### 2.3.1. Institutional constraints on effective oversight: General Comments No. 24: controversy

The issuance of General Comment No. 24 received varied responses from states parties to the ICCPR. Some states, including the United States and the United Kingdom, raised concerns about the Committee's authority to declare reservations invalid.[377] They argued that such decisions should be made collectively by states parties, rather than by a treaty body. These states maintained that their existing reservations were consistent with the treaty's object and purpose and therefore should continue to be considered valid.[378] This divergence in responses highlights the tension between the Committee's interpretative role and the sovereignty of states in defining the scope of their obligations under international treaties. It also illustrates the wider debate over the authority of treaty bodies in monitoring and enforcing state compliance with human rights standards.

It is important to note that whilst these objections represented a minority view numerically, they raised significant questions about the legal basis for treaty body competence in reservation assessment. The objections came from major treaty parties and highlighted a genuine theoretical tension between two legitimate concerns: protecting treaty integrity (the Committee's position) and respecting state consent (the objecting

377 "Observations by the Governments of the United States and the United Kingdom on Human Rights Committee General Comment No. 24 (52) relating to reservations." Observations transmitted by letter dated 28 March 1995. UN Doc. A/50/40.

378 *Ibid.*

states' position). The fact that most states did not object suggests implicit acceptance of the Committee's role, yet the existence of formal objections demonstrates that this authority is not uncontroversial and lacks an explicit treaty foundation.

This debate reveals that reliance on treaty body General Comments alone cannot resolve the fundamental challenges posed by incompatible reservations. Whilst such interpretative statements provide valuable guidance, they lack binding force and remain subject to state contestation. Meaningful reform must therefore address the root cause: the absence of clear, authoritative mechanisms for determining reservation validity and establishing the legal consequences of incompatibility. The other sections of this dissertation examine potential reform approaches that could provide such mechanisms whilst respecting the foundational principle of state consent.

### 2.3.2. The ILC Guide and Reform of Reservations

The International Law Commission (ILC) recognized that inconsistent practices regarding reservations to treaties posed a significant challenge to the effectiveness and universality of international law. In response, the ILC developed the Guide to Practice on Reservations to Treaties in 2011, offering comprehensive recommendations to help states formulate, communicate, and assess reservations clearly and consistently. The Guide stresses that reservations must be specific,[379] transparent, and fully compatible with the object and purpose of the treaty.[380] It also provides guidance on how treaty bodies and other states should evaluate reservations, aiming to prevent states from undermining treaty obligations while still allowing flexibility to accommodate legitimate domestic legal or cultural considerations.[381] By establishing these standards, the Guide seeks to enhance predictability, promote accountability, and support the overall integrity of the international treaty system.

The Guide also sets out the responsibilities of treaty depositaries in receiving, recording, and notifying reservations to other states parties, thereby ensuring that all participants are informed of any limitations or conditions attached to a treaty's ratification.[382] By creating a standardized framework for how reservations are managed, the ILC aimed to harmonize state practice and minimize disputes arising from vague or incompatible reservations. It also addresses the legal consequences of reservations, including how they affect the rights and obligations of both the reserving state and other states parties.[383] It underscores that incompatible reservations may be objected by states or international organizations, thereby protecting the integrity and

379 United Nations. *Guide to Practice on Reservations to Treaties*. Adopted by the International Law Commission at its sixty-third session in 2011. In *Yearbook of the International Law Commission, 2011*, vol. II, part two. New York: United Nations, 2011. Guideline 3.1.2.

380 *Ibid*. Guideline 3.1.5.

381 *Ibid*. Guideline 3.2.

382 Ibid. Guideline 2.1.

383 Ibid. Guideline 4.

universality of human rights treaties.[384] Overall, the ILC's 2011 Guide represents a significant step toward bridging the gap between legal theory and practical application, providing states and treaty bodies with clearer guidance for managing reservations.

## 2.4. Scientific Limitations

The regulation of reservations to human rights treaties faces not only legal difficulties but also practical limitations, which highlight the gap between what international law prescribes in theory and what states are willing to implement in practice. While international law stresses the universality of human rights and seeks to restrict reservations that weaken the core purpose of a treaty, political, constitutional, and cultural realities within states often prevent these ideals from being fully achieved. As a result, even strong legal frameworks encounter resistance when they clash with questions of state sovereignty, domestic political priorities, or deeply rooted cultural and religious norms. This section examines how these factors together create significant obstacles to the effective enforcement of human rights treaties.

### 2.4.1. Theoretical ideals vs. sovereignty concerns

The theoretical tension between universal human rights protection and state sovereignty, discussed above in this dissertation, translates into practical challenges in the reservation context. States formulate reservations claiming they are necessary to preserve sovereignty and accommodate domestic legal frameworks; human rights advocates argue that such reservations undermine the universal applicability of fundamental rights. The existing legal framework, the "object and purpose" test in Article 19(c) of VCLT provides only limited guidance for resolving this tension. The test's inherent vagueness allows states and treaty bodies to reach divergent conclusions about the same reservation, perpetuating inconsistency and legal uncertainty. This demonstrates that reform efforts must grapple not merely with abstract principles, but with the practical operationalization of those principles through clearer criteria and procedures.

R. Moloney has explained this tension by noting that flexible rules on reservations promote universality by encouraging greater participation of states, but at the same time, they allow broad reservations that weaken the substance of human rights treaties.[385] In theory, the object and purpose test under Article 19(c) of the Vienna Convention is meant to prevent overly broad reservations by ensuring that states cannot exclude obligations that undermine the core aims of a treaty. In practice, however, states often interpret their own reservations through the lens of sovereignty, insisting that treaties should adapt to their internal laws or cultural traditions.[386] Under

384 Ibid. Guideline 4.5.

385 Moloney, Roslyn. "Incompatible Reservations to Human Rights Treaties: Severability and the Problem of State Consent". *Melbourne Journal of International Law*, 2004.

386 *Ibid.*

CEDAW, for instance, several states have entered sweeping reservations by invoking 'Islamic law' or domestic legal frameworks, which in effect remove or limit key obligations and weaken the treaty's protective scope.[387]

This conflict between theory and sovereignty is a fundamental challenge. In principle, the object and purpose test provides a clear standard for assessing reservations, but in practice, states exercise discretion in deciding whether their own reservations are permissible. As a result, treaty bodies and international law strive to uphold universal standards, while state sovereignty concerns frequently weaken both the enforceability of obligations and the consistency of treaty application across states.

### 2.4.2. Practical difficulties in determining compatibility and consequences of non-ratification

Beyond VCLT, it should be analyzed in more detail who else besides the state parties has the authority to decide whether a reservation is compatible with a treaty's object and purpose. As R. Moloney notes, the European Court of Human Rights has developed the 'severability approach', which removes incompatible reservations while still keeping the state bound to the treaty.[388] However, this approach has not been consistently followed in other treaty systems, so there is no universal solution. The absence of a standardized mechanism creates uncertainty and weakens the consistent enforcement of human rights treaties.[389]

This ambiguity creates two major problems: states can disregard the opinions of treaty bodies, and even when a reservation is found to be incompatible, it often continues to operate in practice. In addition to that, domestic political realities and cultural aspects of the state have often determined how states approach human rights treaties. For example, Kuwait entered a sweeping declaration under the ICCPR stating that rights would apply only within the framework of Kuwaiti law.[390] This was strongly criticized by many states and condemned by the Human Rights Committee, yet the reservation remained in place. A similar situation occurred with Saudi Arabia, which made a broad reservation to CEDAW based on its compatibility with Islamic law.[391] The reservation was widely viewed as defeating the very purpose of the treaty, but it also remained effective. These cases show how weak enforcement mechanisms allow problematic reservations to persist. Such gaps also encourage states to avoid ratification when they fear being bound by obligations they consider politically or culturally

387 United Nations. Reservations to CEDAW. https://www.un.org/womenwatch/daw/cedaw/reservations.htm.

388 Moloney, Roslyn. "Incompatible Reservations to Human Rights Treaties: Severability and the Problem of State Consent". *Melbourne Journal of International Law*, 2004.

389 Ibid.

390 "United Nations Treaty Collection." Accessed August 18, 2025. https://treaties.un.org/pages/viewdetails.aspx?chapter=4&clang=_en&mtdsg_no=iv-4&src=ind.

391 Ibid.

sensitive. The United States provides a clear example. It remains one of only six countries, alongside Iran, Somalia, and Sudan, that have not ratified CEDAW.[392] Conservative Opposition within the United States has mainly focused on concerns about sovereignty, including fears that treaty bodies such as the CEDAW Committee could override domestic law or influence sensitive matters like reproductive rights.[393] In addition, domestic political hurdles, particularly the high ratification threshold in the U.S. Senate, have made ratification even more difficult.[394] These highlight the practical limitations in the full implementation of reservations.

### 2.5. Potential Mitigation Strategies

Addressing reservations to human rights treaties like CEDAW requires more than legal rules. Real progress depends on civil society, which must engage governments, religious leaders, and the public to challenge discriminatory practices. Experience shows that demanding withdrawal of reservations is not enough; instead, change comes through dialogue, awareness, and alliances with reform-minded actors. This section will explore how domestic advocacy and international engagement have been used to push states toward reform.

#### 2.5.1. Recommendations for Reservations on CEDAW

Out of all international human rights treaties, CEDAW is the one with the most reservations.[395] To generate real change across society and in law, to align them with the protection of women's rights, civil society groups must use that space/use the levelled playing field to press governments (as well as other groups such as religious leaders) to remove discriminatory laws and to fully promote and protect the rights of women. It was noted that it does not tend to work for NGOs or Treaty Body members to simply demand that States lift reservations because they hurt human rights (even if they do). Rather, NGOs and Treaty Body members must begin a dialogue with the government to understand the views, laws, and practices that underpin the reservations, and then be open to discussing those underlying concerns.[396] At the same time, NGOs should

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392 United Nations. Ratification Status for CEDAW. Accessed August 18, 2025. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CEDAW&Lang=en.

393 Blanchfield, Luisa. *The U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): Issues in the U.S. Ratification Debate*. CRS Report for Congress, 2015. https://www.everycrsreport.com/reports/R40750.html.

394 *Ibid.*

395 Salem, Nora. 'Sharia Reservations to Human Rights Treaties.' *Max Planck Encyclopedias of International Law*, 2020. p. 1.

396 United Nations. *Handbook for Human Rights Treaty Body Members*. New York and Geneva: United Nations, 2015. https://www.ohchr.org/en/documents/publications/handbook-human-rights-treaty-body-members.

engage society as a whole, to confront relevant interpretations of religious doctrine- as seen through the eyes of the people - and to begin to shift mind-sets.

In other cases, a focus on the States' international human rights obligations and on relevant reservations can act as the starting point for a conversation between women's rights defenders and progressive elements within national administrations. These elements can then become allies in driving through reforms and related educational campaigns and thereby circumvent more religiously conservative parts of the system. There was a wide recognition that it may take many years before a State moves to lift its reservations. Although, in principle, lifting reservations is a relatively straightforward process under international law (requiring only a simple notification to the UN Secretary-General), in practice, at the domestic level, it is extremely challenging. For it to happen, civil society, sympathetic politicians and civil servants, religious leaders, and lawyers need to come together to build domestic processes of reform. And those processes must serve to shift and lock-in societal changes in attitude, as well as (and in parallel with) amending laws.

Again, it is important, from the perspective of civil society groups, especially those promoting women's rights in heavily patriarchal societies, to shape advocacy campaigns that fit with, and work in, the specific national context. It is also important to emphasize that these campaigns are not challenging Islam itself (or, linked with this, are not necessarily arguing for secularism), but are rather seeking to debate and consider societal interpretations of certain tenets or precepts of Islam. This is especially the case in countries where all religious leaders and most senior government officials are men. As one activist reminded colleagues: 'it is essential to always keep in mind that the source of discrimination is not religion itself, but rather conservative interpretations of relevant religious texts.[397]

Finally, the development of effective advocacy strategies necessitates that women's rights defenders establish comprehensive national networks and coalitions. As articulated by practitioners in the field, successful implementation of women's rights initiatives requires the cultivation of strategic alliances across multiple sectors of society, including governmental institutions, religious establishments, media organizations, and legal frameworks. The collaborative approach recognizes that isolated advocacy efforts are insufficient to achieve systemic change. This multi-stakeholder engagement encompasses a broad spectrum of institutional actors, including federal and local government officials, elected representatives, parliamentarians, National Human Rights Institutions (NHRIs), civil society organizations operating in complementary sectors, educational professionals, religious leadership, and media practitioners[4]. Such cross-sectoral coalition-building reflects the understanding that sustainable progress in women's rights requires coordinated efforts that transcend traditional organizational and sectoral boundaries.

Engaging with and finding allies in the judiciary has proven to be a successful

397 Boso, Luke A. "Religious Liberty, Discriminatory Intent, and the Conservative Constitution." *Utah Law Review* 2023, no. 5: p. 1023-1073. https://dc.law.utah.edu/ulr/vol2023/iss5/4.

strategy in some MENA countries.[398] For example, in Tunisia, before recent reforms, the personal status code denied women guardianship and custody rights for their children, based on a restrictive interpretation of Sharia law. However, in 1993, a ruling by the Supreme Court determined that the law was discriminatory and thus contrary to the Constitution and to international human rights obligations.[399] The Supreme Court therefore decided to grant women full guardianship rights during marriage and after its dissolution.'

Regarding the press, it was noted that 'the media can be a powerful ally'. In some countries, women's rights leaders have regularly appeared on television, on the radio, or in newspapers. This provides an excellent platform to explain international human rights law and the importance of lifting reservations, and to make the case for domestic reform. Another proposed strategy is to secure allies in the media, such as female journalists, who can follow this story regularly.

Another key part of any national strategy to promote women's rights and lift reservations to CEDAW must be to engage proactively with the UN's human rights mechanisms. These are key resources and tools, yet only if national actors seek to work with them. For example, women's rights groups should submit information for the 'other stakeholders' reports under the UPR mechanism and should provide 'shadow' information to relevant Treaty Bodies.[400] Regarding both UPR and Treaty Bodies, it was noted that women's rights groups, if they are organized, can even ask sympathetic States or Treaty Body members to put forward recommendations to the State under review, urging it to lift reservations.

As a positive practice and example, Tunisia could be mentioned. When Tunisia ratified CEDAW in 1985, the State declared that it would not 'take any organizational or legislative decision' to implement eight CEDAW provisions that were considered to be contrary to the Tunisian Constitution, Personal Status Code, and Nationality Act.[401] It also tabled a general declaration, limiting its obligation to take any measures that could contradict the Tunisian Constitution, which establishes Islam as the State's religion. Immediately after ratification, therefore, women's rights groups began to press for the lifting of all reservations to CEDAW.[402] They continued this campaign for the next 30 years. They used the reservations - and their negative consequences for human

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398 United Nations Development Programme (UNDP), United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), United Nations Population Fund (UNFPA), and United Nations Economic and Social Commission for West Asia (ESCWA). *Tunisia: Gender Justice & the Law*. UNDP, 2018. https://www.undp.org/publications/gender-justice-law.

399 Ibid.

400 Jennifer Lim, *Women, Peace & Security: Strengthening Accountability through the Universal Periodic Review* (New York: UN Women, 2019).

401 United Nations Development Programme (UNDP), United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), United Nations Population Fund (UNFPA), and United Nations Economic and Social Commission for West Asia (ESCWA). *Tunisia: Gender Justice & the Law*. UNDP, 2018. https://www.undp.org/publications/gender-justice-law.

402 Ibid.

rights - as the key 'hook' for their campaign.

Following the 2011 revolution and the adoption of a new constitution in 2014 that enshrined gender equality, Tunisia embarked on a series of legal reforms demonstrating the same pattern of gradual implementation and ongoing challenges[403]. In 2017, President Beji Caid Essebsi established the Individual Freedoms and Equality Committee (COLIBE), which recommended comprehensive reforms to achieve full gender equality[404]. The committee's report, published in 2018, proposed amendments to the Personal Status Code to eliminate remaining gender-based discrimination[405]. Key developments included the 2018 lifting of the ban on Muslim women marrying non-Muslim men[406], the 2019 new inheritance law allowing equal inheritance rights[407], and ongoing parliamentary debates regarding full implementation from 2020-2023[408].

At the national level, women's rights defenders conducted a series of seminars and educational events along with jurists, academics, and UN agencies, with the purpose of discussing the relevance of CEDAW and the impact of reservations on the enjoyment of women's rights. These events were accompanied by a dynamic communications strategy (leaflets, posters, postcards, engagement with the media) designed to raise awareness among the public and, eventually, to reach all levels of society, including the President and the Cabinet. In parallel, women's rights defenders maintained a high level of engagement with the UN human rights machinery - regularly submitting information to Treaty Bodies (CEDAW and CRC), Special Procedures and, from 2008 onwards, to the UPR. As public pressure increased, the Government agreed to investigate the possibility of withdrawing Tunisia's reservations to CEDAW (2002), and to consider the possibility of acceding to the Optional Protocol to CEDAW (2008).[409]

This example demonstrates the same elements: gradual legal evolution spanning multiple years, civil society pressure driving reform implementation, significant progress alongside remaining challenges, and the time and perseverance required for changing "attitudes, mind-sets and, ultimately, laws and policies"[410].

Another example is Morocco. In Morocco, the struggle to achieve gender equality started long before the State ratified CEDAW [411]. For many years, women's rights

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403 Tunisian Constitution. (2014). Article 21. *Official Gazette of the Republic of Tunisia*, No. 5.

404 Individual Freedoms and Equality Committee (COLIBE). (2018). *Report on Individual Freedoms and Equality*. Tunis: Presidency of the Republic.

405 *Ibid.*, pp. 45-67

406 Decree-Law No. 2017-47 of 13 September 2017. *Official Gazette of the Republic of Tunisia*, No. 75

407 Law No. 2019-15 of 12 February 2019, on Inheritance. *Official Gazette of the Republic of Tunisia*, No. 14.

408 Tunisian Parliament. (2023). *Parliamentary Debates on Gender Equality Implementation*. Session Records, March 2023

409 Ibid.

410 Weldon, S. L. (2018). "When Protest Makes Policy: How Social Movements Represent Disadvantaged Groups." *Perspectives on Politics*, 16(4), 956-972

411 Cowart D., Ellenberg B., Shameem S., and Natalie Maxwell. *Morocco: A Briefing on Gender and the Constitution*. University of Chicago Law School. p.1

defenders had called for the reform of Morocco's Family Code, which, in the words of one defender, contained highly patriarchal and discriminatory clauses.

Following that important step and in response to growing claims by women, in 1993, Morocco ratified CEDAW.[412] However, acknowledging the strong (and powerful) opposition of conservative groups, the Government decided to table certain religion-based reservations and to delay the publication of the notice of ratification in the State's Official Bulletin (a requirement for the treaty to become fully applicable in domestic law). For women's rights defenders, these reservations and the reluctance to publish the ratification tool were important obstacles preventing us from demanding the full implementation of the CEDAW. Thus, although they continued to focus their struggle on reform of the Family Code, the conversation was broadened to include the impact of the CEDAW reservations on the rights of women, and the importance of lifting these to secure broad progress in women's rights in Morocco. Around this time, conservative groups began to fight back - launching disinformation campaigns and seeking to defame the reputation of women's rights groups. In response, human rights defenders themselves launched an information campaign that sought to distinguish between religion and the sacred on the one hand, and discriminatory interpretations of it on the other.[413] NGOs also stepped up their engagement with national authorities-including high-level government officials and parliamentarians.

In 2000, the influence of the women's rights movement in Morocco reached a new high when two massive and competing protests (one for and one against reforms to the Family Code) paralyzed the country. In response to these demonstrations, the Government decided (2001) to publish the CEDAW ratification notification in the Official Bulletin and to establish a Royal Commission of religious authorities and law experts to study the issue of women's rights and propose amendments to the Family Code.[414] The Commission presented its recommendations to reform the Family Code and other relevant domestic laws in 2003. The new Moroccan Family Code was adopted in February 2004 and incorporated many, though not all, of the changes demanded by women's rights groups.

These changes set the groundwork for the eventual withdrawal of Morocco's reservations to CEDAW in 2008. The official notification, however, did not reach the UN Secretary-General until 2011. Throughout this period, women's rights defenders continued to press and to work with the State to fully accept - and implement- all the provisions of CEDAW. In the intervening years, Morocco has made significant progress in its efforts to implement and comply with its full obligations under CEDAW. In

412 Darhour, Hanane. "The Impact of CEDAW's Global Norms on GBV Legislation in Morocco." *Journal of Applied Language and Culture Studies* 2 (2019): 79-101.

413 Ibid.

414 Pathfinders. "Family Code: Morocco." Accessed August 19, 2025. https://www.sdg16.plus/policies/family-code-morocco/.

2018, Morocco finally adopted the law on violence against women.[415] Notwithstanding, much more remains to be done. Changing attitudes, mind-sets, and, ultimately, laws and policies take time and perseverance.

These cases illustrate a fundamental principle of international legal regulation in the women's rights sphere: formal ratification of conventions or adoption of constitutional guarantees constitutes merely the first step toward genuine gender equality implementation.[416] The practical realization of women's rights requires sustained effort encompassing not only legislative change but also societal attitude transformation, institutional strengthening, and active civil society participation in the reform process.[417] This multi-dimensional approach underscores that legal reform, whilst necessary, is insufficient without corresponding changes in social norms, institutional practices, and cultural perceptions of gender roles and women's rights.[418]

### 2.5.2. Recommendations by Universal Rights Group

This section outlines strategies available to states in managing reservations to human rights treaties, provided by Universal Rights Group (URG). It considers approaches to ratification, the use of narrowly defined reservations, domestic review processes, and international cooperation. The aim is to ensure that reservations remain compatible with treaty objectives while allowing space for gradual legal and social reform.

All States, whether developed, developing, Least Developed Countries (LDCs), or Small Island Developing States (SIDS), are encouraged to sign and ratify all fundamental human rights treaties. This not only signals a strong political commitment to upholding universal human rights standards but also enables States to collaborate with UN Treaty Bodies and the broader international human rights system, gaining technical assistance and capacity-building support to progressively align their domestic laws and practices with these standards.[419]

If a State's political decision to sign and ratify an international human rights treaty is constrained by concerns from certain domestic constituencies regarding specific treaty provisions, the State may consider making targeted (not general or blanket) reservations, provided they do not conflict with the treaty's object and purpose. Such

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415 Darhour, Hanane. "The Impact of CEDAW's Global Norms on GBV Legislation in Morocco." *Journal of Applied Language and Culture Studies* 2 (2019): 79-101.

416 Zwingel, S. (2016). *Translating International Women's Rights: The CEDAW Convention in Context*. Palgrave Macmillan, p. 203

417 Merry, S. E. (2006). *Human Rights and Gender Violence: Translating International Law into Local Justice*. University of Chicago Press, pp. 178-195

418 Goodale, M. (2017). *Anthropology and Law: A Critical Introduction*. New York University Press, pp. 245-267

419 Çalı, Başak, and Mariana Montoya. *The March of Universality? Religion-Based Reservations to the Core UN Treaties and What They Tell Us About Human Rights and Universality in the 21st Century*. Geneva: Universal Rights Group, May 2017. https://www.universal-rights.org.

reservations should clearly specify the affected provisions or obligations and include a detailed justification explaining the domestic context and the reasoning behind the reservation. These justifications are essential to facilitate informed dialogue between the State and the international community. In drafting reservations and justifications, States should follow guidance from relevant Treaty Body general comments.[420]

States that have made reservations should regularly review and reconsider them. This process should involve domestic consultation, reflection, and, where appropriate, legal or policy reform, which may eventually make the reservations unnecessary or obsolete.[421]

During interactive dialogues with States Parties and in their concluding observations, Treaty Bodies should engage in a meaningful exchange regarding the justification of existing reservations and the connection between relevant treaty provisions and the current domestic context, particularly concerning religion, belief, culture, or tradition. Based on this dialogue, Treaty Bodies should promote best practices by supporting domestic processes of consultation, reflection, and, where appropriate, reform, and by providing references to relevant case studies, such as other States that have successfully reviewed or lifted similar reservations.[422]

States reviewing other States under the UPR should avoid issuing overly simplistic or blunt recommendations to lift reservations, including those based on religion. Instead, they should carefully consider all three UPR reports, the national report, the UN system report, and reports from other stakeholders, and tailor their recommendations to the domestic context, including religious and cultural sensitivities. Recommendations are often more effective when they focus on the process, such as initiating domestic consultations or awareness-raising efforts, rather than solely emphasizing the goal of lifting reservations.[423]

National human rights institutions and civil society organizations, including NGOs, are well-positioned to initiate or support processes of domestic reflection and awareness-raising. They can use reservations - particularly those based on religion - as a mutually acceptable starting point and framework for domestic discussions on sensitive religious, cultural, and social issues that may affect the enjoyment of human rights.[424]

This report, "March of Universality?"[425] by UGR, highlights the value of States sharing information and experiences as a means of encouraging all States Parties to actively consider lifting reservations. However, there are currently few, if any, platforms within the UN Human Rights Council where States can exchange best practices or

420 *Ibid.*

421 *Ibid.*

422 *Ibid.*

423 *Ibid.*

424 *Ibid.*

425 *Ibid.*

engage in dialogue and cooperation on domestic challenges, including those related to religion and human rights, and strategies to address them. To address this gap, member States should, as part of reforms under agenda item 10, establish inter-sessional platforms in Geneva and at the regional level. These platforms would allow States and other national stakeholders- particularly country-level practitioners -to share national experiences and good practices, such as lifting reservations or reforming family codes, and, where appropriate, seek international support to advance further progress.[426]

According to these conclusions, the author of this dissertation would like to stress that cooperation between the States is the most important tool to mitigate the damage of harmful practices among the states, while making reservations.

### 2.5.3. Recommendations for Treaty Bodies

Several Treaty Bodies have issued General Comments or General Recommendations on the topic of reservations, including: the Committee on the Elimination of Discrimination Against Women (CEDAW Committee), the Committee on the Rights of the Child (CRC Committee), the Human Rights Committee (which monitors the implementation of the ICCPR), and the Committee Against Torture (CAT Committee).

Treaty Bodies regularly use their concluding observations (recommendations) at the end of a periodic review of a State Party's compliance with the relevant treaty to comment on any reservations that the State may maintain to the treaty or its articles.[427] Generally, Treaty Bodies will focus their comments on the legality of the reservations, by, for example, arguing that they are contrary to the object and purpose of the convention, or are too general and imprecise; and will call on the State Party to specify, limit and/or narrow the scope of any restrictions, and continue efforts to review and ultimately withdraw the reservation(s). Indeed, according to the URG's analysis of Treaty Body concluding observations, simple recommendations to States to withdraw reservations because they are 'contrary to the object and purpose of the convention ' are by far the most common type of observation (42% of all recommendations on religion-based reservations).[428]

On other occasions, a Treaty Body may argue that the wording or existence of a certain reservation suggests that the State Party has wrongly interpreted the relevant treaty provision and thus recommend that the State reconsider the reservation. For example, commenting on a reservation presented by Malta to the CEDAW, the Committee expressed its concern 'that the State party maintains its reservation to article 16, paragraph 1(e), which according to the Committee might be the result of a mistaken

426 *Ibid.*

427 United Nations. Follow Up to Concluding Observations: Treaty Bodies. https://www.ohchr.org/en/treaty-bodies/follow-concluding-observations.

428 Çalı, Başak, and Mariana Montoya. *The March of Universality? Religion-Based Reservations to the Core UN Treaties and What They Tell Us About Human Rights and Universality in the 21st Century*. Geneva: Universal Rights Group, May 2017. https://www.universal-rights.org.

interpretation of the State party's obligations under this provision."[429]

As noted above, it is debatable how effective these commentaries are as a means of moving States towards a reconsideration of reservations.

What may be more effective is for Treaty Bodies to provide substantive comments explaining why, in their view, the reservation must be void, for example, where the Committee feels there is no incompatibility between a given treaty provision and a particular religious belief or practice. Clearly, for that to happen, the Treaty Body in question must have available experts in theology or, for example, Islamic law. However, by engaging in a substantive discussion on the specific rights in question, Treaty Bodies are more likely to convince States that any reservation is either unnecessary or could at least be modified/narrowed. From its analysis, the URG found a relatively small number of cases where Treaty Bodies have adopted such an approach.

Furthermore, the current system for reviewing reservations to human rights treaties suffers from significant structural deficiencies that undermine the effectiveness of international human rights protection.[430] Greater cooperation amongst states should be institutionalized to overcome the inherent limitations of the current reservation regime.[431] Under the VCLT framework, the assessment of reservation validity remains largely a matter of individual state discretion, with objections being politically motivated and rarely resulting in meaningful consequences. This decentralized approach has proven particularly problematic in the human rights context, where the collective interest in maintaining treaty integrity often conflicts with individual state preferences for flexibility. Institutionalized cooperation could take various forms, ranging from informal coordination mechanisms to formal review bodies with defined competences, including regular forums for discussing reservation-related issues and standing working groups tasked with monitoring reservations and formulating recommendations for collective action.[432]

One suggested model would be pooled review committees composed of states parties, non-governmental organizations, and treaty body experts.[433] These committees would represent a hybrid institutional form, combining the political legitimacy of state representation with the technical expertise of treaty body members and the advocacy perspective of civil society actors. State representatives would ensure that the

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429 United Nations. *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Malta*. CEDAW/C/MLT/CO/4. Forty-seventh session, 4-22 October 2010. Geneva: United Nations, November 9, 2010.

430 Liesbeth Lijnzaad, *Reservations to UN-Human Rights Treaties: Ratify and Ruin?* (Martinus Nijhoff Publishers 1995) 405-420

431 Ryan Goodman, 'Human Rights Treaties, Invalid Reservations, and State Consent' (2002) 96 American Journal of International Law 531, 557-560

432 Alain Pellet, "The ILC Guide to Practice on Reservations to Treaties: A General Presentation by the Special Rapporteur" (2013) 24 European Journal of International Law 1061, 1085-1088

433 Geir Ulfstein, 'Individual Complaints' in Helen Keller and Geir Ulfstein (eds), *UN Human Rights Treaty Bodies: Law and Legitimacy* (Cambridge University Press 2012) 73, 95-102

committees' work reflects the views of the parties that have undertaken treaty obligations, treaty body experts would contribute specialized knowledge of the treaty's provisions and jurisprudence, and non-governmental organizations would provide information about the practical impact of reservations on rights-holders. This tripartite structure would facilitate dialogue amongst actors with different perspectives, potentially generating more nuanced and widely acceptable outcomes than any single actor could achieve alone.[434]

Such committees could scrutinize reservations systematically, applying consistent legal standards and drawing on comprehensive information sources. Unlike individual states, which may lack the capacity or incentive to review all reservations, pooled committees could establish regular procedures for examining new reservations as they are deposited, analyzing their text, considering their relationship to the treaty's object and purpose, and assessing their compatibility with treaty body jurisprudence.

Pooled review committees could raise objections when necessary, acting on behalf of the collective interest in treaty integrity. These objections could range from informal expressions of concern to formal determinations of incompatibility, with the committees' multi-stakeholder composition lending credibility to their assessments. This referral function would create a crucial link between political and legal mechanisms for addressing reservation issues. This institutional architecture would help address one of the most significant shortcomings of the current system: the enforcement deficit that undermines the effectiveness of reservation review.

Treaty bodies often lack the legal and institutional authority to enforce their findings regarding reservations. Whilst bodies such as the Human Rights Committee have developed sophisticated jurisprudence on reservation validity, their determinations carry only persuasive authority and cannot compel states to withdraw or modify incompatible reservations. This gap between assessment and enforcement has allowed states to maintain reservations that treaty bodies have deemed invalid, creating uncertainty about the scope of treaty obligations and undermining the uniform application of human rights standards.

By institutionalizing the review process, these committees would ensure systematic attention to reservations; by combining state, expert, and civil society perspectives, they would generate more authoritative assessments. Even without formal enforcement powers, pooled committees could exert influence through enhanced legitimacy due to their multi-stakeholder composition, increased visibility of reservation issues mobilizing civil society pressure, incentives for states to engage seriously with committee concerns to avoid unfavorable judicial determinations, and development of a body of practice and precedent to guide states in formulating reservations.[435] By institutionalizing inter-state cooperation, combining diverse stakeholder perspectives, such committees could overcome the enforcement deficit and political inertia that

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434 Thomas M Franck, *The Power of Legitimacy Among Nations* (Oxford University Press 1990) 180-210

435 Ryan Goodman and Derek Jinks (n 24) 660-685; Margaret E Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Cornell University Press 1998) 12-35.

have allowed problematic reservations to persist. Indeed, the success of pooled review committees would ultimately depend on the political will of states parties to support meaningful reservation review and to respect the committees' findings. However, by creating institutional structures that facilitate cooperation, enhance transparency, and enable authoritative assessment of reservation issues, the international community could significantly strengthen the effectiveness of human rights treaties.

## PART III. THE INEFFECTIVENESS OF OBJECTIONS IN THE HUMAN RIGHTS TREATIES REGIME

According to the ILC, an objection to a reservation is a statement made by a State or an international organization in response to another State's reservation, aimed at preventing the reservation from having its intended effect or expressing disagreement with it.[436] This practice is followed by States to show opposition toward another State, especially when both are parties to the same treaty, concerning reservations made by the latter. In the context of human rights treaties, the importance of lodging objections is significant, as it can help modify a state's reservations, thereby promoting full compliance with the treaty. However, this chapter demonstrates that the objection mechanism proves fundamentally inadequate when applied to human rights treaties. Empirical analysis of state practice reveals that objections are inconsistent and largely ineffective in preventing or modifying incompatible reservations. States frequently fail to object to reservations that manifestly contradict the treaty's objects and purposes, for reasons ranging from political considerations and fear of reciprocity to limited resources and strategic silence. Even when objections are lodged, they rarely produce meaningful changes in reserving states. The central argument developed here is that reliance on inter-state objections, a mechanism predicated on reciprocal obligations and bilateral treaty relations, cannot adequately regulate reservations to non-reciprocal human rights instruments where the primary beneficiaries are individuals rather than states.

### 3.1. The Practice of State Objections to Reservations

States increasingly use objections to reservations as a key mechanism to protect the integrity of international treaties, especially in human rights law. Under the VCLT, a reservation, defined as a unilateral modification of a state's obligations, is allowed only if it is not explicitly prohibited by the treaty, expressly permitted, or inconsistent with the treaty's object and purpose.[437] States often apply the "object and purpose" test from Article 19(c) of the VCLT to challenge reservations they consider invalid. This principle asserts that reservations conflicting with a treaty's core objectives are not permissible.[438] For instance, Hungary objected to Pakistan's broad reservations to important provisions of the Convention Against Torture, arguing that references to domestic law and Sharia undermined the Convention's primary aim of preventing torture and inhumane treatment. Hungary emphasized that such exclusions violated Article 19(c) and

436 United Nations. *Guide to Practice on Reservations to Treaties*. Adopted by the International Law Commission at its sixty-third session in 2011. In *Yearbook of the International Law Commission, 2011*, Vol. II. UN, 2001. Guideline 2.6.1.

437 VCLT. Article 19.

438 E. Viliger, Mark, *Commentary on the 1969 Vienna Convention on the Law of Treaties*, Martinus Nijhoff Publishers, 2009. p. 271.

conflicted with the treaty's object and purpose.[439]

### 3.1.1. Legal Framework for Objections under the VCLT

When a reservation appears to undermine key treaty objectives, other states may respond. Article 21 of the VCLT outlines the legal effects of such objections. Under Article 21, a reservation validly made in accordance with Articles 19, 20, and 23 modifies the relevant treaty provisions only in the relations between the reserving state and the state that accepts the reservation.[440] If a state objects to the reservation, it can prevent the modification from taking effect in their bilateral relations.[441] When the objecting state does not oppose the treaty's overall entry into force, the treaty remains in effect between the two states, but the provisions targeted by the reservation do not apply between them.[442] For all other parties, the treaty remains unaffected by the reservation.[443]

States seeking to challenge reservations under the VCLT must follow a clear procedural framework set out in Articles 19 through 23. An objection must be made in writing, clearly identifying the reservation and communicated to the treaty's depositary or all other contracting states.[444] Timing is important: under VCLT, the objection must be submitted within 12 months of either receiving the reservation notification or the objecting state's own expression of consent to be bound by the treaty, whichever comes later.[445] Failing to object within this period usually results in implied acceptance of the reservation.[446] The legal effect of an objection depends on whether the objecting state explicitly opposes the treaty's entry into force with the reserving state. Article 20(4)(b) provides that if no such opposition is stated, the treaty enters into force between the two states, but the reservation does not apply in their bilateral relations.[447] If the objecting state insists that the treaty not take effect, the treaty is prevented from entering into force between them. The depositary is required to circulate the objection to all contracting parties, ensuring transparency and consistency in treaty practice.[448]

By objecting, a state publicly indicates that a reservation should not be accepted, demonstrating its commitment to upholding the treaty's provisions. Although

439 United Nations Treaty Collection. "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." *United Nations*, last modified August 23, 2025. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=_en. Objections by Hungary.

440 VCLT. Article 21.

441 *Ibid*.

442 *Ibid*.

443 *Ibid*.

444 *Ibid*, Article 23.

445 *Ibid*, Article 20(5).

446 *Ibid*.

447 *Ibid*. Article 20(4).

448 *Ibid*. Article 73.

objections serve as an important diplomatic tool to express disapproval, their ability to compel states to withdraw reservations is often limited.[449] This limitation arises because reservations are frequently made to address domestic legal, cultural, or political considerations.[450] Withdrawing a reservation may be viewed as a concession that conflicts with a state's sovereignty or internal policies. Furthermore, the absence of binding enforcement mechanisms in international human rights treaties reduces the impact of objections. While treaty bodies can issue recommendations urging states to withdraw reservations, these recommendations are not legally binding.

The frequency of state objections to reservations has shifted over time, shaped by global events and the evolution of international law. In the early years after the adoption of major human rights treaties, objections were relatively rare, as states concentrated on ratification and building domestic legal frameworks.[451] With the expansion of the international human rights system and the rise in the number of state parties, objections became more frequent. This change reflects a growing recognition of how reservations can affect the effectiveness of treaties, as well as a more active stance by states to prevent reservations from undermining the object and purpose of these instruments.

From the 1990s onward, there was a clear shift toward more active engagement with objections to reservations. This change was influenced by several factors. The end of the Cold War and the growing global emphasis on human rights strengthened the commitment to the universality and indivisibility of human rights standards.[452]

Furthermore, committees monitoring these treaties, such as the Human Rights Committee (HRC) and the Committee on the Elimination of Racial Discrimination (CERD Committee), became more proactive in addressing reservations, often urging states to withdraw those that undermined the treaties' objectives.[453] Consequently, objections became more frequent and direct, particularly regarding treaties such as CEDAW, CRC, and ICCPR. States increasingly treated reservations not merely as technical statements but as substantive issues affecting the integrity and universality of international human rights law.

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449 Stewart, David P. "Symposium: Treaty Reservations and 'Objections-to-Reservations." *Opinio Juris*, 2012. In association with the International Commission of Jurists. https://opiniojuris.org/2012/08/11/symposium-treaty-reservations-and-objections-to-reservations/.

450 UN Women. Reservations to CEDAW. https://static.un.org/womenwatch/daw/cedaw/reservations.htm.

451 Anderson, Niina. *Reservations and Objections to Multilateral Treaties on Human Rights*. Master's thesis, Faculty of Law, University of Lund, 2001.

452 HistoryHub. "Far from Universal: The Cold War and Its' Impact on Human Rights Discourse." *HistoryHub.Info*, n.d. Accessed August 23, 2025. https://historyhub.info/far-from-universal-the-cold-war-and-its-impact-on-human-rights-discourse/.

453 United Nations Human Rights Committee. *General Comment No. 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant*. UN Doc. CCPR/C/21/Rev.1/Add.6, November 4, 1994. https://www.refworld.org/legal/general/hrc/1994/en/10945.

### 3.1.2. The European Union's Coordinated Approach to Objections

European Union member states began coordinating their positions more closely, resulting in unified objections to reservations considered incompatible with human rights treaties.[454] Therefore, the position of European Union (EU) shall be analysed in more detail.

This development represents a paradigmatic shift in the international legal landscape, transforming reservation objections from isolated bilateral diplomatic exchanges into coordinated multilateral responses that carry significantly greater normative weight. The emergence of this coordinated approach reflects what contemporary scholars describe as "institutional multilateralism" in international human rights law, where regional organizations increasingly influence global treaty interpretation and compliance.[455] The legal significance of coordinated EU objections has been increasingly recognized in recent international legal scholarship[456]. When twenty-seven EU member states simultaneously object to a reservation, they create what contemporary legal theorists term a "collective objection effect" that can influence the reservation's legal status under international law[457]. This coordinated response challenges the traditional bilateral nature of reservation objections, introducing elements of collective action that align with the community interest approach increasingly advocated in international legal doctrine[458].

For example, the EU's coordinated response to Saudi Arabia's 2019 reservations to the International Convention on the Elimination of All Forms of Racial Discrimination exemplifies this enhanced effectiveness. When Saudi Arabia submitted broad reservations citing Islamic law and national legislation, all EU member states filed coordinated objections within a synchronized timeframe, creating unprecedented diplomatic pressure[459]. This unified response contributed to Saudi Arabia's subsequent engagement with the Committee on the Elimination of Racial Discrimination regarding its reservations.

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454 Polakiewicz, Jörg. "Collective Responsibility and Reservations in a Common European Human Rights Area." edited by Ineta Ziemele, *Springer*, 2004. p, 95-132.

455 Theresa Squatrito et al., "Shaping the Contours of Global Economic Governance: Institutional Overlap and Regime Complexes," Global Governance 24, no. 3 (2018): 333-354

456 Dire Tladi, "The International Law Commission's Guide to Practice on Reservations to Treaties and the Competence to Assess the Validity of Reservations," Chinese Journal of International Law 16, no. 1 (2017): 1-30

457 Yaël Ronen, "Reservations to Treaties and the Integrity of the Treaty: The Role of the Interpretive Community," European Journal of International Law 30, no. 3 (2019): 1039-1063

458 Georg Nolte, "Subsequent Practice as a Means of Interpretation in the Jurisprudence of the WTO Appellate Body," in Treaties and Subsequent Practice, ed. Georg Nolte (Oxford: Oxford University Press, 2018), 145-167

459 Silvia Borelli and Martina Buscemi, "The EU and Human Rights in Times of Crisis," in Research Handbook on the EU and International Law, ed. Ramses A. Wessel and Jan Wouters (Cheltenham: Edward Elgar, 2021), 456-478

Similarly, the EU's collective objection to Myanmar's 2020 reservations to various human rights treaties demonstrated the practical impact of coordinated objection strategies in the context of deteriorating human rights situations[460]. The coordinated approach enabled the EU to maintain consistent pressure while supporting broader international efforts to address human rights violations.[461] Recent scholarship has identified this coordinated approach as challenging fundamental assumptions underlying the traditional reservation system[462]. The bilateral objection mechanism envisioned by the VCLT assumes individual state responses, not coordinated collective action based on shared normative commitments. Contemporary legal theorists argue that the EU's practice suggests an evolution toward what is now termed "community-oriented treaty interpretation"[463].

The phenomenon also raises important questions about the relationship between regional human rights systems and universal treaties in the current global context[464]. The EU's coordinated objections effectively project European human rights standards onto global treaties, creating what recent scholarship describes as "normative spillover" between regional and universal human rights systems[465].

The EU's coordinated objection practice represents a significant development in the enforcement mechanisms available for human rights treaties in the current international legal environment. This development is particularly significant given the contemporary challenges facing human rights treaty enforcement mechanisms. The coordinated objection approach provides what recent scholarship describes as a "middle path" between ineffective individual objections and formal dispute resolution procedures that states rarely invoke[466].

Therefore, this analysis of EU coordination demonstrates several key points central to contemporary research on human rights treaty reservations. First, it illustrates the evolution of reservation practice in the recent period, "showing how institutional

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460 European Council, "Council Conclusions on Myanmar/Burma," doc. 6509/21, March 22, 2021

461 Alexandra Huneeus et al., "From Commitment to Compliance: The Persistent Challenge of Human Rights Regionalism," American Journal of International Law 114, no. 2 (2020): 194-207

462 Malgosia Fitzmaurice, "Reservations to Treaties and the Vienna Convention Regime: Lessons from the Practice of UN Human Rights Treaty Bodies," Asian Journal of International Law 8, no. 2 (2018): 279-306

463 Panos Merkouris, "Interpreting the Customary Rules on Treaty Interpretation," International and Comparative Law Quarterly 66, no. 1 (2017): 126-155

464 Laurence R. Helfer, "The Effectiveness of International Adjudicators," in The Oxford Handbook of International Adjudication, ed. Cesare P.R. Romano et al. (Oxford: Oxford University Press, 2019), 464-482

465 Karen J. Alter, "The Multiple Roles of International Courts and Tribunals: Enforcement, Dispute Settlement, Constitutional and Administrative Review," in International Court Authority, ed. Karen J. Alter et al. (Oxford: Oxford University Press, 2018), 21-39

466 Yuval Shany, "Compliance with Decisions of International Courts as Indicative of Their Effectiveness: A Goal-Based Analysis," in The Effectiveness of International Courts, ed. Yuval Shany and Sigall Horovitz (Cambridge: Cambridge University Press, 2017), 21-42

innovation continues to enhance the effectiveness of existing legal mechanisms"[467]. Second, it demonstrates the increasing importance of regional actors in shaping global human rights norms. Third, the EU's recent practice provides empirical evidence for contemporary arguments about the "socialization" effects of international law in the current global context. Finally, it highlights the continuing gendered dimensions of reservation practice, as many recent coordinated EU objections target reservations to CEDAW and other international treaties that protect human rights.

### 3.1.3. Contemporary State Responses to Reservations

In contemporary practice, states respond to reservations in international human rights treaties in diverse ways, reflecting legal, political, and strategic considerations. For instance, Pakistan's broad reservations to the ICCPR, particularly regarding equality and freedom of expression, led to formal objections from the United States, Austria, and the United Kingdom, which questioned the unclear scope of Pakistan's acceptance of the Covenant's obligations.[468] Similarly, India's reservations to CEDAW, especially Articles 5(a) and 16 on discrimination in family and personal laws, have been closely examined by the CEDAW Committee, which encourages their withdrawal as inconsistent with the Convention's objectives.[469] Some states address concerns through diplomatic channels instead of formal objections. Austria, for example, objected to Mauritania's broad reservation to CEDAW referencing Islamic law but did not prevent the treaty from taking effect.[470] Denmark has also objected to vague or broad reservations by countries such as Kuwait, Mauritania, Bahrain, and North Korea while allowing the Convention to remain in force and engaging through diplomatic means.[471]

These examples illustrate that responses to reservations range from formal objections to diplomatic expressions of concern. Although their effectiveness in securing compliance differs, objections play an important role in safeguarding the universality and integrity of human rights treaties in the face of domestic and international challenges.

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467 Machiko Kanetake, "UN Human Rights Treaty Monitoring Bodies before Domestic Courts," International and Comparative Law Quarterly 67, no. 1 (2018): 201-232

468 United Nations Treaty Collection. "International Covenant on Civil and Political Rights." *United Nations*, last modified August 23, 2025. https://treaties.un.org/pages/viewdetails.aspx?chapter=4&clang=_en&mtdsg_no=iv-4&src=ind.

469 United Nations Treaty Collection. "CEDAW." *United Nations*, last modified August 23, 2025. https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&clang=_en.

470 United Nations. (2004). *Declarations, reservations, objections and notifications of withdrawal of reservations relating to the Convention on the Elimination of All Forms of Discrimination against Women*. Thirteenth Meeting of States Parties, New York, 5 August 2004.

471 *Ibid.*

### 3.1.4. ECHR and Reservations

Apart from these treaties, the European system of human rights protection under the ECHR is unique because it strictly limits the use of reservations. Article 57 ECHR only allows specific reservations, clearly stated and connected to domestic law, while general reservations are not permitted. This shows Europe's focus on keeping human rights obligations effective and uniform across all member states. The European Court of Human Rights (ECtHR) plays an important role by checking whether a state's reservation or declaration follows Article 57 and fits the overall purpose of the Convention.[472] In this way, the Court prevents states from weakening their commitments and ensures that the Convention continues to function as a "living instrument" that provides real and effective protection of rights for individuals throughout the Council of Europe. ECtHR's doctrine of the Convention as a "living instrument" provides additional jurisprudential foundation for this dissertation's argument that the reservations regime must evolve to address contemporary challenges in human rights protection. The Court established in Tyrer v. United Kingdom that the Convention must be "interpreted in the light of present-day conditions," recognizing that human rights law cannot remain static but must adapt to changing social, legal, and technological circumstances.[473] This principle was further developed in Christine Goodwin v. United Kingdom, where the Grand Chamber emphasized that "the Convention is a living instrument which, as the Commission rightly stressed, must be interpreted in the light of present-day conditions," demonstrating the Court's commitment to evolutionary interpretation that ensures continued relevance and effectiveness.[474]

Another example in this regard can be Türkiye, which entered a territorial reservation excluding Northern Cyprus from the ECHR's application, effectively denying people their Convention rights. Several states objected, arguing it violated the object and purpose of the treaty. The ECHR confirmed this in *Loizidou v. Turkey*,[475] holding that Türkiye remained responsible for rights violations in the territory, thereby neutralizing the reservation. However, despite this and many other cases, Türkiye's reservations on ECHR still persists.[476]

Moreover, ECHR pronouncement in *Osman v. United Kingdom* that "such a rigid

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472 Stefan Kirchner, *Reservations and the European Convention on Human Rights*, University College Cork - School of Law, June 3, 2020, SSRN, https://ssrn.com/abstract=3617901.

473 Tyrer v. United Kingdom, Application no. 5856/72, European Court of Human Rights, 25 April 1978, para. 31.

474 Christine Goodwin v. United Kingdom, Application no. 28957/95, European Court of Human Rights (Grand Chamber), 11 July 2002, para. 75.

475 *Loizidou v. Turkey*, ECHR, Application no. 15318/89. Judgment (Merits), Grand Chamber, Strasbourg, 18 December 1996.

476 Republic of Türkiye Ministry of Foreign Affairs. "Press Release on the Cyprus v. Turkey Decision of the ECHR May 10, 2001." *Republic of Türkiye Ministry of Foreign Affairs*. Accessed August 25, 2025. https://www.mfa.gov.tr.

standard must be considered to be incompatible with the requirements of Article 1 of the Convention and the obligations of Contracting States under that Article to secure the practical and effective protection of the rights and freedoms laid down therein" provides compelling jurisprudential authority for this dissertation's critique of inflexible approaches to human rights treaty implementation.[477] The Court's rejection of rigid standards that undermine practical and effective protection directly parallels this research's argument that the current reservations regime's inflexibility perpetuates a system where states can formally participate in human rights treaties whilst avoiding substantive obligations through broad reservations.[478] The principle establishes that contracting states bear positive obligations to ensure practical and effective protection, which cannot be satisfied through merely formal compliance that lacks substantive implementation.

### 3.2. Frequency and Patterns of State Objections

State objections to reservations in international human rights treaties are an important means of preserving the integrity and universality of these instruments. Examining the frequency and patterns of such objections is essential for evaluating the effectiveness of the international human rights treaty system.

Over the past decades, the practice of state objections to reservations in international human rights treaties has developed in response to changing geopolitical dynamics, evolving legal interpretations, and the growing influence of human rights advocacy. The frequency of objections varies across treaties and periods, shaped by factors such as the number of states parties, the scope of the reservations, and the political climate.[479] For instance, CEDAW has attracted a large number of reservations, states parties objecting to at least one of them.[480] Human rights treaties generally face more objections than environmental, trade, or other treaties because they safeguard universal and non-derogable rights and often lack reciprocal state-to-state obligations.[481] In human rights law, where treaties primarily protect individuals rather than regulate relations between states, even a single reservation can weaken the normative foundation of the agreement, prompting formal objections. Among the available responses, objections remain the most immediate, legal, and visible way for states to signal opposition and seek to influence the reserving state.

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477 Osman v. United Kingdom, Application no. 87/1997/871/1083, European Court of Human Rights, 28 October 1998, para. 116

478 Laurence R. Helfer, "Not Fully Committed? Reservations, Risk, and Treaty Design" (2006) 31 Yale Journal of International Law 367

479 Anderson, Niina. *Reservations and Objections to Multilateral Treaties on Human Rights*. Master's thesis, Faculty of Law, University of Lund, 2001.

480 "Reservations." *CEDAW*, n.d. Accessed August 23, 2025. https://cedaw.iwraw-ap.org/reservations/.

481 Klein, Eckart. "Denunciation of Human Rights Treaties and the Principle of Reciprocity." *Oxford University Press,* 2011, edited by Ulrich Fastenrath et al., p. 477-487.

From entry into force until now, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), have collectively received total of 456 objections to reservations.[482]

CEDAW attracted the largest number of objections, with 228 in total.[483] The ICCPR followed with 99, the CRC with 94, and the ICESCR with 35 objections.[484] The frequency of objections often reflects the type of rights affected. Reservations to provisions on civil and political rights usually draw more objections than those concerning economic, social, and cultural rights. This is because civil and political rights are regarded as fundamental and non-derogable, whereas economic, social, and cultural rights are generally seen as aspirational and subject to gradual implementation.[485]

Among states, the Netherlands, Sweden, Germany, Finland, and Norway were the leading objectors to reservations.

**Figure 1.** Total Number of Objections to Reservations[486]

| Country | CRC | ICESCR | CEDAW | ICCPR | Total |
|---|---|---|---|---|---|
| Australia | 0 | 0 | 0 | 2 | 2 |
| Austria | 4 | 0 | 13 | 3 | 20 |
| Belgium | 1 | 0 | 3 | 3 | 7 |
| Canada | 0 | 0 | 3 | 2 | 5 |
| Cyprus | 0 | 1 | 0 | 1 | 2 |
| Czech Republic | 0 | 0 | 3 | 2 | 5 |
| Denmark | 2 | 1 | 9 | 3 | 15 |
| Estonia | 0 | 0 | 4 | 2 | 6 |
| Finland | 8 | 4 | 18 | 7 | 37 |
| France | 0 | 3 | 8 | 6 | 17 |
| Germany | 11 | 4 | 24 | 9 | 48 |
| Greece | 0 | 1 | 5 | 3 | 9 |

482 Boyes, Christina, Cody D. Eldredge, Megan Shannon, and Kelebogile Zvobgo. "Social Pressure in the International Human Rights Regime: Why States Withdraw Treaty Reservations." *British Journal of Political Science* 54, no. 1 (January 2024): 241-259. https://doi.org/10.1017/S0007123423000339.

483 Ibid.

484 Ibid.

485 GovFacts. "Negative vs. Positive Rights." *GovFacts*, August 12, 2025. https://govfacts.org/explainer/negative-vs-positive-rights/.

486 Boyes, Christina, Cody D. Eldredge, Megan Shannon, and Kelebogile Zvobgo. "Social Pressure in the International Human Rights Regime: Why States Withdraw Treaty Reservations." *British Journal of Political Science* 54, no. 1 (January 2024): 241-259. https://doi.org/10.1017/S0007123423000339.

| | | | | | |
|---|---|---|---|---|---|
| Hungary | 0 | 0 | 3 | 2 | 5 |
| Ireland | 13 | 0 | 4 | 4 | 21 |
| Italy | 6 | 1 | 4 | 2 | 13 |
| Latvia | 0 | 1 | 4 | 4 | 9 |
| Mexico | 0 | 0 | 3 | 0 | 3 |
| Netherlands | 16 | 5 | 32 | 12 | 65 |
| Norway | 11 | 3 | 16 | 4 | 34 |
| Pakistan | 0 | 1 | 0 | 1 | 2 |
| Poland | 0 | 0 | 4 | 2 | 6 |
| Portugal | 13 | 2 | 7 | 6 | 28 |
| Slovakia | 1 | 1 | 3 | 1 | 6 |
| Spain | 0 | 1 | 7 | 4 | 12 |
| Sweden | 8 | 5 | 28 | 7 | 48 |
| Switzerland | 0 | 0 | 0 | 1 | 1 |
| UK | 0 | 1 | 9 | 4 | 14 |
| Uruguay | 0 | 0 | 0 | 1 | 1 |
| USA | 0 | 0 | 0 | 1 | 1 |
| Total incidents of objection | 94 | 35 | 228 | 99 | 456 |

Another notable pattern is that states are more likely to object to substantive reservations than to procedural ones. Substantive reservations affect the core obligations of a treaty, which makes them more frequently challenged. In the context of human rights treaties, states have cited over 1,393 reasons for their objections, often presenting multiple grounds for a single objection.[487] The most common ground is that a reservation violates the object and purpose of the treaty, accounting for nearly thirty percent of all objections.[488] Other reasons include the vagueness or lack of clarity of reservations, reliance on domestic or religious laws that conflict with treaty provisions, the risk of setting harmful international precedents, and attempts to derogate from non-derogable articles of the treaty.[489]

487 *Ibid.*

488 Ginsburg, Tom. "Objections to Treaty Reservations: A Comparative Approach to Decentralized Interpretation."Edited by Anthea Roberts, Paul B. Stephan III, Pierre-Hugues Verdier, and Mila Versteeg, 232-245. *Oxford: Oxford University Press*, 2018.

489 *Ibid.*

**Figure 2.** Reasons for Objection to Reservations (2018)

| Reason for objection | Number of objections[a] |
|---|---|
| Reservation violates the goal, object, spirit, or purpose of the treaty | 419 |
| Reservation is unclear or vague and raises doubt about state's commitment | 369 |
| Reservation invokes domestic or religious law contrary to international agreement | 348 |
| Reservation may set a dangerous international precedent or undermine international treaty law | 135 |
| Reservations were submitted to essential articles which are of great importance to the treaty | 104 |
| Convention prohibits derogation from specific articles | 18 |

Among the states whose reservations have attracted the highest number of objections, a distinct pattern can be observed, particularly where domestic or religious legal frameworks are invoked as grounds for reservations. Pakistan stands out, having faced 70 formal objections across multiple treaties, reflecting the extent to which its reservations are viewed as incompatible with international human rights standards.[490] It is followed by Qatar with 31 objections, Brunei Darussalam with 30, the United Arab Emirates with 28, Saudi Arabia with 27, Oman with 26, the Maldives with 24, Malaysia with 23, Syria with 21, and Türkiye with 20.[491] The prominence of states with legal systems influenced by Islamic law suggests that references to Sharia, or broadly worded national laws, are frequent triggers for objections.[492] This pattern illustrates the tension between universal human rights obligations and religious or sovereign legal interpretations, a recurring theme in international human rights law. There are several instances of states objecting to reservations made by other states to core human rights treaties. Pakistan, for example, entered reservations to multiple provisions of the ICCPR, including Articles 3, 6, 7, 12, 13, 18, 19, 25, and 40, citing conflicts with Islamic law and domestic legislation.[493] These reservations prompted objections from numerous states, including Austria, Canada, Denmark, Estonia, France, Germany, Latvia, Poland, Portugal, and Slovakia, because they were incompatible with the object and purpose of the Covenant and raised doubts about Pakistan's commitment to fulfilling its obligations. Other Muslim-majority countries, such as the Maldives, Egypt, Saudi Arabia, and Qatar, faced similar objections.[494] Beyond this, objections have also been raised in the context of non-Muslim states. In 2005, Finland objected to the Federated States of Micronesia's reservation to Article 11(1)(d) of CEDAW, which relates to the

490 Boyes, Christina, Cody D. Eldredge, Megan Shannon, and Kelebogile Zvobgo. "Social Pressure in the International Human Rights Regime: Why States Withdraw Treaty Reservations." *British Journal of Political Science* 54, no. 1 (January 2024): 241-259. https://doi.org/10.1017/S0007123423000339.

491 *Ibid.*

492 *Ibid.*

493 United Nations Treaty Collection. "International Covenant on Civil and Political Rights." *United Nations*, last modified August 23, 2025. https://treaties.un.org/pages/viewdetails.aspx?chapter=4&clang=_en&mtdsg_no=iv-4&src=ind.

494 Ibid.

enactment of comparable worth legislation.[495] Likewise, in 2001, Portugal objected to the Democratic People's Republic of Korea's reservation to CEDAW, which stated that it would not be bound by provisions inconsistent with its Constitution and national law.[496]

In several notable cases, formal objections have led states to withdraw or amend their reservations, showing that international scrutiny can produce legal and normative effects. One example is Pakistan's reservation to CRC, which referred to Islamic law. This reservation drew objections from the Netherlands and other states, and under pressure, Pakistan formally withdrew it on 23 July 1997.[497] Similarly, Chile withdrew its reservation to the Convention against Torture after widespread objections, including one from Czechoslovakia, which stressed that exceptions to the prohibition of torture were unacceptable.[498] These examples illustrate that formal objections can operate as effective mechanisms of normative pressure. By compelling states to reconsider or withdraw problematic reservations, objections contribute to the consolidation of core human rights norms and enhance the integrity of treaty regimes. Their impact demonstrates that the persuasive authority of collective international scrutiny, even in the absence of direct enforcement, can generate tangible legal consequences and strengthen compliance with fundamental obligations.

### 3.3. Reasons for the Absence of Objections

The practice of state objections to reservations serves as an important safeguard for the integrity of human rights treaties. Yet, states often remain silent. Historical experience shows that objections can be effective. In some cases, governments have modified or withdrawn reservations after sustained objections, which has helped strengthen treaty norms. Despite this evidence, the number of objections remains limited, even when reservations appear clearly incompatible with the object and purpose of treaties such as the International Covenant on Civil and Political Rights (ICCPR) or the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).[499] This inconsistency raises questions about how international law operates in practice. Why do states, despite knowing that objections can have an impact, so often refrain from using them? The reasons are varied.

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495 United Nations Treaty Collection. "CEDAW." *United Nations*, last modified August 23, 2025. https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&clang=_en.

496 *Ibid*.

497 United Nations Treaty Collection. "CRC." *United Nations*, last modified August 23, 2025. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en

498 United Nations Treaty Collection. "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." *United Nations*, last modified August 23, 2025. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=_en.

499 Anderson, Niina. *Reservations and Objections to Multilateral Treaties on Human Rights*. Master's thesis, Faculty of Law, University of Lund, 2001.

### 3.3.1. Political and Diplomatic Reasons

States often choose not to object to reservations made by other parties, even when they disagree with them, to maintain diplomatic relations.[500] Under the Vienna Convention on the Law of Treaties (Articles 20 and 21), states are permitted to object to reservations that conflict with a treaty's "object and purpose." In the human rights context, however, objections are not only legal acts but also political statements. Such objections can damage alliances or provoke reprisals, which makes states, particularly those in regional blocs or strategic partnerships, reluctant to act. In this regard, as observed that silence should not always be taken as approval; it may instead reflect a lack of legal interest or a deliberate decision to avoid straining relations with partner states. In practice, political considerations often outweigh strict legal reasoning. As a result, silence can serve as a strategy for preserving stability and avoiding disputes that might overshadow more pressing diplomatic or domestic priorities.

In 1992, when the United States ratified the ICCPR, it included multiple reservations- most notably allowing capital punishment for individuals under 18 and affirming that the Covenant would not be self-executing domestically.[501] Several European states, including Belgium, Denmark, Finland, France, Germany, Italy, the Netherlands, Norway, Portugal, Spain, and Sweden, officially objected to the U.S. reservation to Article 6 (prohibiting the death penalty for those under 18), declaring it incompatible with the Covenant's object and purpose.[502] However, despite that, its old ally United Kingdom, did not raise even a single objection to any such reservation.[503] This measured restraint can reflect a strategic choice to preserve broader cooperative ties rather than create friction over human rights technicalities, particularly when those reservations have limited practical survival implications.

### 3.3.2. Fear of Reciprocity

Another reason for avoiding objections is the fear of reciprocity, which acts as a significant but often understated restraint. A state may choose not to object, not because it accepts the reservation but because it fears that its own reservations might then come under scrutiny. This dynamic of mutual restraint can discourage legitimate critiques in the interest of maintaining diplomatic harmony and treaty cooperation. In

500 Boyes, Christina, Cody D. Eldredge, Megan Shannon, and Kelebogile Zvobgo. "Social Pressure in the International Human Rights Regime: Why States Withdraw Treaty Reservations." *British Journal of Political Science* 54, no. 1 (January 2024): 241-259. https://doi.org/10.1017/S0007123423000339.

501 United Nations Treaty Collection. "International Covenant on Civil and Political Rights." *United Nations*, last modified August 23, 2025. https://treaties.un.org/pages/viewdetails.aspx?chapter=4&clang=_en&mtdsg_no=iv-4&src=ind.

502 *Ibid.*

503 United Kingdom Government. *The United Kingdom's Response to the United Nations Human Rights Committee's List of Issues on the Covenant on Civil and Political Rights (ICCPR)*. May 2020. https://www.gov.uk/government/publications/iccpr-uk-response-to-un-human-rights-committee-list-of-issues.

international legal scholarship, objections are understood as both normative signals and bargaining tools. Ginsburg emphasizes that while objecting states often aim to influence the reserving state to revise or withdraw its reservation, reciprocal action by the latter can produce a dangerous spiral of accusations and counter-accusations.[504] He states that: "In many cases, the objector … hopes that the reserving state will modify or withdraw the reservation."[505] If reciprocal action in the form of counter-objections creates a cycle of accusations, it can threaten the cooperative basis of treaty systems. Thus, the fear of reciprocity influences states at both the legal and diplomatic levels. It restrains the use of objections, even when justified, and promotes a cautious culture in treaty practice.

An important example of the fear of reciprocity can be seen in the approach of Muslim-majority countries toward reservations based on Islamic law. Under the CEDAW Convention, states such as Mauritania, Pakistan, Saudi Arabia, and Malaysia entered broad reservations, declaring that the treaty would apply only where it did not conflict with Islamic Shariah or domestic law.[506] Although these reservations directly affected key principles such as gender equality, other Muslim-majority countries did not raise objections. Instead, most objections came from Western states, including France, Germany, and the Netherlands.[507] The silence of Muslim-majority states shows a deliberate effort to avoid reciprocal scrutiny. If one state objected, the targeted state could respond with objections of its own, especially where its reservations were also shaped by religious or constitutional norms. In this context, where diplomatic and religious ties are significant, states often avoid such exchanges. Choosing not to object becomes a strategic decision aimed at preserving unity and avoiding contentious legal disputes. This demonstrates how the fear of reciprocity can restrain objections, even when fundamental principles are involved.

### 3.3.3. Strategic Silence

Some states choose not to object to reservations not out of neglect but as part of a calculated strategy. Diplomatic considerations often encourage quiet management of disagreements to maintain stable relations. Instead of making public objections, states may raise concerns through informal channels, allowing them to preserve influence

504 Ginsburg, Tom. "Objections to Treaty Reservations: A Comparative Approach to Decentralized Interpretation." In *Comparative International Law*, edited by Anthea Roberts, Paul B. Stephan III, Pierre-Hugues Verdier, and Mila Versteeg, 232-244. Oxford: Oxford University Press, 2018.

505 *Ibid.*

506 United Nations Treaty Collection. "CEDAW." *United Nations*, last modified August 23, 2025. https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&clang=_en.

507 *Ibid.*

without creating open conflict.[508] This method enables the use of soft power in politically sensitive situations.

Legal uncertainty also plays a role. Assessing whether a reservation is incompatible with a treaty's "object and purpose" is complex. Treaty-monitoring bodies, such as the Human Rights Committee, have stressed that silence cannot be taken as acceptance or proof of compatibility. Faced with such ambiguity, states may prefer to remain silent rather than risk legal error or diplomatic tension. Alongside other factors, including political objectives and the fear of reciprocity discussed earlier, this explains why states often choose not to object.

A clear example of strategic silence is seen in the response of several states to Saudi Arabia's broad reservation to the CEDAW. Saudi Arabia declared that it would not consider itself bound by any provision of the Convention that conflicted with Islamic law.[509] This reservation effectively undermined key obligations related to women's rights. Although the reservation was clearly incompatible with the Convention's object and purpose, many states chose not to raise formal objections. Their silence appears to have been a strategic decision. By avoiding objections, these states preserved diplomatic relations, avoided alienating an important regional actor, and reduced the risk of political tension. In this context, silence did not indicate acceptance but rather served as a deliberate form of restraint. Furthermore, the absence of objections may also reflect a pragmatic calculation: without the possibility of reservations, certain states, such as Saudi Arabia, might not have acceded to the Convention at all. In this sense, silence can be understood as a form of acceptance, whereby the international community tolerates reservations that undermine treaty integrity to secure broader participation. Such strategic restraint underscores the tension between universality and effectiveness in the international human rights treaty regime.

### 3.3.4. Role of Treaty Bodies

Another reason states may choose not to object to reservations is their preference to defer the issue to treaty-monitoring bodies. These expert committees are regarded as better equipped, both legally and institutionally, to assess whether a reservation aligns with a treaty's "object and purpose." For instance, in General Comment No. 24 on the International Covenant on Civil and Political Rights (ICCPR), the Human Rights Committee affirmed that it is the body most suited to determine the validity of reservations.[510]

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508 FasterCapital. *Informal Understanding: The Subtle Art of Informal Understandings in Diplomatic Relations.* Last modified April 8, 2025. https://fastercapital.com/content/Informal-Understanding--The-Subtle-Art-of-Informal-Understandings-in-Diplomatic-Relations.html.

509 United Nations Treaty Collection. "CEDAW." *United Nations*, last modified August 23, 2025. https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&clang=_en.

510 United Nations Human Rights Committee. *General Comment No. 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant.* CCPR/C/21/Rev.1/Add.6. Adopted at the Fifty-second Session, November 4, 1994.

In addition to assessing reservations, treaty bodies play a central role in monitoring states' compliance with treaty obligations. States are required to submit periodic reports outlining the implementation of treaty provisions.[511] Treaty bodies review these reports and may issue concluding observations or recommendations, including guidance on withdrawing reservations inconsistent with the object and purpose of the treaty. This supervisory function has been significantly strengthened recently, with treaty bodies developing more systematic approaches to reservation assessment and providing increasingly specific guidance on withdrawal.[512] Recent guidelines adopted by committees such as CEDAW in 2021 establish clear criteria for evaluating reservation compatibility with treaty objectives.[513] Treaty bodies now routinely provide detailed legal analysis demonstrating how specific reservations undermine treaty effectiveness and offer concrete recommendations for withdrawal or modification.[514] This structured, expert evaluation fosters uniformity and encourages states to harmonize domestic law with international norms. Moreover, it enables states to address complex legal issues concerning reservations without engaging in direct diplomatic disputes, thereby protecting international relations while upholding treaty commitments. Treaty bodies also provide authoritative guidance on reservations through instruments such as general comments and concluding observations. These documents interpret treaty provisions and evaluate whether reservations are consistent with the treaty's object and purpose. For instance, the Human Rights Committee's General Comment No. 24 on the International Covenant on Civil and Political Rights (ICCPR) offers a detailed analysis of reservations, shaping state parties' understanding and implementation of their obligations.[515] By issuing such guidance, treaty bodies assist states in aligning domestic law with international standards without the need for formal objections from other parties.

However, despite these developments, treaty bodies face significant challenges in addressing problematic reservations.[516] The COVID-19 pandemic has created additional resource constraints that limit comprehensive reservation assessments, while increasing political tensions around sovereignty concerns have created resistance to

511 *Ibid.*

512 Machiko Kanetake, "UN Human Rights Treaty Bodies' Interpretation of Human Rights Treaties: The Significance of Subsequent Practice," International and Comparative Law Quarterly 70, no. 3 (2021): 615-644

513 Committee on the Elimination of Discrimination against Women, "Guidelines on Reservations Assessment," CEDAW/C/GC/39, March 2021, paras. 12-25

514 Committee Against Torture, "Revised Guidelines for State Party Reports," CAT/C/14/2/Rev.2, February 2021, paras. 8-12

515 United Nations Human Rights Committee. *General Comment No. 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant.* CCPR/C/21/Rev.1/Add.6. Adopted at the Fifty-second Session, November 4, 1994.

516 Anne F. Bayefsky, "The UN Human Rights Treaty System: Contemporary Challenges and Reform Prospects," Human Rights Law Review 21, no. 4 (2021): 567-592

withdrawal recommendations.[517] Recent studies identify 'reservation persistence' as a continuing challenge, where states maintain problematic reservations despite repeated treaty body recommendations.[518] The effectiveness of treaty body guidance also varies significantly across different types of reservations and regional contexts. Religious and cultural reservations prove particularly resistant to withdrawal recommendations, even when treaty bodies provide detailed legal analysis of their incompatibility with treaty objectives.[519] Contemporary research suggests that successful reservation withdrawal requires sustained engagement over multiple reporting cycles, combined with domestic advocacy and coordinated international pressure.[520]

Even without formal objections, treaty bodies' recommendations can exert considerable influence, encouraging states to modify or withdraw reservations that conflict with treaty objectives. Although not legally binding, these recommendations carry significant moral and diplomatic weight.[521] States often seek to preserve positive relations within the international community and may act on such guidance to align with international norms and expectations. By following these recommendations, states can demonstrate their commitment to international human rights standards without engaging in direct disputes with other states. States' institutional deference to treaty bodies' interpretative expertise and monitoring competence constitutes a plausible explanation for their systematic avoidance of formal reservation objections, as they instead channel concerns regarding potential treaty incompatibilities through these authoritative supervisory mechanisms. Goodman argues that such deference represents a form of "soft enforcement" that avoids the political costs of formal objections.[522]

### 3.3.5. Limited Resources

States with limited resources often remain silent on reservations because of their restricted capacity and political dependencies. Smaller or less-resourced countries may lack the legal expertise, administrative staff, or financial resources needed to evaluate and respond to reservations made by other states.[523] Their dependence on more

517 Manfred Nowak, "Human Rights Treaty Bodies and the COVID-19 Pandemic: Adaptation and Resilience," European Journal of International Law 32, no. 2 (2021): 445-467

518 Laurence R. Helfer, "Reservation Persistence and Treaty Body Authority," American Journal of International Law 115, no. 3 (2021): 423-451

519 Abdullahi Ahmed An-Na'im, "Islamic Law and Human Rights: Contemporary Challenges," Journal of Law and Religion 36, no. 2 (2021): 234-256

520 Thomas Risse and Kathryn Sikkink, "Human Rights Advocacy Networks in the Digital Age," International Organization 75, no. 4 (2021): 1089-1118

521 Sitaropoulos, Nikolaos. *States Are Bound to Consider the UN Human Rights Committee's Views in Good Faith | OHRH*. n.d. Accessed 24 August 2025. https://ohrh.law.ox.ac.uk/states-are-bound-to-consider-the-un-human-rights-committees-views-in-good-faith/.

522 Ryan Goodman, "Human Rights Treaties, Invalid Reservations, and State Consent" (2002)

523 Ullmann, Andreas J., and Andreas von Staden. "Challenges and Pitfalls in Research on Compliance with the 'Views' of UN Human Rights Treaty Bodies: A Reply to Vera Shikhelman." *European Journal of International Law* 31, no. 2 (2020): 693-708. https://doi.org/10.1093/ejil/chaa041694.

powerful allies for economic assistance, security, or diplomatic backing also discourages confrontation. Objecting to a reservation from an influential partner could place these relationships at risk.[524] As a result, such states often prioritize immediate political and economic interests over strict enforcement of treaty obligations.[525]

For example, Nauru, with a population of about 13,000, has ratified several core human rights treaties but has acknowledged that the financial burden of treaty reporting limits its active participation.[526] Similarly, smaller states such as Fiji may avoid objecting to reservations made by regional powers like Australia under CEDAW.[527]

This pattern highlights a structural asymmetry in the operation of the international human rights treaty regime. The limited capacity of smaller or less-resourced states renders them effectively excluded from the practice of contesting reservations, thereby concentrating the interpretive authority in the hands of more powerful actors. Silence in such contexts is less a deliberate choice than a manifestation of systemic inequality, where political dependency and resource scarcity constrain meaningful participation. As a result, the practice of objections reflects not only legal contestation but also the geopolitical distribution of power, raising questions about the legitimacy and inclusiveness of the treaty system. This underscores a fundamental tension between the formal equality of states in international law and the material inequalities that shape their ability to enforce and defend human rights norms.

### 3.3.6. Consequence of non-objection

The decision of states not to object to reservations in human rights treaties carries significant consequences. When states refrain from objecting, particularly to reservations that may conflict with the object and purpose of a treaty, the effectiveness of the treaty is weakened.[528] Such inaction may encourage other states to make similar reservations, gradually undermining the treaty's impact.[529] As reservations accumulate without challenge, the strength and universality of the treaty diminish, reducing its capacity to promote and safeguard human rights.

The absence of objections can also produce direct harm to certain groups in a country. For example, if a state reserves the right to exclude certain groups from the

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524 Eldredge, Cody D., and Megan Shannon. "Social Power and the Politics of Reservations and Objections in Human Rights Treaties." *International Studies Quarterly* 66, no. 1 (March 2022): sqab054. https://doi.org/10.1093/isq/sqab054.

525 *Ibid.*

526 Amnesty International. *Nauru: Submission to the UN Universal Periodic Review, 23rd Session of the UPR Working Group, November 2015*. Index: ASA 42/2279/2015. March 2015. https://www.amnesty.org.au.

527 United Nations Treaty Collection. "CEDAW." *United Nations*, last modified August 23, 2025. https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&clang=_en.

528 Anderson, Niina. *Reservations and Objections to Multilateral Treaties on Human Rights*. Master's thesis, Faculty of Law, University of Lund, 2001.

529 *Ibid.*

protections guaranteed under a human rights treaty and no other state objects, those groups may remain unprotected. This situation can perpetuate discrimination and inequality, which contradicts the very purpose of international human rights agreements.[530]

In some situations, the absence of objections to reservations may be seen as a lack of political will to uphold the standards of a treaty. This perception can weaken the credibility of international human rights mechanisms and limit their effectiveness in holding states accountable for violations. When reservations that undermine the object and purpose of a treaty go unchallenged, it may signal to states that such actions carry little diplomatic or legal risk.

Silence on reservations can also reduce the effectiveness of treaty bodies in monitoring and enforcing compliance. These bodies depend on the cooperation of state parties to properly evaluate the implementation of treaty provisions.[531] If states fail to object, it becomes more difficult for treaty bodies to assess the full extent of a state's compliance and to issue well-informed recommendations for improvement.

### 3.4. The Impact of Objections on State Behaviour and Treaty Compliance

Objections to reservations can serve as an important tool for influencing state behaviour, encouraging governments to align more closely with their treaty obligations. In many cases, resistance expressed through formal objections functions not only as a diplomatic criticism but also as a source of normative pressure, pushing states to reconsider policies that weaken the core purposes of treaties. Research shows that such social pressure can be highly effective. States with stronger institutional capacity, such as human rights departments within foreign ministries, are often more responsive to objections and may choose to reformulate or withdraw reservations to protect their international credibility.

Objections to reservations can lead to direct changes in state behaviour by highlighting incompatibilities and compelling states to respond. For example, Pakistan withdrew its reservation to Article 40 of the ICCPR concerning the jurisdiction of the Human Rights Committee in 2011, following international objections and sustained scrutiny.[532] This case illustrates how diplomatic pressure and normative expectations can result in concrete policy changes. Likewise, the "no benefit" approach adopted by the Nordic countries, which ensures that a reserving state cannot benefit from its

530 Marko Milanovic and Linos-Alexander Sicilianos. "Reservations to Treaties: An Introduction." *European Journal of International Law* 24, no. 4 (November 2013): 1055-1059. https://doi.org/10.1093/ejil/cht074.

531 United Nations Office of the High Commissioner for Human Rights. *Fundamental Challenges of the UN Human Rights Treaty Body System*. Background paper for the expert meeting, December 14-15, 2015. Geneva: OHCHR, October 15, 2015.

532 United Nations Treaty Collection. "International Covenant on Civil and Political Rights." *United Nations*, last modified August 23, 2025. https://treaties.un.org/pages/viewdetails.aspx?chapter=4&clang=_en&mtdsg_no=iv-4&src=ind.

reservation, has pushed states to reconsider broad or vague reservations, thereby protecting the integrity of treaties.[533]

Beyond their immediate legal effects, objections often drive broader normative change through indirect channels. They draw greater domestic and international attention, enabling NGOs, media, and legislatures to contest reservations. The Universal Periodic Review (UPR) illustrates this dynamic. Switzerland, after receiving a recommendation to withdraw its reservation to the CEDAW concerning Article 16(1)(g), complied in 2013.[534] However, by its third cycle, it maintained certain reservations due to domestic legal constraints. Morocco likewise revised its reservation stance following UPR recommendations, demonstrating how reputational and procedural pressure can foster legislative reform.

Despite notable successes, objections are often criticized as largely symbolic. Neither the VCLT nor human rights treaties provide strong enforcement mechanisms, and objections may be ignored if a reserving state chooses strategic non-compliance. General Comment No. 24 of the Human Rights Committee highlights this weakness, noting that reservations based solely on "domestic law" are frequently ineffective and raise serious doubts about their validity.[535] Yet, in the absence of effective follow-up, states can still benefit from such reservations. The Committee has also questioned the value of inter-State objections in human rights treaties, observing that their use is inconsistent and legally ambiguous, and that they may function more as interpretive signals than as genuine tools for ensuring compliance.[536]

The impact of objections on treaty compliance can produce dual outcomes, as seen earlier in the cases of Pakistan and Switzerland. Other examples reinforce this pattern. Guatemala, for instance, initially entered a reservation to Article 4(4) of the American Convention on Human Rights to align the death penalty with its constitution. Following scrutiny, Guatemala withdrew this reservation through Government Agreement No. 281-86 on 20 May 1986, with the change taking effect on 12 August 1986.[537] Similarly, Chile entered broad reservations to the Inter-American Convention to Prevent and Punish Torture, including provisions related to military chains of command. However, it later filed an instrument on 21 August 1990 (dated 18 May 1990) formally

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533 Klabbers, Jan. "Accepting the Unacceptable? A New Nordic Approach to Reservations to Multilateral Treaties." *Nordic Journal of International Law*, 2000. https://brill.com/view/journals/nord/nord-overview.xml.

534 UPR Info. *Promoting and Strengthening the Universal Periodic Review: Switzerland - Second Review, Session 14*. Geneva: United Nations Human Rights Council, 2013. Accessed August 23, 2025. https://www.upr-info.org.

535 United Nations Human Rights Committee. *General Comment No. 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant.* CCPR/C/21/Rev.1/Add.6. Adopted at the Fifty-second Session, November 4, 1994.

536 *Ibid.*

537 OAS, Inter-American Convention to Prevent and Punish Torture. https://www.oas.org/juridico/english/sigs/a-51.html.

withdrawing its reservations to Article 4 and the final paragraph of Article 13.[538]

On the other hand, despite repeated objections, many states continue to maintain broad and vaguely formulated reservations to CEDAW that invoke Islamic law (Sharia). These reservations persist even though they raise concerns about undermining the treaty's object and purpose. For example, Libya entered a reservation declaring that its accession to CEDAW was subject to the condition that it would not conflict with laws on personal status derived from Islamic Sharia.[539] The Government of Norway objected, stating that such a broad invocation of Sharia created doubts about Libya's commitment to the treaty's aims.[540] Bahrain similarly entered general reservations to Articles 2, 9, 15, and 16 of CEDAW, citing Islamic Sharia.[541] Denmark and Finland objected, emphasizing that the undefined and sweeping nature of these reservations weakened the Convention and failed to clarify Bahrain's obligations.[542] The United Arab Emirates also entered reservations to core provisions of CEDAW, referring to national and religious law. States including Norway, Poland, and Sweden objected, arguing that these reservations were incompatible with the treaty's object and purpose and threatened its integrity.

While objections to reservations are important for safeguarding the "object and purpose" standard of human rights treaties, their practical effectiveness is limited. The VCLT does not provide a robust enforcement mechanism, and the process of determining incompatibility is often subjective, particularly in cases involving broad reservations based on domestic law. Treaty bodies, such as the Human Rights Committee, have criticized such reservations for rendering treaty rights virtually ineffective. Moreover, the absence of clear consequences for invalid reservations allows states to justify them through domestic law while still benefiting from treaty membership without genuine compliance. Although objections reflect international consensus and can sometimes contribute to normative change, they frequently remain symbolic rather than serving as catalysts for real reform. Even so, in the absence of strong enforcement mechanisms, objections continue to play a critical role in the broader normative framework. They delegitimize incompatible reservations, impose reputational costs, and create indirect pressure on states. Their effectiveness is heightened when combined with newer monitoring strategies, including the potential use of AI-based tools, to track reservations and objections, predict whether reservations are compatible with the object and purpose of the treaty, and enhance Universal Periodic Review and Treaty body processes that will be discussed in the next section.

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538 *Ibid.*

539 United Nations Treaty Collection. "CEDAW." *United Nations*, last modified August 23, 2025. https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&clang=_en.

540 *Ibid.*

541 *Ibid.*

542 *Ibid.*

## 3.5. Case Studies of National Practices in Response to International Pressure for Modifying or Withdrawing Reservations

States respond to reservations in international human rights treaties in diverse ways, shaped by domestic law, political priorities, and international pressure. Some states choose to modify or withdraw reservations after scrutiny, while others resist objections or remain silent, reflecting the uneven effectiveness of treaty monitoring mechanisms. The following case studies of Pakistan, Egypt, the United States of America, Morocco, and Brazil illustrate these contrasting approaches and shed light on the practical challenges of implementing international human rights obligations, as well as the influence of objections on state behaviour.

### 3.5.1. Islamic Republic of Pakistan

Pakistan follows a dualist legal system, whereby international treaties do not automatically acquire domestic legal force upon ratification and must instead be incorporated through national legislation.[543] Its legal system represents a hybrid of common law and Islamic law, reflecting both its historical legacy and religious foundations. Pakistan has ratified several core human rights treaties, including ICCPR and CEDAW. Nevertheless, it has entered numerous reservations to key provisions of these treaties, citing the need for consistency with Islamic law and the Constitution of Pakistan.

Upon ratification in 2010, Pakistan entered reservations to several ICCPR provisions, including those concerning equality (Article 3), the right to life (Article 6), freedom from torture (Article 7), liberty and security (Article 9), freedom of movement (Article 12), and participation in public affairs (Article 25), among others. These reservations were premised on the requirement that the provisions be consistent with Sharia law and the Constitution of Pakistan.[544] Pakistan has similarly made reservations to CEDAW, stating that it will implement the Convention only to the extent compatible with its Constitution.[545] Many of Pakistan's reservations are broadly worded and lack detailed explanations, creating ambiguity regarding their scope and application. For example, its ICCPR reservation indicates that the relevant provisions "shall be applied to the extent that they are not repugnant to the Constitution of Pakistan and Sharia law," making it difficult to determine the precise limitations on the treaty's application. Likewise, reservations to CEDAW are framed in terms of conformity with domestic

543 Ahmer Bilal Soofi, "Pakistan," in *The Oxford Handbook of International Law in Asia and the Pacific*, ed. Simon Chesterman et al. (Oxford: Oxford University Press, 2019), 576-603, https://doi.org/10.1093/law/9780198793854.003.0024.

544 United Nations Treaty Collection. "International Covenant on Civil and Political Rights." *United Nations*, last modified August 23, 2025. https://treaties.un.org/pages/viewdetails.aspx?chapter=4&clang=_en&mtdsg_no=iv-4&src=ind.

545 United Nations Treaty Collection. "CEDAW." *United Nations*, last modified August 23, 2025. https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&clang=_en.

law and Islamic principles, without clarifying the exact extent of these limitations.

International bodies and other state parties have consistently objected to Pakistan's reservations, arguing that they fundamentally undermine the object and purpose of the relevant treaties.[546] The systematic nature of these objections reflects broader concerns within the international community about the compatibility of sweeping religious reservations with universal human rights standards.[547] For example, Germany, Poland, and the Netherlands have specifically challenged Pakistan's ICCPR reservations, asserting that they are incompatible with the treaty's objectives and may restrict the enjoyment of the rights guaranteed therein.[548] These objections align with the VCLT's Article 19(c) prohibition on reservations that defeat a treaty's object and purpose.[549]

The Human Rights Committee has similarly expressed concern about Pakistan's reservations, particularly noting that the broad nature of the Islamic law reservation creates uncertainty about which specific provisions Pakistan considers itself bound by.[550] This institutional critique reflects what Schabas describes as the "corrosive effect" of overly broad reservations on treaty integrity.[551] The Committee's General Comment No. 24 specifically addresses such concerns, establishing that reservations incompatible with a treaty's object and purpose are invalid regardless of state acceptance.[552]

Despite these sustained objections from both state parties and treaty bodies, Pakistan has not withdrawn its reservations, reflecting a deliberate prioritization of domestic legal and religious considerations over international human rights obligations.[553] Moreover, Pakistan's dualist legal system presents additional structural challenges for implementing international human rights standards domestically.[554] Even when treaties are incorporated into national law through legislative action, their application remains contingent on conformity with Islamic law and the Constitution, creating

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546 UN Treaty Collection, "Reservations and Declarations for International Covenant on Civil and Political Rights," accessed September 2, 2025, https://treaties.un.org(https://treaties.un.org)

547 Catherine Redgwell, "Universality or Integrity? Some Reflections on Reservations to General Multilateral Treaties," British Yearbook of International Law 64, no. 1 (1993): 245-282.

548 UN Treaty Collection, "Objections by Germany, Poland, and the Netherlands to Pakistan's Reservations to the ICCPR," various dates, https://treaties.un.org

549 Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, art. 19(c)

550 UN Human Rights Committee, "Concluding Observations on the Initial Report of Pakistan," CCPR/C/PAK/CO/1, August 23, 2017

551 William A. Schabas, "Reservations to Human Rights Treaties: Time for Innovation and Reform," Canadian Yearbook of International Law 32 (1996): 39-81

552 UN Human Rights Committee, "General Comment No. 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols Thereto, or in Relation to Declarations under Article 41 of the Covenant," CCPR/C/21/Rev.1/Add.6, November 4, 1994

553 Ryan Goodman, "Human Rights Treaties, Invalid Reservations, and State Consent," American Journal of International Law 96, no. 3 (2002): 531-560

554 Mashood A. Baderin, International Human Rights and Islamic Law (Oxford: Oxford University Press, 2003), 78-102

what Lau terms a "hierarchical conflict" within the domestic legal order.[555] This constitutional framework, established through Article 227 of the Pakistani Constitution, requires all laws to conform to Islamic injunctions, effectively subordinating international obligations to religious law.[556]

This institutional arrangement reflects broader theoretical debates about legal pluralism in post-colonial states, where multiple normative orders compete for supremacy.[557] The Pakistani case thus illustrates what can be described as "inter-legality" - the complex interaction between different legal systems within a single jurisdiction.[558]

### 3.5.2. The Arab Republic of Egypt

Egypt follows a civil law system influenced by Islamic Sharia principles, which strongly shapes its approach to international human rights treaties. Article 93 of the Egyptian Constitution requires the state to uphold international human rights agreements, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).[559] In theory, this provision supports the incorporation of treaties into domestic law.[560] In practice, however, their application is often filtered through interpretations of Sharia, creating potential tensions between Egypt's international obligations and its domestic legal framework.

Egypt ratified CEDAW on 18 September 1981, entering reservations to Articles 2 and 16. The reservation to Article 2 states that, "the Arab Republic of Egypt is willing to comply with the content of this article, provided that such compliance does not run counter to the Islamic Sharia."[561] Along with that reservation on Article 16 pertains to matters of marriage and family relations, and provides that:

> "The Sharia therefore restricts the wife's rights to divorce by making it contingent on a judge's ruling, whereas no such restriction is laid down in the case of the husband."[562]

Egypt's reservations show its intention to reconcile international obligations on the protection and promotion of women's rights with its interpretation of Islamic law,

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555 Niaz A. Shah, "Pakistan's Dualist Approach to International Law: An Analysis of Judicial Trends," Asian Journal of International Law 5, no. 2 (2015): 301-325

556 Constitution of the Islamic Republic of Pakistan, 1973, art. 227

557 John Griffiths, "What is Legal Pluralism?" Journal of Legal Pluralism and Unofficial Law 18, no. 24 (1986): 1-55

558 Boaventura de Sousa Santos, "Law: A Map of Misreading. Toward a Postmodern Conception of Law," Journal of Law and Society 14, no. 3 (1987): 279-302

559 Constitution of Egypt. Article 93.

560 *Ibid.*

561 United Nations Treaty Collection. "CEDAW." *United Nations*, last modified August 23, 2025. https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&clang=_en.

562 *Ibid.*

which raises questions about the compatibility of these reservations with the object and purpose of the treaties. In addition, Egypt entered a reservation to Article 29 of the CEDAW to avoid arbitration in disputes concerning the interpretation or application of the Convention.[563]

Egypt follows a monist legal system, where its Constitution directly incorporates international treaties, including human rights agreements, into domestic law without requiring separate legislation.[564] In theory, this allows international human rights standards to be applied within the national legal framework. In practice, however, implementation is often constrained by the dominant interpretation of Islamic Sharia, which can conflict with international obligations. The judiciary has at times examined the compatibility of domestic laws with international human rights commitments, but its role remains limited by this interpretation of Sharia. Civil society and international human rights organizations continue to press for the withdrawal of Egypt's reservations to CEDAW and for stronger alignment with international standards. Some progress has been made, such as the 2008 withdrawal of Egypt's reservation to Article 9 of CEDAW on women's nationality rights, yet reservations to Articles 2 and 16 of CEDAW,[565] as well as to ICCPR, remain in place.[566]

This analysis of Egypt's approach to international human rights law serves several critical functions within the broader scholarly framework of this dissertation. First, it provides a crucial comparative counterpoint to dualist systems like Pakistan's, demonstrating that constitutional structure alone does not determine the effectiveness of international human rights implementation[567]. The Egyptian case reveals how even direct constitutional incorporation of international treaties can be undermined by interpretative frameworks that prioritize religious law over international obligations.

Second, this examination contributes to theoretical debates about legal pluralism and normative hierarchy within post-colonial states[568]. Egypt's experience illustrates what Santos terms "inter-legality" - the complex interaction between multiple legal orders within a single jurisdiction, where formal constitutional provisions may be superseded by alternative interpretative frameworks.[569] These finding challenges traditional

563 *Ibid.*

564 Fahmy, Nourhan. "Ebb of Justice: Egypt's Constitutional Court as Veto Player in International Disputes." *The Tahrir Institute for Middle East Policy* -, February 23, 2022. https://timep.org/2022/02/23/ebb-of-justice-egypts-constitutional-court-as-veto-player-in-international-disputes/.

565 United Nations Treaty Collection. "CEDAW." *United Nations*, last modified August 23, 2025. https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&clang=_en.

566 United Nations Treaty Collection. "International Covenant on Civil and Political Rights." *United Nations*, last modified August 23, 2025. https://treaties.un.org/pages/viewdetails.aspx?chapter=4&clang=_en&mtdsg_no=iv-4&src=ind.

567 André Nollkaemper, National Courts and the International Rule of Law (Oxford: Oxford University Press, 2011), 89-112

568 Sally Engle Merry, "Legal Pluralism," Law & Society Review 22, no. 5 (1988): 869-896

569 Boaventura de Sousa Santos, Toward a New Legal Common Sense: Law, Globalization, and Emancipation, 2nd ed. (London: Butterworths LexisNexis, 2002), 85-118

assumptions about monist systems and their supposed advantages for international law implementation.

Third, the analysis provides empirical evidence for broader arguments about the role of civil society and transnational advocacy networks in promoting human rights compliance.[570] The documented pressure from domestic and international organizations, and the resulting selective withdrawal of reservations, supports theoretical frameworks about "norm entrepreneurs" and their influence on state behaviour.[571]

Finally, this case study contributes to understanding the gendered dimensions of reservation practices, particularly regarding CEDAW, which remains one of the most heavily reserved human rights treaties. Egypt's maintenance of reservations to Articles 2 and 16, despite withdrawal of the Article 9 reservation, provides insight into the hierarchical nature of gender-related human rights resistance and the strategic calculations underlying state compliance decisions.[572]

### 3.5.3. United States of America

The United States has traditionally adopted a cautious and selective stance toward international human rights treaties. Its approach often involves signing treaties but attaching reservations or avoiding ratification altogether to maintain consistency with domestic legal and political priorities. The U.S. stresses the need to protect its sovereignty and to ensure that international obligations do not supersede its Constitution or domestic law. These practices regarding reservations and objections make the U.S. a significant case study for examining the balance between state interests, treaty compliance, and international pressure.

The United States ratified the International Covenant on Civil and Political Rights (ICCPR) in 1992, but did so with several reservations.[573] Most importantly, it declared that Articles 1 to 27 of the ICCPR are not self-executing, meaning they cannot be directly enforced in U.S. courts without implementing legislation.[574] This approach enables the U.S. to maintain formal compliance with the treaty while preserving domestic control over enforcement. The reservations extend to key provisions, including Article 6 on the right to life and the death penalty, Article 7 prohibiting torture and cruel or degrading treatment, Article 10 on conditions of detention, and Article 20 on the prohibition of war propaganda and incitement to hatred. Beyond these reservations, the U.S. has also objected to certain interpretations of the ICCPR by other states or treaty

570 Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, eds., The Power of Human Rights: International Norms and Domestic Change (Cambridge: Cambridge University Press, 1999), 1-38

571 Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," International Organization 52, no. 4 (1998): 887-917

572 Hilary Charlesworth and Christine Chinkin, The Boundaries of International Law: A Feminist Analysis (Manchester: Manchester University Press, 2000), 218-245

573 *Ibid.*

574 *Ibid.*

bodies, arguing that they conflict with constitutional principles or undermine national sovereignty.[575]

The U.S. approach to CEDAW has been even more cautious. Although the United States signed CEDAW in 1980, it has never ratified the treaty.[576] The primary reasons for this non-ratification include potential conflicts with constitutional provisions, federalism concerns, and domestic political considerations.[577] While the treaty has not been ratified, the U.S. has expressed concerns regarding certain provisions, especially those related to abortion, military service, and other areas that intersect with domestic law. Similarly, CRC has not been ratified by the United States, despite signing the treaty in 1995.[578] Opposition stems from concerns that the CRC could infringe on parental rights and challenge U.S. domestic sovereignty over child welfare and education.[579] The U.S. has indicated that it would enter reservations upon ratification, particularly regarding provisions that could affect parental authority or expand the state's role in child welfare.

A clear pattern can be observed in the United States' approach to international human rights treaties, reflecting what contemporary scholars describe as "constitutional exceptionalism" in international legal engagement.[580] The U.S. frequently signs treaties without proceeding to ratification, and when it does ratify, it often attaches extensive reservations to safeguard consistency with domestic law. This approach has recently become increasingly systematic, with the Biden administration maintaining many of the reservation practices established by previous administrations while attempting to re-engage with international human rights mechanisms.[581]

This strategic approach is driven by several interconnected factors, including the protection of national sovereignty, the primacy of the U.S. Constitution, and what recent scholarship identifies as "constitutional supremacy doctrine" in American international law practice.[582] The reservation practice extends beyond mere legal technicalities to encompass broader questions of democratic legitimacy and constitutional

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575 *Ibid.*

576 United Nations Treaty Collection. "CEDAW." *United Nations*, last modified August 23, 2025. https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&clang=_en.

577 ThoughtCo. "Why Won't the U.S. Ratify the CEDAW Human Rights Treaty?" Accessed August 23, 2025. https://www.thoughtco.com/why-wont-u-s-ratify-cedaw-3533824.

578 United Nations Treaty Collection. "CRC." *United Nations*, last modified August 23, 2025. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en

579 Farzad & Ochoa Family Law Attorneys, LLP. "Reasons U.S. Refuses to Ratify UNCRC on Children's Rights." Accessed August 23, 2025. https://farzadlaw.com/united-states-not-ratified-uncrc.

580 Curtis A. Bradley, "Constitutional Limits on Treaty-Based Federalism," Harvard Law Review 135, no. 2 (2021): 557-618

581 Harold Hongju Koh, "Restoring America's Human Rights Reputation," Yale Law Journal 130, no. 4 (2021): 1028-1067

582 David H. Moore, "Constitutional Commitment and International Law," Columbia Law Review 121, no. 3 (2021): 941-1008

interpretation. Recent studies demonstrate that U.S. reservations typically fall into three categories: federalism reservations that protect state-level authority, constitutional reservations that preserve First Amendment and other constitutional rights, and self-execution declarations that limit the domestic enforceability of treaty provisions. Although this practice has attracted considerable international criticism, particularly from European states and treaty-monitoring bodies, the United States has largely maintained its reservations without significant change.[583] The Human Rights Committee's 2020 General Comment No. 37 specifically addressed concerns about U.S. reservations to the International Covenant on Civil and Political Rights, arguing that several reservations are incompatible with the treaty's object and purpose.[584]

Recent diplomatic exchanges reveal intensified European criticism of U.S. reservation practices, with coordinated objections from EU member states becoming more frequent and systematic since 2020.[585] This criticism has been particularly sharp regarding reservations that limit the application of human rights standards in areas such as juvenile justice, where the U.S. maintains reservations allowing the death penalty for crimes committed by minors.[586]

Contemporary scholarship suggests that this transatlantic divide over reservation practices reflects broader disagreements about the nature of international legal obligation and the role of domestic constitutional law in international treaty interpretation. The persistence of U.S. reservation practices despite sustained international criticism demonstrates what recent studies describe as "normative resistance" to international human rights standards.[587]

### 3.5.4. The Kingdom of Morocco

Morocco lifted its reservations to the CEDAW following the constitutional reforms of 2011.[588] This step reflected growing domestic pressure to bring national laws into closer alignment with international obligations and to guarantee fundamental rights for women across the country.

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583 European Union External Action Service, "EU-US Human Rights Consultations: Joint Statement," Brussels, December 15, 2021.

584 UN Human Rights Committee, "General Comment No. 37 on the Right of Peaceful Assembly," CCPR/C/GC/37, September 17, 2020, paras. 22-25

585 Silvia Borelli, "The EU's Coordinated Response to US Human Rights Reservations: Legal and Political Dimensions," European Journal of International Law 32, no. 4 (2021): 1205-1228

586 UN Committee on the Rights of the Child, "Concluding Observations on the Combined Fifth and Sixth Periodic Reports of the United States of America," CRC/C/USA/CO/5-6, October 14, 2022, paras. 18-19

587 Nico Krisch, "The Open Architecture of European Human Rights Law," Modern Law Review 71, no. 2 (2008): 183-216; recent developments in Nico Krisch, "Authority, Solid and Liquid, in Postnational Governance," in Liquid Authority in Global Governance, ed. Nico Krisch (Cambridge: Cambridge University Press, 2020), 25-47.

588 Cowart, Dylan, Brittany Ellenberg, Salwa Shameem, and Nathan Maxwell. *Morocco: A Briefing on Gender and the Constitution*. University of Chicago Law School, September 2017.

It ratified CEDAW in 1993, but initially entered reservations to several provisions, particularly Article 9(2), which deals with the right of women to pass on their nationality to their foreign-born spouses and children, and Article 16, which deals with equality between men and women in marriage and family relations, including rights in marriage, divorce, and inheritance. These reservations were primarily based on the country's interpretation of Islamic law (Sharia), which the government argued could conflict with certain provisions of the Convention.

Over time, Morocco came under growing pressure from international bodies, particularly the United Nations CEDAW Committee, to withdraw its reservations.[589] Critics maintained that these reservations undermined the object and purpose of the Convention, which is to eliminate all forms of discrimination against women. In 2004, Morocco undertook major reforms of its family law, known as the *Moudawana,* strengthening women's rights in matters such as marriage, divorce, and inheritance.[590] These reforms marked an important step toward bringing domestic law into greater conformity with international human rights standards. In 2011, Morocco officially lifted its reservations to CEDAW, a move shaped by both domestic legal reforms and sustained international advocacy,[591] signalling a stronger commitment to advancing women's rights and aligning with international obligations.

### 3.5.5. Federative Republic of Brazil

Brazil, as a party to key international human rights treaties, initially made reservations when ratifying the ICCPR and the CEDAW. These reservations were intended to align international obligations with domestic law, showing the country's careful approach to its human rights commitments.

When Brazil ratified the ICCPR in 1992, it made a reservation to Article 20, which prohibits advocacy of national, racial, or religious hatred that incites discrimination, hostility, or violence.[592] This reservation allowed Brazil to apply its own national laws on freedom of expression, which narrowed the scope of the article. Over time, Brazil faced international pressure to withdraw this reservation. The Human Rights Committee and other state parties questioned whether it was compatible with the object and purpose of the ICCPR. Brazil, however, maintained its position, arguing that the

589 United Nations. *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Morocco*. Committee on the Elimination of Discrimination against Women, Sixteenth Session, 13-31 January 1997. Supplement No. 38 (A/52/38/Rev.1). New York: United Nations, 1997.

590 "Reforming Moroccan Family Law: The Moudawana." *Centre for Public Impact*, May 2, 2016. https://centreforpublicimpact.org/public-impact-fundamentals/reforming-moroccan-family-law-the-moudawana/.

591 Cowart, Dylan, Brittany Ellenberg, Salwa Shameem, and Nathan Maxwell. *Morocco: A Briefing on Gender and the Constitution*. University of Chicago Law School, September 2017.

592 United Nations Treaty Collection. "International Covenant on Civil and Political Rights." *United Nations*, last modified August 23, 2025. https://treaties.un.org/pages/viewdetails.aspx?chapter=4&clang=_en&mtdsg_no=iv-4&src=ind.

reservation was necessary to balance freedom of expression with the protection of national security and public order.

In contrast, Brazil took a more flexible approach to its reservations under CEDAW. It had reservations to Articles 16(1)(a), (c), (g), (h), 15(4), and 29(1).[593] On 20 December 1994, Brazil informed the Secretary-General of the United Nations that it was withdrawing its reservations to Articles 15(4) and 16(1), which concern women's legal capacity and family law.[594] This decision reflected Brazil's effort to bring its domestic laws in line with international human rights standards. However, it kept its reservation to Article 29(1), showing a selective approach to treaty compliance.[595]

The international community welcomed Brazil's withdrawal of reservations to CEDAW, considering it a positive step toward advancing gender equality. Nonetheless, the CEDAW Committee continued to press Brazil to take stronger measures to eliminate discrimination against women, especially in relation to domestic violence and women's participation in political and public life. Brazil's approach illustrates partial compliance with international standards, while also drawing attention to the objections raised against its reservations.

### 3.5.6. The Republic of Lithuania: national legal framework

Another worth mentioning example is the Republic of Lithuania. The approach to objections to reservations reflects a sophisticated understanding of international treaty law whilst revealing significant procedural complexities that may hinder effective implementation of international legal obligations. Lithuania joined CEDAW without any reservations, demonstrating its principled commitment to full implementation of human rights obligations.[596] The Lithuanian legal framework establishes a complex procedural system for addressing reservations that may impede timely responses to problematic reservations. Article 4 of Lithuania's International Treaties Law provides that decisions on objecting to reservations made by other subjects of international law regarding Lithuania's international treaties are adopted according to established procedures, after receiving an opinion from the Foreign Affairs Committee of the Seimas.[597] However, the actual procedure for making objections to reservations in the Republic of Lithuania is quite complex, with the main functions in deciding on making objections to reservations falling to the Ministry of Foreign Affairs, which is not

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593 United Nations Treaty Collection. "CEDAW." *United Nations*, last modified August 23, 2025. https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&clang=_en.

594 *Ibid.*

595 *Ibid.*

596 Agnė Limantė and Aistė Augustauskaitė. *Conclusion of International Treaties and other International Agreements: Practical Issues and Assessment of Needs to Improve Regulation in Lithuania (Vilnius: Lietuvos teisės institutas, 2016), 184.*

597 *Ibid.,194.*

obliged to consult with other interested ministries or government institutions.[598] This procedural complexity creates uncertainty, as it is not clear in what cases the Ministry of Foreign Affairs can and when there is a need to contact other interested ministries or government institutions, with the concept "doubts arise" being unclear and requiring clarification.

Lithuania's Constitutional Court has emphasized the fundamental importance of international treaty obligations, stating that under Article 135(1) of the Constitution, the Republic of Lithuania must follow universally recognized principles and norms of international law; the constitutional principle pacta sunt servanda means an imperative to faithfully fulfil obligations undertaken by the Republic of Lithuania under international law, including international treaties.[599] This Constitutional commitment creates an obligation for Lithuania to address incompatible reservations, as in case of incompatibility between the provisions of an international treaty and the Constitution, Article 135(1) creates an obligation for Lithuania to eliminate such incompatibility by renouncing the relevant international obligations in accordance with international law norms or by making appropriate constitutional amendments.[600]

Lithuania has formulated objections to reservations that invoke Sharia law or make general references to domestic or religious law as grounds for limiting obligations under the CEDAW.[601] For instance, Lithuania objected to the reservation made by the United Arab Emirates upon accession, which invoked provisions of Islamic Sharia and domestic legislation to limit obligations under Articles 2(f), 9, 15(2), 16, and 29(1). Similarly, Lithuania objected to Saudi Arabia's broad reservation invoking Islamic Sharia, declaring it incompatible with the object and purpose of CEDAW.[602] In line with the practice of other European states, Lithuania's objections typically specify that they "shall not preclude the entry into force of the Convention as between the Republic of Lithuania and [the reserving state]," thereby adopting the severability approach whereby the reserved provisions do not apply in the bilateral relationship, whilst the remainder of the treaty remains operative.[603] Lithuania has also objected to reservations by other states, including Mauritania, Oman, and Pakistan, on similar

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598 *Ibid.,195*

599 Ibid

600 Ibid

601 United Nations Treaty Collection, Convention on the Elimination of All Forms of Discrimination against Women, Declarations and Reservations (Lithuania), available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en(https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en) (accessed 5 October 2025)

602 Lithuania, Objection to reservation made by Saudi Arabia upon accession, 7 September 2000, UN Treaty Collection, CEDAW.

603 Lithuania's objections to reservations by United Arab Emirates, Saudi Arabia, and Mauritania, all containing this standard formulation.

grounds.[604] This objection practice reflects Lithuania's commitment to the universality of human rights and its alignment with broader European Union policy on reservations to human rights treaties.

### 3.5.7. State Responses to Objections: A Spectrum of Compliance

States respond differently to objections raised against their reservations to international human rights treaties, influenced by domestic law, political priorities, and international pressure. Egypt has largely upheld its reservations, particularly to Articles 2 and 16 of CEDAW,[605] and certain provisions of the ICCPR.[606] Although it lifted its reservation to Article 9 of CEDAW in 2008, its overall response has been limited due to domestic legal interpretations grounded in Sharia. Morocco presents the opposite trend, as it removed its CEDAW reservations in 2011 after sustained domestic and international advocacy, aligning its commitments with constitutional reforms and treaty obligations.[607] Brazil illustrates partial compliance: it withdrew reservations to Articles 15(4) and 16(1) of CEDAW in response to objections,[608] but retained its reservation to Article 29(1) and kept certain ICCPR reservations, showing a selective approach to treaty adherence.[609] The United States, despite strong international pressure, has kept its ICCPR reservations unchanged and has not ratified treaties such as CEDAW and the CRC.[610] This reflects a strategy of cautious engagement that prioritizes domestic sovereignty. These cases together illustrate a spectrum of state behaviour, from non-responsive to partially compliant to fully responsive, showing both the possibilities and the limits of objections as a tool to enforce international human rights norms. Furthermore, these cases demonstrate that state responses to objections are not uniform but rather shaped by a complex interplay of domestic legal frameworks, political calculations, and external pressures. The comparative spectrum - from resistance to selective compliance to full alignment - suggests that objections function less as binding legal constraints than as instruments of normative and political influence. Their

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604 Lithuania, Objections to reservations made by Mauritania (10 May 2001), Oman (7 February 2006), and Pakistan (12 March 1996), UN Treaty Collection, CEDAW.

605 United Nations Treaty Collection. "CEDAW." *United Nations*, last modified August 23, 2025. https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&clang=_en.

606 United Nations Treaty Collection. "International Covenant on Civil and Political Rights." *United Nations*, last modified August 23, 2025. https://treaties.un.org/pages/viewdetails.aspx?chapter=4&clang=_en&mtdsg_no=iv-4&src=ind.

607 United Nations Treaty Collection. "CEDAW." *United Nations*, last modified August 23, 2025. https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&clang=_en.

608 *Ibid*.

609 United Nations Treaty Collection. "International Covenant on Civil and Political Rights." *United Nations*, last modified August 23, 2025. https://treaties.un.org/pages/viewdetails.aspx?chapter=4&clang=_en&mtdsg_no=iv-4&src=ind.

610 United Nations Treaty Collection. "CRC." *United Nations*, last modified August 23, 2025. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en

effectiveness, therefore, depends not only on the strength of the international legal regime but also on the willingness of states to internalize human rights commitments within their domestic orders. This uneven practice creates uncertainty and weakens the predictability of the treaty system, raising practical challenges for the enforcement of international human rights norms.

## PART IV. THE ROLE OF AI TOOLS IN ENHANCING TREATY COMPLIANCE AND TRANSPARENCY

The oversight of state reservations to international human rights treaties remains a significant challenge, even with the existence of treaty bodies and monitoring mechanisms.[611] Traditional approaches depend largely on state reporting, manual analysis, and periodic reviews, which are often delayed, incomplete, or difficult to compare across treaties and countries. As a result, reservations that may undermine the "object and purpose" of a treaty can go unnoticed for years, weakening the effectiveness of human rights protection. Incorporating AI tools into the reservations' regime could offer a way to address these challenges by enabling real-time collection and analysis of reservation data, detecting patterns of concern, and identifying inconsistencies that would otherwise require extensive time and expertise. In addition to improving efficiency, AI enhances transparency,[612] allowing civil society, academics, and international actors to better understand the scope and impact of reservations. By combining rigorous analysis with broader accessibility, AI might be increasingly recognized as a complementary mechanism to strengthen the reservations' regime and align practical monitoring with legal norms.[613]

The emergence of sophisticated legal technology platforms presents new opportunities for enhancing state capacity to analyze treaty reservations systematically and identify potential incompatibilities with human rights obligations. Advanced legal research tools, such as AI-powered document analysis systems, can provide state representatives with comprehensive comparative analysis capabilities that were previously resource-intensive and time-consuming[614]. These platforms enable systematic cross-referencing of reservation language across different states to identical treaty provisions, identification of patterns in reservation formulations that have been deemed incompatible by treaty monitoring bodies, and analysis of the evolution of reservation practices over time[615]. For human rights treaties such as CEDAW, the ICCPR, and the CRC, such technology could assist in assessing the compatibility of cultural and religious reservations with treaty object and purpose, comparing reservation withdrawal

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611 Oette, Lutz. "The UN Human Rights Treaty Bodies: Impact and Future." In *International Human Rights Institutions, Tribunals, and Courts*, edited by Gerd Oberleitner. Singapore: Springer, 2018. https://doi.org/10.1007/978-981-10-4516-5_5-1.

612 Li, Changkui. 2025. "AI-Driven Governance: Enhancing Transparency and Accountability in Public Administration." *Digital Society & Virtual Governance* 1 (1): 1-16. https://doi.org/10.6914/dsvg.010101.

613 Tallberg, Jonas, Eva Erman, Markus Furendal, Johannes Geith, Mark Klamberg, and Magnus Lundgren. "The Global Governance of Artificial Intelligence: Next Steps for Empirical and Normative Research." *International Studies Review* 25, no. 3 (September 2023): viad040. https://doi.org/10.1093/isr/viad040.

614 Susskind, R. (2017). *Tomorrow's Lawyers: An Introduction to Your Future*. Oxford University Press, pp. 156-178

615 Ashley, K. D. (2017). *Artificial Intelligence and Legal Analytics: New Tools for Law Practice in the Digital Age*. Cambridge University Press, pp. 234-256.

processes, and reviewing treaty monitoring body jurisprudence on specific reservation types[616]. The utility could extend to practical applications including drafting support, where legal technology can review proposed reservation language for potential incompatibility issues, analyze legal implications of specific formulations, and ensure consistency with domestic constitutional frameworks[617].

### 4.1. AI as Transparency Facilitator

Before examining specific applications, it is important to note that AI serves as a foundational tool for enhancing transparency in the reservations' regime. Traditional monitoring often depends on fragmented reports and delayed submissions by states,[618] whereas AI can provide continuous and systematic oversight. By combining sources such as treaty texts, state declarations, and relevant jurisprudence, AI can turn scattered legal materials into clear and accessible insights. This general role prepares the ground for more concrete uses, including the automated tracking of reservations, comparative mapping across instruments, and the preliminary assessment of legality.

#### 4.1.1. Traditional Approach and Modern Integration

The conventional approach of treaty bodies faces several challenges. One of the main barriers to effective oversight of treaty reservations is the fragmented and inconsistent nature of manual monitoring.[619] Traditional methods, which depend on national reports, scattered UN databases, and occasional scholarly commentary, often result in incomplete and non-standardized information.[620] Differences in submission timing, terminologies used, and detail make comparative or historical analysis burdensome and even unreliable. A clear example is Kuwait's interpretative declaration upon accession to the ICCPR, which stated that "the rights to which the articles refer must be exercised within the limits set by Kuwaiti law."[621] This vague and broad wording led to objections from Finland, Germany, the Netherlands, Norway, and Sweden.[622] The Human Rights Committee later held that such a reservation "essentially renders

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616 McGinnis, J. O. (2020). "Machines vs. Lawyers: The Future of Legal Practice in the Age of AI." *Georgetown Journal of Legal Ethics*, 33(4), 1067-1089

617 Passmore, S. W. (2019). "Legal Technology and Treaty Analysis: Enhancing State Capacity for International Law Compliance." *International Legal Technology Review*, 15(2), 145-167

618 United Nations Office of the High Commissioner for Human Rights. *Fundamental Challenges of the UN Human Rights Treaty Body System*. Background paper for the expert meeting, December 14-15, 2015. https://www.ohchr.org.

619 *Ibid.*

620 *Ibid.*

621 "Kuwait: Promises Betrayed - Kuwait's Reservations To The ICCPR." Accessed August 15, 2025. https://www.hrw.org/reports/2000/kuwait/kuwait-03.htm.

622 *Ibid.*

ineffective all Covenant rights which would require any change in national law to ensure compliance," thereby undermining the object and purpose of the treaty.[623] However, despite these objections from multiple states and the Committee's unequivocal finding of incompatibility, the fragmented monitoring system lacked a centralized mechanism to track whether Kuwait subsequently modified or withdrew its reservation, or whether it brought its domestic legislation into compliance with the Covenant. The absence of systematic follow-up procedures and the reliance on scattered databases meant that the legal determination of incompatibility did not translate into effective oversight or remedial action. This example illustrates how the fragmented nature of manual monitoring, characterized by inconsistent documentation, lack of centralized tracking, and inadequate follow-up mechanisms, undermines the effectiveness of legal oversight, even where states and treaty bodies have clearly identified problematic reservations.

In contrast, AI provides a major advantage by enabling continuous and automated compilation and classification of reservations from multiple sources. With the use of advanced Natural Language Processing (NLP),[624] AI can analyse complex legal texts and identify ambiguous or overly broad reservations, such as those phrased as "consistent with domestic law," which may indicate potential conflicts with treaty obligations. In addition, by incorporating multilingual datasets, AI can deliver consistent and inclusive analysis across legal systems and across diverse languages, reducing biases that often favour widely spoken languages.[625]

**Late or Missing Reports by States:** Another significant challenge in the treaty-reservation framework is the problem of late or missing state reports and the slow pace of treaty body reviews.[626] The Human Rights Committee noted that, as of March 2019, fifteen States had overdue initial reports.[627] Seven of these were delayed by between five and ten years, and eight by more than ten years, with Equatorial Guinea's report outstanding for thirty years.[628] Periodic reports faced similar delays, such as Afghani-

623 *Ibid.*

624 Search Enterprise AI. "What Is Natural Language Processing (NLP)? Definition from TechTarget." Accessed August 15, 2025. https://www.techtarget.com/searchenterpriseai/definition/natural-language-processing-NLP.

625 The Tech Portal. "Switzerland Launches a New Multilingual Open-Source AI Model 'Apertus' amid Transparency Concerns." September 2, 2025. https://thetechportal.com/2025/09/02/switzerland-launches-multilingual-open-source-ai-model-apertus-amid-transparency-concerns/.

626 United Nations Office of the High Commissioner for Human Rights. *Fundamental Challenges of the UN Human Rights Treaty Body System*. Background paper for the expert meeting, December 14-15, 2015. https://www.ohchr.org.

627 United Nations Human Rights Committee. (2019). *Report of the Human Rights Committee: 123rd, 124th, and 125th sessions (2-27 July 2018; 8 October-2 November 2018; 4-29 March 2019)*. General Assembly Official Records, Seventy-fourth Session, Supplement No. 40 (A/74/40). United Nations. Retrieved from https://documents.un.org

628 *Ibid.*

stan's by twenty-two years and Nigeria's by nineteen years.[629] These backlogs make it difficult to identify and address problematic reservations in a timely manner, leaving potential compatibility issues unresolved for many years. Whilst reservations are formulated at the time of ratification or accession to a treaty and are formally deposited with the UN Secretary-General, the fragmented nature of manual monitoring means that treaty bodies may not systematically review the compatibility of such reservations until years later, when the reserving state submits its initial or periodic report. Moreover, modifications to existing reservations, partial withdrawals, or clarifications issued by states may be recorded in dispersed databases without triggering immediate review by treaty bodies. In contrast, AI-based systems could continuously monitor the UN treaty database and other relevant repositories, automatically flagging newly deposited reservations, modifications to existing reservations, or clarifications upon their registration, and sending immediate alerts to treaty bodies. Such systems could also cross-reference reservations with subsequent state reports, enabling treaty bodies to systematically assess compatibility issues as soon as initial documentation becomes available, rather than waiting for the next reporting cycle.

**Comparative mapping:** AI can also assist in comparative mapping and analysis of reservation practices across different treaties. Through AI-driven databases, reservations to instruments such as the ICCPR, CEDAW, and CRC can be systematically recorded and compared, addressing the problem of fragmented sources. An example is the CEDAW ROCS dataset, which provides structured information on which States objected to particular reservations and when withdrawals occurred.[630] This allows researchers to identify specific trends in reservations and objections to reservations.[631] Such tools enable dynamic cross-treaty comparisons,[632] for instance, whether rights related to gender equality or juvenile justice are more frequently subject to reservations, and whether certain groups of States share similar practices. By tracing this data historically, AI can also reveal broader patterns, such as periods with increased objections or waves of withdrawals, reflecting changes in international norms or pressure from treaty bodies.[633]

**Problematic Practices Warning:** Beyond descriptive mapping, AI-based visual and analytical tools can serve as early-warning systems for problematic practices. For instance, monitoring when states withdraw reservations may indicate constructive

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629 *Ibid.*

630 Kreutzer, Willow. "Introducing the CEDAW ROCS Dataset: A Dataset on the United Nations Treaty the Convention on the Elimination of All Forms of Discrimination against Women--Reservations and Objections of Committed States." *Foreign Policy Analysis* 21, no. 1 (January 2025). https://doi.org/10.1093/fpa/orae030.

631 *Ibid.*

632 Kreutzer, Willow. 2025. *"Introducing the CEDAW ROCS Dataset: A Dataset on the United Nations Treaty the Convention on the Elimination of All Forms of Discrimination against Women--Reservations and Objections of Committed States." Foreign Policy Analysis* 21 (1). https://doi.org/10.1093/fpa/orae030.

633 *Ibid.*

engagement or a reaction to external scrutiny, while detecting an increase in vague or broad reservations, such as those conditional on national law, can signal risks of treaty dilution.[634] Even the UN's ratification dashboards, although not yet incorporating reservation data, illustrate the potential of real-time treaty monitoring.[635] When combined with AI platforms, such datasets allow stakeholders to identify emerging threats to the integrity of human rights treaties. By using both spatial and temporal analytics, AI can provide treaty bodies, civil society, and scholars with the ability to anticipate and address trends that may weaken the universality and coherence of international human rights law before they solidify into established state practice.

**Access to Databases:** Effective scrutiny of treaty reservations requires more than automated data collection also demands careful legal analysis. In this respect, AI is valuable because it can cross-reference treaty provisions with jurisprudence, General Comments, and state practice. Traditional methods often struggle with assessing whether a reservation conflicts with the "object and purpose" of a human rights instrument, since this standard is neither formulaic nor easily applied.[636] AI systems, using machine learning and Natural Language Processing (NLP), can be trained on comprehensive sources such as treaty texts, Vienna Convention norms, mentioned General Comments, and treaty body decisions. By mapping semantic and doctrinal connections, for example, identifying language found in inadmissible reservations or patterns in objections by treaty bodies, AI can flag reservations that deserve closer examination.[637] This process does not replace legal judgment, but it provides a scalable and consistent preliminary screening that helps treaty bodies concentrate on the most pressing concerns.[638]

A hypothetical example shows this potential in practice. Consider an AI tool reviewing a reservation to the ICCPR where a state declares that "rights guaranteed by this Covenant shall be implemented only to the extent permitted by national security considerations under domestic law." The AI system would compare this reservation with General Comment No. 29 on derogations, relevant treaty body jurisprudence, and the Vienna Convention's compatibility tests. Since invoking "national security" to

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634 Boyes, Christina, Cody D. Eldredge, Megan Shannon, and Kelebogile Zvobgo. "Social Pressure in the International Human Rights Regime: Why States Withdraw Treaty Reservations." *British Journal of Political Science* 54, no. 1 (January 2024): 241-259. https://doi.org/10.1017/S0007123423000339.

635 United Nations Office of the High Commissioner for Human Rights (OHCHR). *Status of Ratification Interactive Dashboard*. Accessed August 18, 2025. https://www.ohchr.org.

636 United Nations International Law Commission. *Note on Draft Guideline 3.1.5 (Definition of the Object and Purpose of the Treaty), by Mr. Alain Pellet, Special Rapporteur*. A/CN.4/572*, June 21, 2006. https://legal.un.org/ilc/documentation/english/a_cn4_572.pdf.

637 Naddaf, Miryam. "Hundreds of Suspicious Journals Flagged by AI Screening Tool." *Nature*, ahead of print, August 29, 2025. https://doi.org/10.1038/d41586-025-02782-6.

638 Shcherbiak, Anna, Hooman Habibnia, Robert Böhm, and Susann Fiedler. "Evaluating Science: A Comparison of Human and AI Reviewers." *Judgment and Decision Making* 19 (2024): e21. Cambridge University Press. https://doi.org/10.1017/jdm.2024.24.

limit rights often undermines the treaty's core protections,[639] the algorithm could classify the reservation as high-risk and issue an alert within hours of submission. Rather than waiting months for manual analysis, the treaty body would receive a structured report that highlights the key concerns, applicable norms, and relevant precedents.[640] This predictive assessment not only accelerates the detection of potentially incompatible reservations but also strengthens transparency in legal reasoning, allowing for a calibrated response such as an objection, interpretative dialogue, or further legal review.

**Resource Constraint:** AI platforms could provide an important solution to the resource constraints that treaty bodies often face, including limited staff, time, and analytical capacity.[641] By automating labour-intensive tasks such as parsing multilingual legal texts, cross-referencing doctrinal precedents, and conducting preliminary compatibility assessments, AI can greatly reduce the workload of human reviewers. This could allow treaty bodies to focus their limited legal expertise on higher-level functions such as complex legal analysis or diplomatic engagement, rather than routine monitoring. An AI-supported system, therefore, improves efficiency while also strengthening institutional capacity,[642] enabling treaty bodies to address chronic understaffing without compromising rigorous oversight or the integrity of human rights treaties.

### 4.1.2. Method for Legality Assessment of Reservations Using AI

AI can help identify potentially incompatible reservations by comparing treaties and jurisprudence, but its role can go further by offering a structured method for assessing legality. Rather than limiting AI to detection, a step-by-step framework can be created to ensure consistency and transparency in deciding whether a reservation complies with international legal standards.[643] This would not replace the judgment of

639 "'Bedrock of Peace' Under Attack, Secretary-General Warns Human Rights Council | Meetings Coverage and Press Releases." Accessed September 3, 2025. https://press.un.org/en/2024/sgsm22137.doc.htm.

640 Nations, United. "AI Advisory Body." United Nations. Accessed September 3, 2025. https://www.un.org/en/ai-advisory-body.

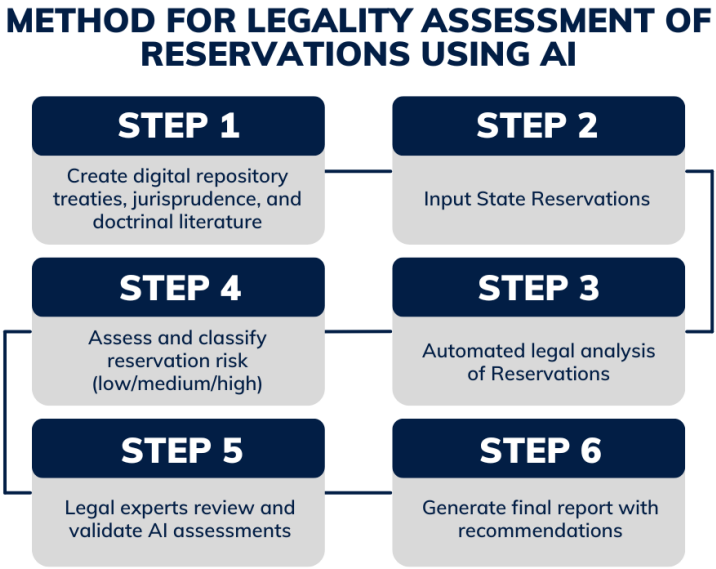
641 ISHR. "UNGA79: Treaty Bodies Express Concern about Lack of Resources Impacting Their Work." November 26, 2024. https://ishr.ch/latest-updates/unga79-in-discussing-the-treaty-bodies-reform-agenda-chairs-continue-to-express-concern-about-the-alarming-lack-of-resources-impacting-their-work/.

642 Patrick Mikalef et al., "Examining How AI Capabilities Can Foster Organizational Performance in Public Organizations," *Government Information Quarterly* 40, no. 2 (April 2023): 101797. https://doi.org/10.1016/j.giq.2022.101797.

643 United Nations. *Guide to Practice on Reservations to Treaties*. Adopted by the International Law Commission at its sixty-third session in 2011. In *Yearbook of the International Law Commission*, 2011, vol. II, Part Two. United Nations, 2011.

treaty bodies or states,[644] but it would provide a standardized baseline for analysis and basically reinforce the duties that they are already performing.

The author proposes the following stages for the incorporation of artificial intelligence tools into the system designed to assess and ensure the validity of reservations, emphasizing both methodological coherence and practical applicability. Each will be described in more detail:




***Step 1 - Database Creation:***

A strong AI-based framework for assessing the legality of treaty reservations should begin with a comprehensive digital repository.[645] This repository should combine three main categories of legal sources: treaties, jurisprudence, and doctrinal literature. First, treaties must be digitized and made machine-readable,[646] including their full texts as well as metadata such as ratification dates, formal declarations, reservation records, and interpretative commentary. Second, jurisprudence should include a

644 Shcherbiak, Anna, Hooman Habibnia, Robert Böhm, and Susann Fiedler. "Evaluating Science: A Comparison of Human and AI Reviewers." *Judgment and Decision Making* 19 (2024): e21. Cambridge University Press. https://doi.org/10.1017/jdm.2024.24.

645 Deshmukh, Rahul K. "AI in Open Access: Revolutionizing Digital Repositories for Knowledge Sharing." *Envisioning The Future: AI Tools for Libraries*, Dnyanprassarak Mandal College & Research Centre (DMC), Goa, February 2025. In *AI-Driven Libraries: Shaping the Future of Knowledge Management*, 71-72. ISBN 978-93-58984-62-0.

646 Cintron Roman, Anthony, Jennifer Wortman Vaughan, Valerie See, Steph Ballard, Kevin Xu, Jehu Torres, Caleb Robinson, and Juan M. Lavista Ferres. "Open Datasheets: Machine-Readable Documentation for Open Datasets and Responsible AI Assessments."*arXiv* preprint arXiv:2312.06153v2 [cs.LG], March 28, 2024. https://arxiv.org/abs/2312.06153.

curated collection of treaty body decisions and General Comments, especially those that apply the "object and purpose" test or address the legality of reservations, along with relevant rulings from domestic, regional and international courts. Third, doctrinal materials such as scholarly analyses, commentary on the Vienna Convention, and guidance from international law bodies should be integrated to provide contextual depth and clarity when interpreting ambiguous or complex provisions.

Centralizing these diverse sources in a single AI-accessible system offers significant analytical benefits. It allows for multi-dimensional comparison, analysis of historical legal trends, and the ability to track doctrinal changes across time and jurisdictions. A precedent for such platforms exists in the human rights field. HURIDOCS's Uwazi is an open-source database designed to help defenders preserve, organize, and analyse collections of documents, including legal instruments, court decisions, and campaign materials.[647] It supports multilingual content, advanced search functions, and customizable categorization.[648] Uwazi databases have been used to create public collections of jurisprudence, notably for the African Court on Human and Peoples' Rights, providing searchable and annotated case law and commentary to a global audience.[649]

Moreover, for AI-driven analysis to be effective, the repository must contain structured information extracted from unstructured legal texts. This task can be addressed by tools such as LexNLP.[650] It is an open-source library designed for legal and regulatory documents, with functions including segmentation, entity extraction, clause type identification, and citation recognition.[651] Its pre-trained models and extensive testing on real-world legal datasets make it well-suited for creating searchable and structured representations of treaty texts, jurisprudence, and doctrinal sources.

Together, these elements form the foundation for the next AI-supported steps in the legality assessment framework. They enable clear, consistent, and evidence-based analysis of state reservations while remaining grounded in established legal documentation practices.

***Step 2 - Reservation Input***

Once a comprehensive digital repository is established, the next step is to input a state's declared reservation into the AI assessment system. At this point, real-world data enters the machine-assisted analytical process and becomes the basis for further evaluations. To ensure integrity and reliability, the system should allow multiple input

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647 "Uwazi." *HURIDOCS*, n.d. Accessed August 20, 2025. https://huridocs.org/technology/uwazi/.

648 Team, HURIDOCS. "10 Ways Uwazi Makes Human Rights Documentation Smarter." *HURIDOCS*, July 29, 2025. https://huridocs.org/2025/07/10-ways-uwazi-makes-human-rights-documentation-smarter/.

649 "Network of African National Human Rights Institutions (NANHRI) Library." *HURIDOCS*, n.d. Accessed August 25, 2025. https://huridocs.org/resource-library/human-rights-research-databases/network-of-african-national-human-rights-institutions-nanhri-library/.

650 "About LexNLP - LexNLP 2.3.0 Documentation." Accessed August 20, 2025. https://lexpredict-lexnlp.readthedocs.io/en/latest/about.html.

651 *Ibid.*

methods.[652]

First, structured submission mechanisms can be introduced, allowing states or authorized legal entities to submit reservations through standardized digital forms. These forms would require essential metadata such as the affected treaty articles, the exact reservation text, the submission date, and any contextual or interpretative notes. This structured format reduces errors and improves traceability. Secondly, when reservations are submitted in non-standard formats such as scanned documents or unstructured PDFs, the system can use optical character recognition (OCR) together with legal natural language processing (NLP) tools.[653] These technologies allow for the accurate extraction of both the full text of the reservation and the related metadata, which helps maintain consistency across different input formats.[654] The use of OCR and NLP is already common in legal practice, where they are applied to streamline document processing and the extraction of important information from contracts and court filings.[655]

Crucially, the system must preserve the exact text and formatting of each reservation, since precise legal language and nuance are essential. At the same time, metadata tagging should be generated, covering elements such as the treaty name, article number, state party, date, and type of declaration (for example, interpretive declaration or partial reservation), to support efficient analysis.[656] By giving priority to both accuracy and traceability in the input phase, the system safeguards the legal integrity of submissions. This careful approach allows the AI to identify inconsistencies or ambiguities at an early stage while keeping a clear audit trail. In turn, it provides a strong basis for precise automated analysis and informed human review, supporting a reliable and transparent legality evaluation process.

***Step 3 - Automated Analysis:***

Once a reservation is entered into the system, the AI begins its main analytical task through a structured, multi-level assessment. This process combines linguistic analysis, reference to precedents, and legal interpretive methods to provide an initial

652 "Data Integrity: The Key to Trust in AI Systems - IEEE Spectrum." Accessed September 3, 2025. https://spectrum.ieee.org/data-integrity.

653 Jacinto, Jean. "OCR vs NLP: The Future of Document Automation and How They Power Modern Workflows." *Flowtrics AI*, October 9, 2024. https://flowtrics.com/ocr-vs-nlp-document-automation/.

654 *Ibid*.

655 Clio. "How AI Enhances Legal Document Review." *Law Technology Today*, American Bar Association, February 13, 2025. https://www.lawtechnologytoday.org/2025/02/how-ai-enhances-legal-document-review/.

656 "United Nations Treaty Collection." Accessed September 3, 2025. https://treaties.un.org/Pages/Content.aspx?path=DB/MTDSGStatus/pageIntro_en.xml.

evaluation of the reservation's legality.[657]

The text structure examination component makes use of advanced legal NLP models, such as "LEGAL-BERT", which has been specifically trained on extensive legal corpora covering legislation, judicial rulings, and contractual texts. This training allows the model to accurately recognize nuanced linguistic patterns, including qualifiers such as "insofar as," modal verbs, and ambiguous clauses.[658] Through this capacity, the system is able to detect vague wording or conditional phrasing, which are characteristic features of reservations that may raise legal concerns.[659] At the same time, the precedent search sub-module compares the reservation text with a curated repository of jurisprudence and doctrinal sources. Using semantic similarity techniques, the AI identifies past treaty-body decisions or scholarly analyses that addressed comparable reservation language. This connection strengthens the evaluation by adding contextual legal depth and enabling comparative analysis. Finally, the AI applies an algorithmic version of the "object and purpose" test under Article 19 of the Vienna Convention, assessing whether the reservation is consistent with or undermines the treaty's core objectives.[660] Although AI cannot perform holistic legal reasoning, it can systematically identify reservations whose wording or intent appears to conflict with fundamental treaty principles.

This triadic approach, consisting of text structure scrutiny, precedent alignment, and object-and-purpose evaluation, operates mainly as a preliminary screening tool rather than a substitute for human judgment. It improves consistency, speeds up the identification of high-risk reservations, and helps treaty bodies direct their attention more strategically. The final assessment is then supported by a nuanced and transparent human review, ensuring that the system serves as a complement to, and not a replacement for, expert legal and institutional oversight.[661]

***Step 4 - Risk Assessment:***

After the automated analysis phase, in which AI examines the reservation's text structure, relevant precedents, and the "object and purpose" test, the system advances to a risk classification stage. The main purpose of this stage is to convert analytical

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657 Wu, Yiquan, Siying Zhou, Yifei Liu, Weiming Lu, Xiaozhong Liu, Yating Zhang, Changlong Sun, Fei Wu, and Kun Kuang.*"Precedent-Enhanced Legal Judgment Prediction with LLM and Domain-Model Collaboration."*In *Proceedings of the 2023 Conference on Empirical Methods in Natural Language Processing*, 12060-12075. Singapore: Association for Computational Linguistics, 2023. https://aclanthology.org/2023.emnlp-main.740/.

658 Srinivasa Kalyan Vangibhurathachhi,*"Advanced Natural Language Processing for Legal Document Analysis," International Journal of Core Engineering & Management* 8, no. 2 (2025): 53-55. https://www.researchgate.net/publication/393232732_ADVANCED_NATURAL_LANGUAGE_PROCESSING_FOR_LEGAL_DOCUMENT_ANALYSIS#fullTextFileContent.

659 *Ibid.*

660 *Ibid.*

661 Marcinek, Krystyna, Karlyn D. Stanley, Gregory Smith, Paul Cormarie, and Salil Gunashekar. *Risk-Based AI Regulation: A Primer on the Artificial Intelligence Act of the European Union*. 2024. https://www.rand.org/pubs/research_reports/RRA3243-3.htmt.

findings into practical insight by categorizing state reservations according to their probability of legal incompatibility. For this purpose, the system is designed to automatically assign each reservation a risk level of low, medium, or high, based on clearly defined criteria.[662]

The low-risk category might include reservations that are minor, narrowly tailored, and consistent with established treaty norms, such as those whose wording aligns with accepted exceptions or standard interpretative declarations. For example, the reservation of the United Kingdom on ICCPR which are well defined and definite.[663] Medium-risk reservations could involve more significant deviations or novel phrasing that are not immediately objectionable but require closer examination. For example, like Reservations on CEDAW by Kuwait, even though they might be considered against the object and core purpose of the treaty, they still don't impose blanket restrictions, or are not vague.[664] High-risk reservations, by contrast, can be flagged where the analysis shows a strong likelihood of conflicting with the treaty's object and purpose, often reflecting patterns or precedents that have previously been deemed impermissible. For example, blanket reservations on ICCPR by Pakistan.[665]

Adopting a tiered approach reflects the structure of risk classification systems increasingly applied in AI governance, such as those described in the EU's AI Act, which defines categories including unacceptable, high, limited, and minimal risk based on both the probability and severity of harm.[666] By drawing on these models, the categorization of reservations ensures that only those posing significant legal concerns trigger intensified review, while minor or conventional reservations move forward with fewer obstacles. This method provides proportional oversight, like the way AI systems with different risk levels are subject to graduated regulatory or transparency requirements.[667]

Moreover, the risk assessment process must clearly document the rationale for each classification by explaining which markers or algorithmic thresholds led to a reservation being labelled as "high risk."[668] This level of transparency is essential for accountability and helps build trust among treaty bodies and legal actors, ensuring

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662 *Ibid.*

663 United Nations Treaty Collection. "ICCPR". https://treaties.un.org/pages/viewdetails.aspx?chapter=4&clang=_en&mtdsg_no=iv-4&src=ind.

664 United Nations Treaty Collection. "CEDAW". https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&clang=_en.

665 United Nations Treaty Collection. "ICCPR". https://treaties.un.org/pages/viewdetails.aspx?chapter=4&clang=_en&mtdsg_no=iv-4&src=ind.

666 "AI Act | Shaping Europe's Digital Future." August 1, 2025. https://digital-strategy.ec.europa.eu/en/policies/regulatory-framework-ai.

667 Marcinek, Krystyna, Karlyn D. Stanley, Gregory Smith, Paul Cormarie, and Salil Gunashekar. *Risk-Based AI Regulation: A Primer on the Artificial Intelligence Act of the European Union*. 2024. https://www.rand.org/pubs/research_reports/RRA3243-3.html.

668 *Ibid.*

that AI supports rather than obscures decision-making.[669] In the author's view, by offering a structured and evidence-based triage system, the risk assessment stage enables treaty-monitoring bodies to prioritize detailed reviews, allocate resources efficiently, and respond strategically to the most concerning reservations, while still preserving the role of expert judgment.

***Step 5 - Expert Involvement:***

The Expert Involvement stage is the key point where automated systems relate to human legal authority. Once the AI system processes and classifies a reservation by risk level, experts review the flagged cases, especially those marked as medium or high risk.[670] Their role is to ensure that the final decision combines technical accuracy with normative judgment. Legal experts and treaty-monitoring bodies, including treaty committee members, independent scholars, and expert panels, are responsible for validating AI-generated findings.[671] They may reassess reservations by considering factors that algorithms cannot fully capture, such as political motivations, domestic legal interpretations, and developing international practices. Their qualitative insight is particularly important when treaty language is vague or when the "object and purpose" of a treaty is open to different interpretations.

The growing field of AI-assisted legal systems shows how expert oversight complements automated processes. Traditional legal expert systems, which rely on rule-based or case-based reasoning, are designed to imitate human decision-making but require expert supervision to ensure accuracy and accountability.[672] In a similar way, modern hybrid frameworks that combine human expertise with adaptive models, such as those using Retrieval-Augmented Generation (RAG) or Knowledge Graph-based architectures, highlight the importance of structured expert review to reduce risks like hallucinations or misleading outputs.[673] The Expert Involvement stage connects machine-driven analysis with legal and institutional expertise. It maintains the authority and interpretative role of human legal actors, supports adaptive legal reasoning, and acts as the final filter before outcomes are formalized. In this way, it strengthens both accuracy and credibility in the AI-assisted legality assessment process.

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669 High-Level Expert Group on Artificial Intelligence. *Ethics Guidelines for Trustworthy AI*. European Commission, April 8, 2019. https://ec.europa.eu/digital-single-market/en/high-level-expert-group-artificial-intelligence.

670 Gregg Wirth. "The Role of Humans: Integrating Human Judgment in Court Systems in the AI Era." Thomson Reuters Institute, March 24, 2025. https://www.thomsonreuters.com/en-us/posts/government/human-judgment-ai-court-systems/.

671 *Ibid.*

672 Gray, Morgan, Li Zhang, and Kevin D. Ashley. "Generating Case-Based Legal Arguments with LLMs." *Symposium on Computer Science and Law (CSLAW '25)*, March 25-27, 2025, München, Germany. New York: ACM, 2025. https://doi.org/10.1145/3709025.3712216.

673 Nasir, Sidra, Qamar Abbas, Samita Bai, and Rizwan Ahmed Khan. "A Comprehensive Framework for Reliable Legal AI: Combining Specialized Expert Systems and Adaptive Refinement." arXiv:2412.20468. Preprint, arXiv, March 5, 2025. https://doi.org/10.48550/arXiv.2412.20468.

***Step 6 - Final Outcome:***

The Final Outcome stage is the last step of the AI-assisted legality assessment, where the system brings together the earlier findings into a structured report.[674] This report would suggest what should be the response, may it be acceptance, or objection to reservation, or any other suitable response.[675] It is important to note that the output serves only as a preliminary recommendation. Its purpose is to ensure transparency and consistency, while the final authority remains with human legal actors.

By providing a structured and standardized evaluation, the report may offer several benefits. It can improve analytical consistency, limit political bias by grounding decisions in data-driven methods, and speed up preliminary assessments so that treaty bodies can focus on high-risk cases more effectively. In this way, it is like AI tools in other legal processes, such as drafting briefs or identifying contractual risks, where AI produces a data-informed first draft but human oversight remains essential.[676] For example, in judicial systems like England and Wales, AI-generated summaries or drafts are cautiously welcomed for their speed and clarity. However, judges are clearly reminded that human judgment and responsibility remain the final authority.[677] Similarly, concerns about AI-generated "hallucinations", such as fabricated citations or reasoning in legal contexts, have led to demands for human verification and the adoption of transparent usage policies.[678]

By presenting the Final Outcome as a complementary tool rather than a decision-maker, the AI system can help maintain institutional legitimacy, improve efficiency, and support evidence-based oversight, while ensuring that final legal determinations remain with expert human actors.[679]

## 4.2. Public Accessibility and Accountability

Public accessibility and accountability are essential to ensure that information on

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674 Kalaycioglu, Sean, Bob Liu, Colin Hong, and Haipeng Xie. 2025. *AI-Powered Legal Intelligence System Architecture: A Comprehensive Framework for Automated Legal Consultation and Analysis*. Toronto: Toronto Metropolitan University, Skalay Law PC, AIMechatroniX Inc., Dr. Robot Inc., and UCC.

675 *Ibid.*

676 MyCase. "How to Use AI for Legal Document Summaries and Analysis to Save Time on Work." Accessed August 20, 2025. https://www.mycase.com/blog/ai/ai-for-legal-document-review/.

677 AP News. "Judges in England and Wales Are given Cautious Approval to Use AI in Writing Legal Opinions." January 8, 2024. https://apnews.com/article/artificial-intelligence-ai-guidance-england-wales-judges-c2ab374237a563d3e4bbbb56876955f7.

678 Fierro, Brandon. "Short Circuit Court: AI Hallucinations in Legal Filings and How to Avoid Making Headlines." Legal Industry. *Reuters*, August 4, 2025. https://www.reuters.com/legal/legalindustry/short-circuit-court-ai-hallucinations-legal-filings-how-avoid-making-headlines-2025-08-04/.

679 Vidaki, Anastasia Nefeli, and Vagelis Papakonstantinou. "Democratic Legitimacy of AI in Judicial Decision-Making." *AI & Society*, published June 19, 2025. https://doi.org/10.1007/s00146-025-02411-w.

state reservations to human rights treaties is not limited to specialized institutions.[680] Making this information widely available and clear allows AI tools to support civil society, researchers, and policymakers in monitoring compliance, identifying potential issues, and engaging in informed advocacy.[681] Enhanced transparency enables external scrutiny, which can influence state behaviour and encourage adherence to international human rights standards, thereby strengthening the effectiveness of treaty frameworks.

### 4.2.1. Development of a Public-Facing AI Platform

The purpose of creating an open-access AI platform is to make human rights treaty data more widely available,[682] enabling stakeholders such as civil society organizations, NGOs, academics, and journalists to monitor and evaluate state compliance with international human rights obligations. The platform may serve multiple purposes, including promoting transparency, providing real-time information on state reservations to human rights treaties, enhancing accountability by allowing human rights organizations to scrutinize state actions, and supporting advocacy by promoting informed public discourse and campaigns on human rights issues.[683] It would also seek to address the challenges of fragmented and unclear reservation data by offering a centralized and accessible interface for comprehensive information.

Key features of the platform might include interactive dashboards that display trends in treaty ratifications, reservations, and withdrawals over time. These dashboards can reveal patterns and anomalies, helping identify states with frequent or problematic reservations.[684] Additionally, a searchable database of treaty texts, state reservations, and related documents would allow users to query specific treaties, countries, or types of reservations, enabling focused analysis.[685] Detailed profiles for each state provide summaries of their engagement with international human rights law, including information on ratifications, reservations, objections, and withdrawals, and may offer a clear overview of each state's commitments and practices. These features not only enhance the usability of the platform but also support in-depth analysis and comparison across different jurisdictions and treaties.

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680 Linda M. Keller's article titled *"The Impact of States Parties' Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)"*, published in the Michigan State Law Review (2014).

681 *Ibid.*

682 "The Fundamentals of Open Access and Open Research | Open Science | Springer Nature." Accessed August 26, 2025. https://www.springernature.com/gp/open-science/about/the-fundamentals-of-open-access-and-open-research.

683 *Ibid.*

684 Virani, Rahil. "Using Data Dashboards for Research." Research Data Services, October 28, 2024. https://researchdata.wisc.edu/tools/using-data-dashboards-for-research/.

685 *Ibid*.

Effective data visualization is crucial for conveying complex information in an understandable manner for all institutions and other stakeholders.[686] The platform could incorporate maps displaying the distribution of reservations across different regions. This would be helpful in revealing regional trends and highlighting areas where certain reservations are more prevalent. Timelines would also be great,[687] as they would effectively illustrate when states have withdrawn reservations or made objections to others' reservations, helping to track the evolution of state commitments. Graphs could also be used to show the frequency and scope of reservations in particular areas,[688] such as civil rights, economic rights, or cultural rights, pinpointing where states are most likely to limit their obligations.

One of the main challenges in human rights law is understanding complex legal information.[689] By using AI, the platform can simplify legal language through natural language processing (NLP) techniques, translating legal jargon into clear summaries.[690] This could make the content more accessible to non-experts, facilitating broader engagement. The platform could also provide contextual information and explanations of legal terms and concepts, enhance understanding, and help users appreciate the significance of specific reservations or treaty provisions.[691] The development of a public AI platform would represent an important step toward improving transparency and accountability in human rights treaty compliance. By providing accessible, comprehensive, and clear information, the platform would enable stakeholders to engage more effectively with international human rights law, promoting informed advocacy and public discussion.

### 4.2.2. Validating Assumptions About the Impact of Reservations

The integration of AI tools into the analysis of human rights treaty reservations offers a transformative way to understand their impact. Traditionally, the effectiveness of reservations has been assessed through qualitative legal analysis and theoretical

686 Andersen, Grady. "Unveiling the Principles of Effective Data Visualization to Enhance Clarity and Communication of Information." February 5, 2025. https://moldstud.com/articles/p-unveiling-the-principles-of-effective-data-visualization-to-enhance-clarity-and-communication-of-information.

687 *Ibid.*

688 *Ibid.*

689 *Addressing the Challenges in Human Rights Implementation - The Just Laws*. July 1, 2024. https://thejustlaws.com/challenges-in-human-rights-implementation/.

690 Somwanshi, Kiran, Khalid Alfatmi, Ashwini Vibhandik, Darshana Karbhari, Gagan Jarsodiwala, Rahul Relan, and Makarand Shahade. "Simplifying Legal Language: An AI-Powered Approach to Enhance Document Accessibility." In *Advances in AI for Biomedical Instrumentation, Electronics and Computing*, 1st ed., 5. CRC Press, 2024. ISBN 9781032644752.

691 *Ibid.*

frameworks.[692] However, these methods often lack empirical support and may be influenced by subjective interpretations.[693] AI enables large-scale, data-driven analyses that can reveal patterns and correlations that were previously overlooked.

A key advantage of AI in this context would be its ability to process and analyse large amounts of data from multiple sources.[694] For example, AI could examine treaty texts, state reservations, and compliance reports to identify inconsistencies or conflicts between a state's reservations and the treaty's objectives. Natural Language Processing (NLP) techniques allow AI to interpret the nuanced language of legal documents,[695] helping detect reservations that may undermine a treaty's purpose. Machine learning algorithms can then correlate these findings with human rights indicators, such as those from the Human Rights Measurement Initiative, to evaluate whether states with certain reservations show poorer human rights outcomes. Furthermore, AI can improve the transparency and accessibility of data on reservations.[696] By automating the extraction and organization of reservation information, AI can generate interactive dashboards and visualizations that help stakeholders explore and understand the impact of reservations.[697] This wider access to information could enable civil society organizations, researchers, and policymakers to engage more effectively with the data and advocate for necessary changes.

AI analyses can provide empirical insights that inform policy discussions and legal reforms. By showing the real-world effects of reservations, AI can support arguments for stronger guidelines and oversight mechanisms. Additionally, AI can help identify best practices and model reservations that align with the treaty's objectives, giving states a basis to reformulate their reservations in a way that respects their international obligations. AI tools could provide a powerful way to assess the impact of reservations on human rights treaty compliance. Through data-driven analyses, AI can reveal patterns, increase transparency, and guide policy reforms, ultimately supporting the strengthening of international human rights law. However, whilst these technological tools represent significant advances in legal research capabilities, they must be understood as sophisticated analytical instruments that complement, rather

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692 Dörr, Oliver, and Kirsten Schmalenbach. "Guide to Practice on Reservations to Treaties." In *Vienna Convention on the Law of Treaties*, edited by Oliver Dörr and Kirsten Schmalenbach, 349-388. Berlin: Springer, 2012. https://doi.org/10.1007/978-3-642-19291-3_26.

693 *Ibid.*

694 "Using AI for Data Analysis: The Ultimate Guide (2025) | Luzmo." Accessed August 22, 2025. https://www.luzmo.com/blog/ai-data-analysis.

695 Khurana, Diksha, Aditya Koli, Kiran Khatter, and Sukhdev Singh. "Natural Language Processing: State of the Art, Current Trends and Challenges." *Multimedia Tools and Applications* 82 (2023): 3713-3744. https://doi.org/10.1007/s11042-022-13428-4.

696 Executive Office of the President, Office of Management and Budget. *Accelerating Federal Use of AI through Innovation, Governance, and Public Trust*. Memorandum M-25-21. Washington, D.C.: Office of Management and Budget, April 3, 2025. https://www.whitehouse.gov/wp-content/uploads/2025/04/M-25-21.pdf.

697 *Ibid.*

than replace, human legal expertise and political judgement.[698] The combination of advanced legal technology with experienced counsel could provide state representatives with enhanced capacity for risk assessment, strategic planning, and comprehensive legal research, particularly valuable in the complex and evolving field of human rights treaty law, where reservation validity often depends on nuanced legal interpretation and developing international jurisprudence.[699]

## 4.3. Methodological Considerations

To integrate Artificial Intelligence (AI) into human rights treaty monitoring, it is first necessary to understand its role. AI should be seen as a tool that strengthens human oversight rather than replaces it.[700] It has the capacity to process large volumes of data, detect patterns, and generate insights that can support the monitoring of state compliance with international human rights obligations.[701] At the same time, its use must be guided by a framework that reflects human rights principles, ensuring that AI promotes transparency, accountability, and respect for state sovereignty. Such a framework provides the foundation for developing AI tools that are not only technically advanced but also ethically sound and legally compliant.

### 4.3.1. Conceptual Framework for AI Use in Human Rights Treaty Monitoring

Artificial Intelligence has become an important tool across many fields, including international human rights law.[702] When applied to the monitoring of treaty reservations, its role must be clearly defined so that it strengthens existing legal frameworks without exceeding its proper function.

AI's primary role in this context is to assist in the identification and analysis of reservations made by states to international human rights treaties. By processing large volumes of textual data,[703] AI can automatically detect and extract reservation clauses

698 Remus, D., & Levy, F. S. (2017). "Can Robots Be Lawyers? Computers, Lawyers, and the Practice of Law." *Georgetown Journal of Legal Ethics*, 30(3), 501-558

699 Zeleznikow, J. (2021). "Using Artificial Intelligence to Provide Intelligent Legal Decision Support." *Group Decision and Negotiation*, 30(4), 789-813

700 Sarah Strumberger. "See What Legal Professionals Say about the Role of AI and Law." Thomson Reuters Law Blog, August 18, 2025. https://legal.thomsonreuters.com/blog/how-ai-is-transforming-the-legal-profession/.

701 Eboigbe, Edwin O. "AI in Legal Analytics: Balancing Efficiency, Accuracy, and Ethics in Contract and Predictive Analysis." *SSRN Scholarly Paper*, October 7, 2024. https://ssrn.com/abstract=4997519.

702 Dulka, Anne. "The Use of Artificial Intelligence in International Human Rights Law." *Stanford Technology Law Review* 26, no. 2 (2023): 316-366.

703 Sarah Strumberger. "See What Legal Professionals Say about the Role of AI and Law." Thomson Reuters Law Blog, August 18, 2025. https://legal.thomsonreuters.com/blog/how-ai-is-transforming-the-legal-profession/.

from treaty documents and state reports. It can further analyse patterns and inconsistencies across different states' reservations to the same treaty, offering stakeholders user-friendly platforms to access and interpret reservation data, thereby enabling more informed discussions. It is important, however, to position AI as a tool that supports rather than replaces human judgment in the assessment of treaty reservations.[704] AI can highlight potential incompatibilities that may conflict with the object and purpose of a treaty, generate data-driven insights for decision-making, and assist treaty bodies in organizing and reviewing reservations more efficiently. Despite these capabilities, AI lacks the nuanced reasoning and interpretive depth required in legal analysis.[705]

Accordingly, AI should be regarded as a provider of interpretive assistance rather than as an entity that makes normative decisions.[706] Interpretive assistance involves helping human experts understand and structure information, recognize trends, and identify possible concerns. This type of support enhances the efficiency and effectiveness of human decision-making processes.[707] Normative decision-making, by contrast, involves determining the legal validity and implications of reservations and objections.[708] Such judgments demand a sophisticated understanding of legal principles, the specific context of each treaty, and the interaction between international obligations and domestic legal frameworks. These complex evaluations require human expertise and cannot be adequately carried out by AI systems. Thus, while AI can play a valuable role in processing, analysing, and organizing information, it should not be entrusted with making normative decisions,[709] regarding the permissibility or consequences of reservations and objections. Rather, it should be recognized as a supplementary tool that strengthens the assessment and monitoring process without assuming the function of an enforcement mechanism.

By clearly defining the scope of AI involvement, it becomes possible to utilize its capabilities to maximum extent to strengthen the monitoring of human rights treaty reservations while ensuring that human oversight continues to play a central role in the decision-making process. This approach is consistent with the principles set out in the Council of Europe's Framework Convention on Artificial Intelligence, which

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704 Bertolini, Andrea. Artificial Intelligence and Civil Liability: A European Perspective. Brussels: European Parliament, Policy Department for Justice, Civil Liberties and Institutional Affairs, July 2025. https://www.europarl.europa.eu/RegData/etudes/STUD/2025/776426/IUST_STU%282025%29776426_EN.pdf

705 Pasupuleti, Murali Krishna. *AI in Legal Research: Tools for Streamlining Case Analysis and Decision Making.* International Journal of Academic and Industrial Research Innovations 4, no. 10 (October 2024). National Education Services. https://doi.org/10.62311/nesx/rb978-81-979321-2-0.

706 Bertolini, Andrea. Artificial Intelligence and Civil Liability: A European Perspective. Brussels: European Parliament, Policy Department for Justice, Civil Liberties and Institutional Affairs, July 2025. https://www.europarl.europa.eu/RegData/etudes/STUD/2025/776426/IUST_STU%282025%29776426_EN.pdf

707 *Ibid.*

708 *Ibid.*

709 *Ibid.*

underscores the need for AI systems to remain aligned with human rights, democracy, and the rule of law.[710]

### 4.3.2. Technical Design and Architecture of the AI Tool

The design of an AI tool should focus not only on efficiency but also on the inclusion of human rights safeguards and interoperability.[711] Ensuring that the tool can work across treaty texts, monitoring reports, and related legal documents allows it to produce results that are both accurate and legally relevant.

**Data Input:** A robust AI tool designed for monitoring human rights treaty reservations should rely on diverse and comprehensive data sources, including both primary and secondary materials, to guarantee accuracy, completeness, and transparency.[712]

The backbone of an AI system should consist of official and authoritative documents that provide the unaltered legal and procedural foundation, known as primary sources. These include the complete texts of treaties, with every article and clause in normative form;[713] the reservations made by states at the time of ratification or accession, reflecting each state's legal position; the objections submitted by states that contest reservations made by others;[714] the concluding observations of treaty bodies, which provide expert interpretation and guidance; and the periodic reports of states, which outline national implementation of treaty obligations.[715] Taken together, these sources allow the AI to ground its analysis in legal fact, a foundation that is essential for detecting patterns such as recurring or semantically similar reservations and for placing them within the context of treaty-specific jurisprudence.

To provide the AI system with a deeper contextual understanding, it is essential to incorporate interpretive and corroborative layers of information, commonly referred

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710 Council of Europe. *Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law*. Council of Europe, 2025. https://www.coe.int/en/web/artificial-intelligence/framework-convention.

711 Organisation for Economic Co-operation and Development (OECD). *AI, Data Governance and Privacy: Synergies and Areas of International Co-operation*. OECD Artificial Intelligence Papers, No. 22. Paris: OECD Publishing, 2024. https://doi.org/10.1787/2476b1a4-en.

712 Solanki, Sneha. "Sources of Legal Research: Primary, Secondary and the Role of AI." Thomson Reuters Law Blog, December 19, 2023. https://legal.thomsonreuters.com/blog/sources-of-legal-research-primary-secondary-and-the-role-of-ai/.

713 Greenwood, Christopher. *Sources of International Law: An Introduction*. Lecture. January 24, 2008. https://legal.un.org/avl/pdf/ls/greenwood_outline.pdf.

714 *Ibid.*

715 Spackey, Traci Emerson. "GW Law Library: Library Guides: International Human Rights Law Resources: Primary Sources." Accessed August 28, 2025. https://law.gwu.libguides.com/c.php?g=187743&p=7057209.

to as secondary sources.[716] These include academic commentary, which offers theoretical and doctrinal analysis and clarifies debates about compatibility or evolving legal norms.[717] Shadow reports submitted by NGOs, along with inputs to the Universal Periodic Review (UPR), provide real-time, practical insights that may expose inconsistent practices or highlight emerging issues that formal treaty bodies have not yet addressed.[718] By integrating both primary and secondary sources, the AI could identify not only the reservations that exist but also how they have been contested or defended within broader human rights discussions.

This layered sourcing reflects approaches that are increasingly encouraged in human rights monitoring. For example, the Geneva Human Rights Platform (GHRP) has examined the role of AI in enhancing the interoperability of monitoring tools, highlighting the value of integrating diverse datasets to enable more in-depth analysis.[719] Together, this dual-level data input strategy, combining solid legal documents with contextual insights, lays the groundwork for an AI that is both accurate and insightful, offering users a nuanced and trustworthy tool for analysing treaty reservations.

**Natural Language Processing Modules:** A well-designed AI system for treaty reservation analysis begins by accurately identifying and classifying key legal elements, such as reservations and objections, within treaty texts. This can be achieved by using fine-tuned transformer models like Legal-BERT or other domain-adapted variants to recognize and label legal entities and clauses.[720] The system can also be supported by rule-based filters or classifiers that organize the results into structured categories,[721] such as "reservation," "objection," or "treaty body commentary." In this way, unstructured legal documents are converted into data-rich inputs that can be systematically analyzed.[722]

After the initial extraction, the system addresses the challenge of determining whether a new reservation is similar to one already noted by treaty bodies. Models such as Sentence-BERT (SBERT) are well-suited for this task because they generate

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716 Solanki, Sneha. "Sources of Legal Research: Primary, Secondary and the Role of AI." Thomson Reuters Law Blog, December 19, 2023. https://legal.thomsonreuters.com/blog/sources-of-legal-research-primary-secondary-and-the-role-of-ai/.

717 *Ibid.*

718 International Women's Rights Action Watch. *Shadow Reporting to UN Treaty Bodies*. University of Minnesota, 2013. Archived February 1, 2023. Accessed August 20, 2025. https://www.iwraw-ap.org

719 "Expert Roundtable on Opportunities for Artificial Intelligence and Machine Learning in Human Rights Monitoring - The Geneva Academy of International Humanitarian Law and Human Rights." Accessed August 20, 2025. https://www.geneva-academy.ch/news/detail/743-expert-roundtable-on-opportunities-for-artificial-intelligence-and-machine-learning-in-human-rights-monitoring.

720 "Improving Legal Entity Recognition Using a Hybrid Transformer Model and Semantic Filtering Approach." Accessed August 28, 2025. https://arxiv.org/html/2410.08521v1.

721 Liu, Han, Alexander Gegov, and Frederic T. Stahl. "Categorization and Construction of Rule Based Systems." *Communications in Computer and Information Science* 459 (2014): 153-164. https://doi.org/10.1007/978-3-319-11071-4_18.

722 *Ibid.*

sentence embeddings that can be compared quickly and accurately using cosine similarity.[723] Unlike traditional BERT models, which require a very large number of pairwise comparisons, SBERT reduces the computational burden significantly, cutting processing time from hours to seconds while still performing strongly on semantic similarity tasks.[724] By using this semantic capacity, the AI module can identify reservations that resemble known problematic ones without relying only on keyword matches. Embeddings based on SBERT or similar methods allow for a more nuanced understanding of phrasing, legal framing, and conceptual overlap. The analysis can be further refined by integrating domain-specific ontologies, which combine taxonomy-based recognition with meaning-based pattern detection.

NLP is transforming legal workflows, including research and contract analysis, by enabling context-aware searches, concept-based retrieval, entity extraction, and predictive insights.[725] However, studies also warn against overreliance, as legal decisions still require human oversight to prevent biases, ensure transparency, and validate outcomes.[726] Even advanced models may misinterpret vague terms, such as "public morals" or "national security," which require legal judgment beyond technical capabilities.[727]

Placing NLP modules within a hybrid system, where automated detection highlights potential issues and human experts provide final assessments, ensures both efficiency and legitimacy. Embeddings and rule-based methods provide effective initial detection, while expert review applies the essential normative judgment. This collaborative approach combines advanced automation with the legal nuance required for treaty reservation analysis.

**Multilingual Processing:** Ensuring that an AI tool preserves legal meaning across languages requires more than simple translation; it depends on maintaining semantic precision in complex legal contexts.[728] Neural Machine Translation (NMT) models trained on domain-specific corpora can efficiently render standardized legal phrasing,

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723 Zhu, Xunjie, and Gerard de Melo. "Sentence Analogies: Linguistic Regularities in Sentence Embeddings." *Proceedings of the 28th International Conference on Computational Linguistics*, Barcelona, Spain (Online), December 8-13, 2020, pp. 3389-3400. https://sentence.embeddings.org.

724 *Ibid.*

725 Rahman, Md Mostafijur, Najmul Gony Md, Md Mashfiquer Rahman, Md Mostafizur Rahman, and Maria Khatun Shuvra." Natural Language Processing in Legal Document Analysis Software: A Systematic Review of Current Approaches, Challenges, and Opportunities." *International Journal of Innovative Research and Scientific Studies* 8, no. 3 (June 2025): 5026-5042. https://doi.org/10.53894/ijirss.v8i3.7702.

726 *Ibid.*

727 Coan, Andrew, and Harry Surden. "AI and Constitutional Interpretation: The Law of Conservation of Judgment." *Lawfare*, December 16, 2024. https://www.lawfaremedia.org/article/ai-and-constitutional-interpretation--the-law-of-conservation-of-judgment.

728 Abdurahim Mannonov et al., "The Role of AI and Legal Linguistics in Ensuring Compliance with Language Requirements in International Law," *Indian Journal of Information Sources and Services* 15, no. 2 (2025): 16-21, https://doi.org/10.51983/ijiss-2025.IJISS.15.2.03.

such as procedural clauses or boilerplate language, providing speed and cost advantages.[729] However, these models often struggle with complex legal terms and culturally specific concepts, where small changes in wording can have significant legal consequences. For instance, a study on Arabic translations found that AI tools, including ChatGPT, fell short of human translators in preserving legal accuracy, clarity, and adherence to legal frameworks, highlighting the continued need for expert oversight.[730]

To manage these risks, the tool should use a hybrid architecture that combines purpose-built multilingual NLP layers, including translation and embedding systems, with language-specific components to preserve phrase-to-concept accuracy.[731] Multilingual semantic resources, such as BabelNet, can improve cross-language conceptual alignment and reduce translation ambiguity.[732] Nevertheless, human review remains essential, not just for correction but to safeguard against subtle semantic loss, jurisdictional nuances, and contextual misalignment that automated systems cannot fully address.

**Visualization and User Interface:** The visualization component of the AI tool should offer an intuitive and effective way to explore treaty reservations through interactive interfaces. A dynamic world map could show each country with colour codes indicating the presence and type of reservations, allowing users to quickly understand global patterns. Clicking on a country could reveal thematic filters, treaty details, or temporal overlays showing how reservations have changed over time. Interactive charts, such as bar graphs of reservation withdrawals or pie charts of reservation categories, would enable clear and detailed data exploration. Drawing on successful models like the OHCHR's interactive treaty ratification dashboard[733] and the Rights Tracker's visualizations of human rights scores,[734] the tool could provide both snapshot views and deeper analytical features. Timeline controls could track the life cycle of reservations, from submission to modification or their withdrawal, highlighting shifts in state behaviour within a broader historical context. This approach reflects modern human rights visualization strategies, where interactive design and layered storytelling

729 "Legal Translation in the Age of AI: Opportunities and Limitations - Globibo Blog." May 6, 2025. https://globibo.blog/legal-translation-in-the-age-of-ai-opportunities-and-limitations/.

730 Altakhaineh, Abdel Rahman Mitib, Ghazi Ayed Alghathian, and Mashal Mufleh Jarrah. "A Comparative Study of Accuracy in Human vs. AI Translation of Legal Documents into Arabic." *International Journal of Language & Law* 14 (2025): 63-80. https://doi.org/10.14762/jll.2025.063.

731 Chang, Chen-Chi, Yu-Hsun Lin, Yun-Hsiang Hsu, and I-Hsin Fan. "Integrating Hybrid AI Approaches for Enhanced Translation in Minority Languages." *Applied Sciences* 15, no. 16 (2025): 9039. https://doi.org/10.3390/app15169039.

732 Navigli, Roberto, and Simone Paolo Ponzetto. "An Overview of BabelNet and Its API for Multilingual Language Processing." In *The People's Web Meets NLP*, edited by Roberto Navigli, 77-91. Berlin, Heidelberg: Springer, 2013. https://doi.org/10.1007/978-3-642-35085-6_7.

733 United Nations. "OHCHR Dashboard." Accessed August 28, 2025. https://indicators.ohchr.org/.

734 "Tracking Tools - The Geneva Academy of International Humanitarian Law and Human Rights." Accessed August 24, 2025. https://www.geneva-academy.ch/geneva-humanrights-platform/tracking-tools/detail/11-rights-tracker.

turn complex legal data into actionable insight.[735]

**Separate Narrow Profile v. Broad System:** When designing artificial intelligence (AI) tools for treaty monitoring, report submission, reservation tracking, and related functions, an important consideration is whether to develop separate narrow-profile AI modules, each dedicated to a particular task, or to construct a single broad system, such as one based on retrieval-augmented generation (RAG), capable of handling multiple tasks through a shared infrastructure.[736] Narrow-profile tools are created to perform one task effectively. For example, a self-check tool for treaty reporting could incorporate highly domain-specific rules, legal definitions, fixed checklists, and multilingual translation for a limited set of treaties. Because the scope is restricted, it is possible to optimize many aspects of the system, including data inputs, validation processes, prompt engineering or rule-based logic, user interfaces, and error handling.[737] Such optimization often results in higher precision, clearer accountability, more predictable outcomes, easier debugging when errors occur, and potentially faster deployment of the individual module.[738]

In contrast, a broad system, such as one based on a retrieval-augmented generation (RAG) architecture, relies on a shared knowledge base that may include treaty texts, state reports, jurisprudence, and records of state practice.[739] It also employs common retriever and embedding infrastructure, together with a single generative or hybrid model.[740] Within this framework, different workflows or prompt templates are layered on top of the shared base, for instance, one workflow may support pre-submission checking while another may be used for monitoring reservations. This approach offers several advantages. It promotes consistency because shared data and common definitions reduce the likelihood of divergence across tasks.[741] It enhances efficiency since data pipelines, embeddings, retrieval mechanisms, and other infrastructural components need to be developed only once.[742] It also facilitates scalability, making it easier to add new treaties or tasks, and it simplifies updates because new treaties or judicial

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735 "In Highlight: TransMonEE Database and Dashboard - The Geneva Academy of International Humanitarian Law and Human Rights." Accessed August 28, 2025. https://www.geneva-academy.ch/news/detail/713-in-highlight-transmonee-database-and-dashboard.

736 Njeh, Chaima, Haïfa Nakouri, and Fehmi Jaafar. "Enhancing RAG-Retrieval to Improve LLMs Robustness and Resilience to Hallucinations." In *Hybrid Artificial Intelligent Systems*, edited by Héctor Quintián et al., Lecture Notes in Computer Science, vol. 148.

737 *Ibid.*

738 *Ibid.*

739 Sharma, Chaitanya. 2025. *Retrieval-Augmented Generation: A Comprehensive Survey of Architectures, Enhancements, and Robustness Frontiers*. Preprint under review at ACM Transactions on Information Systems. https://arxiv.org/abs/2506.00054.

740 *Ibid.*

741 "Production-Ready RAG: Engineering Guidelines for Scalable Systems." Accessed September 15, 2025. https://www.netguru.com/blog/rag-for-scalable-systems.

742 *Ibid.*

decisions can be integrated in one central location.[743]

Despite these benefits, broad systems involve trade-offs. Precision in specific tasks may decline unless task-specific adjustments are introduced.[744] There is also a risk of interference or confusion if workflows and prompts are not carefully separated. The overall system design becomes more complex, and errors or biases within the shared knowledge base can propagate across multiple functions. Moreover, governance and quality control requirements become more demanding, as output must be monitored closely across all operational areas.[745]

An optimal solution may be found in a hybrid approach. In this model, a broad RAG-based backbone would be developed to handle general tasks, while specialized narrow modules would be embedded or overlaid for functions that require particularly high precision or involve greater risk.[746] For instance, a dedicated module could be designed to check compliance with treaty provisions using fixed rules and highly formal legal language, especially in situations where errors may carry significant consequences.[747] By contrast, for functions such as exploratory monitoring or the analysis of state practice, more flexible generative workflows could be employed that draw upon the shared knowledge base. This hybrid approach also allows both broad and narrow systems to rely on the same underlying infrastructure, which minimizes redundancy and reduces the duplication of resources.[748]

**Why RAG is Preferable to other Alternatives?** In treaty monitoring and submission review contexts, a Retrieval-Augmented Generation (RAG) framework provides several advantages over fine-tuned large language models (LLMs) or more autonomous AI agents. First, RAG enables the system to integrate up-to-date and authoritative background materials such as treaty texts, recent state reports, jurisprudence, and official comments at the time of query.[749] This ensures that the model's output reflects the current legal environment without requiring complete retraining.[750] The approach reduces the risk of producing outdated or inaccurate outputs, supports alignment with

743 *Ibid.*

744 Shen, Michael, Muhammad Umar, Kiwan Maeng, G. Edward Suh, and Udit Gupta. "Towards Understanding Systems Trade-Offs in Retrieval-Augmented Generation Model Inference." arXiv:2412.11854. Preprint, arXiv, December 16, 2024. https://doi.org/10.48550/arXiv.2412.11854.

745 *Ibid.*

746 Kalra, Rishi, Zekun Wu, Ayesha Gulley, Airlie Hilliard, Xin Guan, Adriano Koshiyama, and Philip Treleaven. "HyPA-RAG: A Hybrid Parameter Adaptive Retrieval-Augmented Generation System for AI Legal and Policy Applications." arXiv preprint arXiv:2409.09046v2 [cs.IR], February 25, 2025. https://arxiv.org/abs/2409.09046.

747 *Ibid.*

748 TECHCOMMUNITY.MICROSOFT.COM. "GenAIOps and Evals Best Practices | Microsoft Community Hub." Accessed September 15, 2025. https://techcommunity.microsoft.com/blog/azure-ai-foundry-blog/genaiops-and-evals-best-practices/4409415.

749 Baladi, Stephanie. "A Complete Guide to Retrieval Augmented Generation vs Fine-Tuning." January 3, 2025. https://www.glean.com/blog/retrieval-augemented-generation-vs-fine-tuning.

750 *Ibid.*

evolving state practice, and enhances verifiability, since the retrieved documents can be directly cited. In contrast, a fine-tuned LLM is limited by its training data cutoff, and any updates after that point necessitate retraining or costly adjustments.[751] These additional burdens can become significant in legal domains where treaty interpretations, new case law, and state reports are continuously introduced.[752]

Second, compared to AI agents, which may be designed to take autonomous actions or make decisions such as sending notifications, triggering alerts, or even implementing changes, RAG is more controllable and transparent.[753] AI agents often need to manage tool use, planning, and decision-making loops, and they may produce "hallucinations" or unintended actions when inputs are ambiguous or when data sources are incomplete.[754] In the context of treaty compliance tools, legal certainty and human oversight are essential. The structure of RAG, which combines retrieval with generation, enables human reviewers to examine the source materials, facilitates auditing of the reasoning process, and provides safer fallback options.[755] Although agents can be powerful in tasks that require automation, their risks in legal and regulatory settings - such as errors in treaty interpretation, overreach, and potential liability - are greater unless governance measures are exceptionally strong.[756]

Third, fine-tuned large language models (LLMs) demonstrate strong performance in narrow and well-defined tasks, such as drafting in a fixed legal style, detecting specific treaty clause violations, or verifying formal compliance.[757] However, they are less flexible in adapting to new or evolving contexts. Their knowledge is generally limited to the training data available up to a fixed date, they often require substantial amounts of training data, and updating them when new legal documents emerge can be resource-intensive.[758] By contrast, RAG is more modular, as its knowledge base can be updated or supplemented with new documents, treaties, or case law without the need to retrain the entire model. This makes it more scalable across jurisdictions, treaties,

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751 "Retrieval-Augmented Generation (RAG) vs LLM Fine-Tuning." Accessed September 15, 2025. https://www.kore.ai/blog/retrieval-augmented-generation-rag-vs-llm-fine-tuning.

752 *Ibid.*

753 Codewave. "Agentic AI vs RAG: Comprehensive Comparison Guide." *Codewave Insights*, April 26, 2025. https://codewave.com/insights/agentic-ai-vs-rag-comparison-guide/.

754 *Ibid.*

755 WeBuild-AI. "RAG, Agents and Graph: Your AI Compliance Dream Team." Accessed September 15, 2025. https://www.webuild-ai.com/insights/rag-agents-and-graph-your-ai-compliance-dream-team-b7fgt-lhba6.

756 *Ibid.*

757 "The Ultimate Guide to Fine-Tuning LLMs from Basics to Breakthroughs: An Exhaustive Review of Technologies, Research, Best Practices, Applied Research Challenges and Opportunities (Version 1.0)." Accessed September 15, 2025. https://arxiv.org/html/2408.13296v1.

758 Hou, Zhitian, Zihan Ye, Nanli Zeng, Tianyong Hao, and Kun Zeng. "Large Language Models Meet Legal Artificial Intelligence: A Survey." *arXiv* preprint arXiv:2509.09969v1 [cs.CL], September 12, 2025. https://arxiv.org/abs/2509.09969.

and tasks.[759] Furthermore, when tasks require a high degree of precision, a hybrid approach can be employed by combining RAG with fine-tuned or rule-based modules for specific checks.[760]

Finally, RAG provides a balanced approach. It is sufficiently broad to support multiple use cases, such as self-checking, monitoring state practice, and conducting jurisprudence queries, within a single framework.[761] At the same time, it can be adapted for narrow and task-specific functions where greater precision is required. Using structured workflows, prompt templates, and validation mechanisms, it is possible to develop specialized modules within or alongside a RAG architecture to address high-stakes or high-precision tasks. In this way, RAG combines consistency, flexibility, updatability, traceability, and effective governance, all of which are particularly important in treaty monitoring and human rights contexts.[762]

### 4.3.3. Balancing State Sovereignty and Public Oversight

AI-powered tools designed to enhance transparency in tracking international treaty reservations provide clear benefits. They make legal texts, state positions, and emerging patterns easier to see,[763] allowing faster identification of potentially conflicting reservations. AI systems can analyse large amounts of multilingual legal data, metadata, and contextual commentary, producing insights that were previously hidden or available only to experts.[764] This greater visibility, while useful, may cause states to feel monitored or second-guessed, especially when datasets contain sensitive information or show historical non-compliance. Scholars warn that algorithmic opacity can limit personal autonomy and make it difficult to understand or challenge AI conclusions.[765] In human rights monitoring, this lack of transparency may have a chilling effect: states or human rights bodies, aware of constant automated scrutiny, might avoid issuing detailed reservations or engaging in open legal dialogue, favouring instead safer and more ambiguous approaches.

There is also a significant risk in using AI-enhanced transparency for public

759 *Ibid.*

760 *Ibid.*

761 Sharma, Chaitanya. *Retrieval-Augmented Generation: A Comprehensive Survey of Architectures, Enhancements, and Robustness Frontiers*. arXiv preprint arXiv:2506.00054v1 [cs.IR], May 28, 2025. https://arxiv.org/abs/2506.00054.

762 *Ibid.*

763 Dolidze, Tatia. 2025. "The Evolving Role of Artificial Intelligence in Legal Education and Research." *Law and World* 11 (33): 92-105. https://doi.org/10.36475/11.1.7.

764 Terzidou, Kalliopi. "Generative AI Systems in Legal Practice Offering Quality Legal Services While Upholding Legal Ethics." *International Journal of Law in Context*, FirstView (2025): 1-22. Cambridge University Press. https://doi.org/10.1017/S1744552325000047.

765 Vaassen, Bram. "AI, Opacity, and Personal Autonomy." *Philosophy & Technology* 35, no. 88 (2022). https://doi.org/10.1007/s13347-022-00577-5.

"naming and shaming." This approach, which calls out actors for perceived wrongdoing, is common in international human rights and can be effective,[766] but often sparks controversy. When AI systems could flag reservations that seem incompatible, presenting them as red flags without proper context or legal nuance, they may unintentionally portray states as violators, even when the issues involve complex legal or political considerations. AI dashboards or flagging tools are powerful because of their immediacy and reach,[767] but if not carefully designed, they can reduce detailed legal debates to simple accusatory labels. This can undermine constructive monitoring and provoke backlash, mistrust, or strategic silence among states that might otherwise engage in open dialogue. Therefore, while AI-enhanced transparency offers promise, its design must ensure that outputs remain descriptive and context-rich, avoiding the risk of turning nuanced legal analysis into public condemnation.[768]

**Safeguards in Designs:** AI systems, particularly in sensitive areas such as monitoring human rights treaty reservations, should be designed to provide descriptive insights rather than prescriptive judgments. The purpose of such tools is to help users understand the content of reservations, identify how they align or conflict with established treaty interpretations, and highlight possible areas of inconsistency.[769] However, the system must avoid delivering legal verdicts or normative advice. Building the tool on principles of algorithmic transparency ensures that users can see how conclusions were reached, including the data sources, methods of reasoning, and areas of uncertainty.[770] Incorporating human-in-the-loop (HITL) processes strengthens this approach, as AI outputs serve only as structured guidance that experts evaluate and interpret rather than accept as binding decisions.[771] This approach prevents "black-box" decision-making and ensures that the system supports, rather than replaces, legal analysis.

It is equally important to include contextual disclaimers alongside AI-generated

766 Nations, United. "Human Rights." United Nations. Accessed August 28, 2025. https://www.un.org/en/global-issues/human-rights.

767 Author, Guest. "Using Dashboards and Analytics to Improve Legal Performance." *Valasys Media*, July 29, 2024. https://valasys.com/using-dashboards-and-analytics-to-improve-legal-performance/.

768 Al-Shawabkeh, Faisal Abdul-Hafez, and Khalid Al-Jasmi. "Artificial Intelligence and Transparency Management in the Public Sector: A Comparative Legal Study on Accountability and Oversight in European and American Laws." *Journal of Posthumanism* 5, no. 5 (2025): 2326-2340. https://doi.org/10.63332/joph.v5i5.1619.

769 Sarah Strumberger. "See What Legal Professionals Say about the Role of AI and Law." Thomson Reuters Law Blog, August 18, 2025. https://legal.thomsonreuters.com/blog/how-ai-is-transforming-the-legal-profession/.

770 Al-Shawabkeh, Faisal Abdul-Hafez, and Khalid Al-Jasmi. "Artificial Intelligence and Transparency Management in the Public Sector: A Comparative Legal Study on Accountability and Oversight in European and American Laws." *Journal of Posthumanism* 5, no. 5 (2025): 2326-2340. https://doi.org/10.63332/joph.v5i5.1619.

771 Murray, Sarah. "What Does AI Mean for a Responsible Business?" Financial Times, March 27, 2024.

alerts.[772] For example, the system might state: "This reservation may be incompatible based on prior treaty-body jurisprudence." Such disclaimers help limit legal responsibility, clarify the AI's role as an analytical assistant, and remind users that outputs are conditional, interpretive, and require expert review.[773] This practice aligns with emerging standards in AI governance, which stress that AI systems operate with inherent uncertainty and must openly communicate this risk.[774] In high-stakes contexts, the Council of Europe's Framework Convention on AI highlights the need for transparency, traceability, and the right to challenge AI-informed outcomes, especially when such outcomes affect legal or human rights matters.[775] By incorporating clear disclaimers, designers uphold procedural fairness and legal pluralism, signalling that the role of AI is supportive and advisory rather than conclusive.

**AI as Neutral Observer:** To achieve normative legitimacy, AI tools for monitoring treaty reservations must act as neutral observers rather than as instruments of political influence.[776] This neutrality relies on transparency, explainability, and accountability.[777] These tools should serve as technical aids, providing analytical support that identifies textual patterns or historical trends, without making normative judgments. The Framework Convention on Artificial Intelligence of the Council of Europe supports this approach by establishing principles such as transparency, accountability, and mechanisms for human oversight, ensuring that AI systems respect democratic values and human rights without engaging in normative evaluation.[778] Furthermore, accountability in algorithmic design requires public justification of AI processes, allowing explanations of how and why decisions are made. By embedding these safeguards, AI functions as a technical assistant rather than a moral authority, preserving the objectivity necessary for monitoring across nations.

**Validation and accuracy:** Accurately identifying incompatible treaty reservations

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772 "AI Content Disclaimer." Accessed August 28, 2025. https://www.jll.com/en-us/ai-content-disclaimer.html.

773 *Ibid.*

774 Tokmakov, Sergei. "AI Legal Framework for AI Implementation in Business: From Chatbots to Custom Models." *Terms.Law*, February 12, 2025. https://terms.law/ai-legal-framework-for-ai-implementation-in-business/.

775 Council of Europe. *Feasibility Study: A Legal Framework for the Design, Development and Application of Artificial Intelligence Based on Human Rights, Democracy and the Rule of Law*. CM(2021)11-add. Strasbourg: Council of Europe, February 5, 2021. https://www.coe.int/en/web/artificial-intelligence/cahai.

776 Fisher, Jillian, Ruth Elisabeth Appel, Chan Young Park, Yujin Potter, Liwei Jiang, Taylor Sorensen, Shangbin Feng, Yulia Tsvetkov, Margaret Roberts, Jennifer Pan, Dawn Song, and Yejin Choi. 2025. *Political Neutrality in AI Is Impossible - But Here Is How to Approximate It*. ICML 2025 Position Paper Track. Last modified July 23, 2025. https://openreview.net/forum?id=MmQ0Z.

777 *Ibid.*

778 Council of Europe. *Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law*. Strasbourg: Council of Europe, 2025. https://www.coe.int/en/web/artificial-intelligence/framework-convention.

requires careful adjustment of AI detection thresholds to balance precision and recall.[779] If the system is not fine-tuned, it may either over-flag, creating an excessive number of false positives that burden experts, or it may miss more subtle but important reservations, leading to false negatives. Best practices suggest calibrating thresholds using real-world data,[780] such as testing the system against reservations that treaty bodies have already classified as incompatible, to evaluate performance under actual conditions.

Equally important is ensuring effective human-machine collaboration.[781] AI should function as an assistant rather than an adjudicator. This approach aligns with emerging international norms, such as Article 14 of the EU AI Act,[782] and the Council of Europe's Framework Convention on Artificial Intelligence,[783] which require meaningful human oversight for high-risk AI systems. In practice, this involves embedding human-in-the-loop workflows, where AI outputs, including flagged reservations, are reviewed and validated by qualified legal experts before any further action or public dissemination. These workflows ensure that complex legal contexts and cultural interpretations are properly considered, reducing dependence on opaque algorithmic judgments and enhancing both accountability and legitimacy in monitoring.

### 4.4. Stakeholders Analysis

Evaluating an AI-based reservation monitoring system requires attention to the different actors that shape its legitimacy and effectiveness.[784] States, treaty bodies, and civil society each bring unique roles, perspectives, and challenges, making their involvement essential to ensure that the tool promotes transparency while respecting sovereignty.[785]

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779 "How to Use Classification Threshold to Balance Precision and Recall." Accessed August 25, 2025. https://www.evidentlyai.com/classification-metrics/classification-threshold.

780 Roshni Sahoo, Alyssa Chen, Shengjia Zhao, and Stefano Ermon. "Reliable Decisions with Threshold Calibration." *Proceedings of the 35th Conference on Neural Information Processing Systems (NeurIPS 2021)*. Stanford University and UTSW Medical Center, 2021.

781 Pfister, Zoe. *Human-Machine Collaboration and Ethical Considerations in Adaptive Cyber-Physical Systems*. University of Innsbruck, July 3, 2025. arXiv:2507.02578v1 [cs.SE]. https://arxiv.org/abs/2507.02578.

782 *Article 14: Human Oversight | EU Artificial Intelligence Act*. n.d. Accessed August 25, 2025. https://artificialintelligenceact.eu/article/14/.

783 Council of Europe. *Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law*. Strasbourg: Council of Europe, 2025. https://www.coe.int/en/web/artificial-intelligence/framework-convention.

784 Heymans, Frederic, and Rob Heyman. "Identifying Stakeholder Motivations in Normative AI Governance: A Systematic Literature Review for Research Guidance." *Data & Policy* 6 (2024): e58. https://doi.org/10.1017/dap.2024.66.

785 *Ibid.*

### 4.4.1. State Actors and National Human Rights Institutions (NHRIs)

State ministries, including those responsible for foreign affairs, justice, women and child development, and religious affairs, are the main bodies that shape reservations to international human rights treaties.[786] They play an important role in negotiating and drafting the language that defines how a state interprets or limits its obligations under a treaty. In practice, these reservations are developed through a collaborative process in which legal, diplomatic, and policy teams evaluate international commitments, domestic priorities, and their alignment with constitutional or religious principles.[787]

By incorporating AI tools, these ministries can gain strong capabilities for self-audit and defense of reservations. AI-driven systems, especially those using agentic models,[788] can review treaty texts, past reservations, and treaty body jurisprudence to identify semantic similarities, detect potential conflicts with the object and purpose of a treaty, and highlight areas that may need legal refinement.[789] Such tools could allow ministries to proactively assess whether a proposed reservation is consistent with international norms. This may improve the quality and consistency of drafting while lowering the chances of objections. In this way, AI could serve as a policy assistant, helping state actors protect their sovereignty while also adapting to the changing standards of human rights law.

Similarly, National Human Rights Institutions (NHRIs), established in line with the Paris Principles, act as important links between a state's domestic legal framework and its international human rights obligations.[790] They review and provide advice on legislation and policy to help ensure that governments comply with international treaties, offering guidance on how human rights standards should be implemented at the national level.[791] Through ongoing monitoring and reporting, including their participation in the Universal Periodic Review (UPR) and their own independent reporting, NHRIs provide authoritative assessments of how reservations or deviations from treaty commitments affect both national law and the actual protection of rights in practice.[792]

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786 United Nations. *Guide to Practice on Reservations to Treaties*. Report of the International Law Commission, Sixty-Fifth Session. UN Doc. A/65/10 (2010), Guideline 1.1.

787 Michael Wood, "Institutional Aspects of the Guide to Practice on Reservations," *European Journal of International Law* 24, no. 4 (November 2013): 1099-1112, https://doi.org/10.1093/ejil/cht066.

788 Soodeh Hosseini and Hossein Seilani, "The Role of Agentic AI in Shaping a Smart Future: A Systematic Review," *Array* 26 (July 2025): Article 100399. https://doi.org/10.1016/j.array.2025.100399.

789 "How AI Can Reshape Anti-Corruption Compliance." Accessed August 26, 2025. https://www.ibanet.org/how-AI-can-reshape-anticorruption-compliance.

790 United Nations, 'National Human Rights Institutions: History, Principles, Roles and Responsibilities,' *Office of United Nations High Commissioner of Human Rights. https://www.ohchr.org/sites/default/files/Documents/Publications/PTS-4Rev1-NHRI_en.pdf.*

791 *Ibid.*

792 "The Role of National Human Rights Institutions (NHRIs) in the UPR | UPR Info." Accessed August 26, 2025. https://upr-info.org/en/get-involved/nhris/role.

When combined with AI-enabled dashboards, these institutions can greatly strengthen their oversight and advisory roles. AI tools are able to quickly analyze treaty texts, detect gaps between international commitments and domestic laws, and show patterns of alignment over time, which helps NHRIs prepare data-based recommendations.[793] In addition, AI-supported monitoring can reveal uneven implementation across provinces or sectors, allowing for more focused advocacy. However, as emphasized by the Council of Europe Commissioner for Human Rights, these benefits depend on NHRIs being fully independent and well resourced, with the capacity to investigate AI-related human rights risks and to work with expert bodies to transform machine-generated findings into credible accountability measures.[794]

As AI-powered surveillance and analytical tools advance, states increasingly raise sovereignty concerns, emphasizing that such technologies can project influence even in the absence of physical intervention.[795] AI tools that track and highlight reservations may be viewed as intrusive, not simply analytical, but as a form of external oversight that weakens the authority of states to manage treaty-making on their own. Scholars note that digital and algorithmic influence can shape what a population knows, sees, and believes, which poses a challenge to informational sovereignty even without direct coercion.[796] This would limit diplomatic flexibility and risk turning what should remain legal evaluations into political judgments.

Moreover, the rise of algorithmic governance raises concerns about a drift toward techno-authoritarianism, where states might use AI systems not only for genuine assessment but also to justify or entrench restrictive policies.[797] Scholars discussing digital authoritarianism point out that advanced surveillance and AI technologies can be easily turned into tools for controlling dissent, often presented as measures of

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793 "Using AI for Data Analysis: The Ultimate Guide (2025) | Luzmo." Accessed August 26, 2025. https://www.luzmo.com/blog/ai-data-analysis.

794 Council of Europe Commissioner for Human Rights. "National Human Rights Structures Play a Key Role in Addressing the Impacts of Artificial Intelligence on Human Rights." *Council of Europe*, March 31, 2023. https://www.coe.int/en/web/commissioner/-/national-human-rights-structures-play-a-key-role-in-addressing-the-impacts-of-artificial-intelligence-on-human-rights.

795 Vatamanu, Anca Florentina, and Mihaela Tofan. 2025. *Integrating Artificial Intelligence into Public Administration: Challenges and Vulnerabilities*. Administrative Sciences 15, no. 4: 149. https://doi.org/10.3390/admsci15040149.

796 "AI, Surveillance, and the Fracturing of Sovereignty: Ethical Concerns in Cross-Border Technology Use." *Centre for Multilateral Affairs (CfMA)*, n.d. Accessed August 28, 2025. https://thecfma.org/2025/06/11/ai-surveillance-and-the-fracturing-of-sovereignty-ethical-concerns-in-cross-border-technology-use/.

797 Faizan Zaheer, Zohaib Ali, and Danish Baig, "Mechanisms of Algorithmic Governmentality, State-Controlled Consciousness, and Systemic Conditioning: A Techno Authoritarian Analysis of *Brave New World*," *Journal of Asian Development Studies* 14, no. 2 (2025): 1550-1562, https://doi.org/10.62345/jads.2025.14.2.120.

efficiency or security.[798] In the field of human rights treaty reservations, this risk could take the form of AI-generated "compliance scores" or "compatibility flags" being used to pressure states, politicize multilateral negotiations, or undermine domestic legal and cultural frameworks, all while being framed as neutral technical findings rather than political judgments.

### 4.4.2. International Human Rights Bodies and Treaty Monitoring Committees

UN treaty bodies such as the Human Rights Committee, the CEDAW Committee, and the CRC Committee could use AI-generated insights to improve their periodic reviews. By incorporating AI findings into the preparation of Lists of Issues, these bodies could identify reservations that raise compatibility concerns more efficiently and require state parties to clarify or justify them.[799] During dialogues, AI-flagged reservations could help shape questions and strengthen the precision of concluding observations.[800] At the same time, treaty bodies must avoid excessive reliance on algorithmic outputs. They need to maintain their interpretive autonomy and legal rigor by ensuring that AI serves only as a supportive tool rather than replacing expert judgment.[801]

Meanwhile, the OHCHR and other UN agencies are well placed to act as the technical and institutional foundation for such AI tools.[802] As repositories of reservations, objections, and state reports, the OHCHR could develop centralized, machine-readable databases that provide essential input for AI systems.[803] By enabling structured data flows from national submissions and treaty body outputs, the OHCHR would play a central role in ensuring the tool's credibility and usability.[804] Its involvement would also help guarantee that the AI tool remains consistent with UN standards of accuracy, transparency, and data integrity.

That said, AI-enabled treaty compliance tools must include clear safeguards to

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798 Azgin, Bilge, and Sevki Kiralp.2024. *"Surveillance, Disinformation, and Legislative Measures in the 21st Century: AI, Social Media, and the Future of Democracies."* Social Sciences 13, no. 10: 510. https://doi.org/10.3390/socsci13100510.

799 ARTICLE 19. "UN: AI Panel and Dialogue Must Be Guided by Human Rights and International Law." April 7, 2025. https://www.article19.org/resources/un-ai-panel-and-dialogue-must-be-guided-by-human-rights-international-law/.

800 *Ibid.*

801 Editorial, International Law. *Monitoring Compliance with Treaties: A Comprehensive Overview - World Jurisprudence*. May 2, 2024. https://worldjurisprudence.com/monitoring-compliance-with-treaties/.

802 United Nations Office of Information and Communications Technology (OICT). *Updated UN Guidance on the Use of AI Tools at Work*. Broadcast dated March 5, 2025. Accessed September 3, 2025. https://www.un.org.

803 Office of the United Nations High Commissioner for Human Rights. *OHCHR Databases and Resources*. United Nations. Accessed September 3, 2025. https://www.ohchr.org.

804 *Ibid.*

preserve legal interpretive discretion. AI should serve only as an analytical assistant,[805] capable of flagging or highlighting patterns such as reservations that may conflict with a treaty's object and purpose, but it should never issue normative judgments. Treaty bodies and UN agencies must ensure that outputs are explainable and properly contextualized, while human experts retain the final authority in assessing compatibility.[806] Mechanisms for human review, transparency about AI assumptions, and the use of procedural disclaimers will be essential to protect state sovereignty and to ensure that treaty monitoring remains both rigorous and firmly grounded in law.

### 4.4.3. Non-Governmental Organizations (NGOs) and Civil Society

Non-governmental organizations such as Amnesty International are increasingly using AI to strengthen their advocacy by detecting and documenting treaty-related issues more efficiently.[807] AI-based visualization tools can process large datasets, including treaty texts, objections, and human rights reports, to identify potentially problematic reservations and bring them to the attention of policymakers and the public.[808] The digital outputs generated through these tools can then support public awareness campaigns or shadow reports, enabling NGOs to build persuasive narratives based on real-time, algorithmically derived insights.[809] This, in turn, helps amplify pressure for policy reform and greater compliance with treaties.

At the grassroots level, local NGOs often adapt machine-generated findings into culturally sensitive advocacy.[810] AI outputs can highlight patterns of concern, such as reservations that disproportionately restrict rights, but it is the responsibility of community-based organizations to present these insights in accessible language and culturally relevant terms. This approach enables affected communities to engage more effectively with treaty compliance issues and to contribute their own local observations, which can then be integrated into AI systems to improve accuracy, inclusivity, and relevance.[811]

Civil society's use of AI also presents significant challenges, particularly in relation

805 Pietropaoli, Irene, with Iris Anastasiadou, Jean-Pierre Gauci, and Holly MacAlpine. *Use of Artificial Intelligence in Legal Practice*. London: British Institute of International and Comparative Law, 2023. https://www.biicl.org.

806 Kouroutakis, Antonios."Rule of Law in the AI Era: Addressing Accountability, and the Digital Divide." *Discover Artificial Intelligence* 4, no. 115 (2024). https://doi.org/10.1007/s44163-024-00191-8.

807 Amnesty International. "Artificial Intelligence for Good." June 9, 2017. https://www.amnesty.org/en/latest/news/2017/06/artificial-intelligence-for-good/.

808 Eboigbe, Edwin O. "AI in Legal Analytics: Balancing Efficiency, Accuracy, and Ethics in Contract and Predictive Analysis." *SSRN*, October 7, 2024. https://ssrn.com/abstract=4997519.

809 *Ibid.*

810 Alnajem, Ahmed Abdel Qader Ismail. "The Role of Grassroots Movements in Achieve Community Sustainability." *MEDAAD*, vol. 2024, 2024, pp. 15-20. https://doi.org/10.70470/MEDAAD/2024/003.

811 WPAB. *AI in Monitoring Human Rights Violations Across the Globe - NGOs.AI*. January 10, 2025. https://ngos.ai/articles/ai-in-monitoring-human-rights-violations-across-the-globe/.

to accessibility and potential misuse. Many NGOs face a choice between open-source tools, which encourage transparency and wider use, and proprietary platforms that may offer advanced features but restrict access and create barriers. Ethical concerns are equally pressing, as AI-generated alerts may be misinterpreted or used by political actors to advance selective criticism or engage in "naming and shaming," rather than fostering constructive advocacy.[812] To address these risks, toolkits such as the "Human-Rights-Compliant Use of AI Systems" provide guidance on privacy protections, fairness audits, and risk assessments, enabling NGOs to use AI more responsibly in pursuit of human rights objectives.[813]

### 4.4.4. Treaty Depositaries and Legal Scholars

Treaty depositaries, such as the UN Secretary-General or designated regional bodies, play a central role in ensuring the integrity and accessibility of multilateral treaties.[814] In practice, the Secretary-General, when serving as a depositary, does not evaluate the legal validity of reservations or interpretative declarations.[815] Instead, the text of such submissions is circulated to all States concerned, allowing each to reach its own legal conclusions.[816] This approach preserves neutrality and maintains procedural clarity.[817] In certain cases, if a statement seems to go beyond a declaration and potentially amounts to a reservation contrary to the treaty, the Secretary-General may ask for clarification.[818] However, this is done cautiously and only in specific situations. This practice has long been followed, as reflected in the 1952 General Assembly resolution, which confirmed that depositaries should accept and circulate reservations or objections without making any judgment about their legal effect.[819]

Beyond their procedural responsibilities, treaty depositaries can also strengthen the technical systems needed for AI-based monitoring of treaty reservations. Since they collect and distribute original texts and State communications in centralized

812 *Human-Rights-Compliant Use of Artificial Intelligence Systems: Toolkit for Civil Society*. October 8, 2024. https://dslua.org/publications/human-rights-compliant-use-of-artificial-intelligence-systems-toolkit-for-civil-society/.

813 *Ibid.*

814 "United Nations Treaty Collection." Accessed August 26, 2025. https://treaties.un.org/pages/historicalinfo.aspx.

815 Polakiewicz, Jörg. "Managing the International Order - The Functions of Treaty Depositaries." *Seminar Presentation*, Helsinki, September 19, 2018. Council of Europe. Accessed August 28, 2025. https://rm.coe.int/16809074a8.

816 *Ibid.*

817 *What Is a Treaty Depositary? - EUCLID (Euclid University) Treaty and Depositary*. n.d. Accessed August 26, 2025. https://www.euclidtreaty.org/what-is-a-treaty-depositary/.

818 United Nations. *Treaty Handbook*. Revised edition. New York: United Nations, Office of Legal Affairs, Treaty Section, 2013. https://treaties.un.org.

819 United Nations. *Reservations to Multilateral Conventions*. Codification Division, Office of Legal Affairs. Last updated June 22, 2023. https://legal.un.org/ilc/summaries/1_8.shtml.

repositories,[820] depositaries provide a stable and authoritative source of machine-readable data. This makes it possible to build structured datasets that allow algorithms to analyse language, identify patterns, and highlight reservations that may conflict with a treaty's object and purpose. In practice, the ability to access standardized and unaltered reservation records from the UN Treaty Collection or similar regional platforms gives AI systems reliable inputs for accurate detection and comparison across States and treaties.[821]

Integrating AI tools into this framework requires careful design to protect both the neutrality of the depositary and the legitimacy of the outputs. AI systems that rely on depositary data must acknowledge that the depositary neither makes nor should make legal judgments on reservations.[822] Instead, AI-generated results should serve as descriptive tools, such as identifying patterns, signaling potential concerns, or presenting visual trends, without assigning legal validity. These outputs should always carry disclaimers that the ultimate interpretation rests with human legal experts applying treaty law. By preserving the depositary's role as a repository and facilitator rather than a legal authority, AI-enhanced systems can strengthen transparency and analytical capacity while respecting the sovereign rights of States and the established order of international law.

Along with these, Academic institutions play an important role in examining the legitimacy of applying AI to the complex field of treaty law. For example, the Leverhulme Centre for the Future of Intelligence at Cambridge brings together computer scientists, philosophers, and ethicists to study how AI connects with justice, transparency, and legal interpretation.[823] This work provides a basis for developing frameworks that place AI within the normative and moral dimensions of international law. Similarly, the Norwegian Research Center for Computers and Law at the University of Oslo focuses on the relationship between law and digital technologies, exploring how principles such as sovereignty, consent, and procedural fairness are shaped by algorithmic tools in legal reasoning.[824] These and other academic hubs contribute valuable theoretical insights into how AI can be incorporated into international treaty processes without weakening core legal values.

At the same time, scholars are working to strengthen transparency and accuracy

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820 *Human-Rights-Compliant Use of Artificial Intelligence Systems: Toolkit for Civil Society*. October 8, 2024. https://dslua.org/publications/human-rights-compliant-use-of-artificial-intelligence-systems-toolkit-for-civil-society/.

821 "United Nations Treaty Collection." Accessed September 3, 2025. https://treaties.un.org/Pages/Content.aspx?path=DB/MTDSGStatus/pageIntro_en.xml.

822 United Nations. *Treaty Handbook*. Revised edition. New York: United Nations, Office of Legal Affairs, Treaty Section, 2013. https://treaties.un.org.

823 LCFI - Leverhulme Centre for the Future of Intelligence. "Leverhulme Centre for the Future of Intelligence." Accessed August 28, 2025. https://www.lcfi.ac.uk.

824 "Norwegian Research Center for Computers and Law - Department of Private Law." Accessed August 28, 2025. https://www.jus.uio.no/ifp/english/about/organization/nrccl/index.html.

in AI systems that are applied to legal texts. The European Centre for Algorithmic Transparency, within the European Commission's Joint Research Centre, examines how algorithms influence governance and supports the enforcement of transparency standards on digital platforms.[825] This work is important for the design of AI tools in treaty analysis because it ensures that outputs are clear, reviewable, and based on sound methods. More broadly, scholars have suggested creating strong institutional frameworks, such as international advisory bodies or treaty mechanisms, to guide the use of AI in international law.[826] These proposals emphasize oversight, verification, and normative clarity. Together, both theoretical research and practical governance models can help build AI tools that remain legally accountable and consistent with fundamental values in the sensitive field of human rights treaty reservations.

The above discussion shows that although AI has an exceptional ability to process large legal datasets, detect patterns, and point out possible conflicts, its real value lies in supporting rather than replacing human oversight. When algorithmic efficiency is combined with expert judgment, AI can help ensure more consistent, transparent, and timely monitoring of treaty reservations, while protecting the interpretive role of legal and institutional actors. This balance allows technology to act as a tool for clarity and accountability, without taking the place of the nuanced reasoning required in international law.

825 "European Centre for Algorithmic Transparency - European Commission." July 4, 2025. https://algorithmic-transparency.ec.europa.eu/index_en.

826 Christina Voigt and Caroline Foster, eds. *International Courts versus Non-Compliance Mechanisms: Comparative Advantages in Strengthening Treaty Implementation*. Cambridge: Cambridge University Press, 2024. https://doi.org/10.1017/9781009373913.

## CONCLUSIONS AND RECOMMENDATIONS

The findings of this thesis demonstrate that the implementation of the reservations' regime has reached a critical juncture. While the current framework has successfully encouraged broader state participation in human rights treaties, it has simultaneously permitted states to maintain extensive reservations that fundamentally undermine the core objectives of these international instruments. This dual outcome highlights the inherent tensions within the existing system and emphasizes the need for reform to better balance the competing demands of inclusivity and treaty integrity. Following the analysis of the thesis, the author presents the following conclusions:

1. This dissertation has demonstrated that the VCLT reservation mechanism is fundamentally insufficient for human rights treaties. The research revealed that widespread state practice of making reservations that conflict with the object and purpose of human rights treaties exposes the inadequacy of the VCLT framework, which proves too narrow to address the unique normative character of human rights instruments. This insufficiency necessitates alternative regulatory approaches specifically designed to safeguard the integrity of human rights law and prevent states from undermining their substantive obligations whilst maintaining formal treaty participation.
2. The analysis established that state practice and emerging customary norms have outpaced the VCLT provisions on reservations. Despite formal rules governing objections, states rarely use the objection mechanism, making it ineffective as a regulatory tool. New customary practices have developed, including interpretative authority exercised by treaty monitoring bodies, demonstrating that the VCLT regime alone cannot effectively regulate reservation compatibility. Consequently, assessing reservation validity now relies increasingly on evolving treaty practice, institutional interpretations, and supplementary mechanisms beyond the original VCLT framework.
3. The current reliance on state objections has proven inadequate, as political considerations systematically override legal obligations. Cases such as *Cudak v. Lithuania* confirmed that human rights must be practical and effective rather than theoretical or illusory. However, the existing mechanism allows incompatible reservations to persist unchallenged, creating legal gaps that permit continued violations. This structural deficiency requires institutional reform that empowers treaty bodies with binding authority to assess reservation validity.
4. Examination of institutional approaches, including the Human Rights Committee's General Comment No. 24 and the ILC's Guide to Practice, confirmed that non-binding guidance cannot address the systemic enforcement deficit. These instruments lack the authority to compel compliance or invalidate problematic reservations, perpetuating widespread non-compliance despite formal legal standards. The research concluded that meaningful reform requires a fundamental restructuring of oversight mechanisms, including enhanced authority for treaty bodies and the adoption of innovative technological solutions.

5. The objection mechanism operates as a fundamentally flawed instrument driven by political expediency rather than principled human rights commitment, with objections remaining exceptional occurrences systematically undermined by strategic calculations, including alliance considerations, reciprocity concerns, and diplomatic silence that prioritize bilateral relationships over treaty integrity. This creates a permissive environment where incompatible reservations persist despite formal disapproval, exposing deeper structural inadequacies where the absence of binding enforcement mechanisms enables states to disregard treaty obligations without meaningful consequences and necessitating comprehensive institutional reform.
6. An artificial intelligence represents a transformative opportunity for enhancing treaty compliance and transparency in the human rights regime. The analysis revealed that AI technologies possess significant potential to revolutionize monitoring and analysis of reservations, offering unprecedented capabilities for systematic tracking of state compliance and providing enhanced accountability mechanisms. The analysis stressed that AI tools cannot replace the legal judgment of human beings but can support treaty bodies, NGOs, and national human rights institutions by providing systematic data, comparative insights, and transparent monitoring. By broadening access to information, AI could increase accountability and serve as a tool to encourage states to align their reservations with international standards, as well as exert public pressure.
7. The sustained public pressure serves as a critical determinant in shaping legal outcomes, particularly regarding reservations to human rights treaties, with the analysis revealing that whilst legal frameworks provide formal structure, it is often the persistence of long-term public advocacy that proves decisive in achieving meaningful change. The evidence from multiple jurisdictions shows that sustained civil society pressure has been instrumental in persuading states to withdraw problematic reservations to human rights instruments such as CEDAW and the ICCPR, with governments ultimately abandoning restrictive clauses following years or decades of consistent public advocacy. This pattern demonstrates that public pressure operates not merely as an external influence but as an integral component of democratic governance that fundamentally reshapes international legal commitments, serving as a vital mechanism of democratic accountability in international law where sustained civic engagement becomes essential for ensuring that formal treaty obligations translate into meaningful domestic human rights protections.

***Recommendations for Improving the Reservations' Regime:***

This research has demonstrated the complex evolution of the reservation regime from rigid unanimity requirements to the flexible "object and purpose" framework established by the 1951 ICJ Advisory Opinion, whilst revealing that artificial intelligence represents a transformative opportunity for enhancing treaty compliance and transparency in human rights law. The convergence of historical legal development, technological advancement, and sustained advocacy creates an unprecedented opportunity to

address the persistent challenges within the reservation regime, including definitional ambiguity, institutional limitations, and enforcement gaps that have undermined the universal application of human rights protection. Based on these findings, the following comprehensive reforms are proposed to strengthen the reservations' regime and enhance human rights treaty effectiveness:

1. Doctrinal and legal reforms should be introduced to clarify and reinforce the central legal concepts governing the reservations regime. A primary concern is the precision of the definition of the term "object and purpose" in different treaty contexts.[827] As the author revealed in the thesis, Article 19(c) of VCLT prohibits reservations that are incompatible with the object and purpose of a treaty,[828] but state practice and treaty jurisprudence have not produced a consistent interpretation of this provision.[829] This has created significant uncertainty. Therefore, the international treaty law could be strengthened through the compulsory protocol prepared by the International Law Commission (ILC) and adopted by the State parties of VCLT. Such a measure could provide clearer standards for distinguishing between essential and non-essential reservations. Similarly, greater convergence among treaty bodies, regional human rights systems, and international courts in applying uniform benchmarks for assessing "object and purpose" would reduce legal uncertainty and promote consistency in decision-making within the reservations regime.
2. The author also suggests that institutional reforms are necessary to make the reservations regulatory regime more effective and to strengthen human rights enforcement mechanisms and oversight. For example, treaty-monitoring bodies could be formally empowered, whether through treaty amendments, optional protocols, or consensus decisions of states parties, to review the validity of reservations or at least to issue determinations and advisory opinions that are binding or carry strong persuasive authority. Such authority, however, must be explicitly granted in the constituent instruments of treaties or through treaty-based protocols, rather than relying solely on guidelines or informal practice.
3. In addition, greater cooperation among states should be institutionalized. One possible model would be pooled review committees composed of states parties, non-governmental organizations, and treaty body experts. Such committees could scrutinize reservations, raise objections when necessary, and refer disputes to competent judicial or quasi-judicial bodies. This would help address one of the most significant shortcomings of the current system. Treaty bodies often lack the legal and institutional authority to enforce their findings

827 Pellet, Alain. *Note on Draft Guideline 3.1.5 (Definition of the Object and Purpose of the Treaty)*. United Nations, International Law Commission, A/CN.4/572*, 21 June 2006.

828 VCLT. Article 19(c).

829 Alain Pellet, "1969 Vienna Convention: Article 19 Formulation of Reservations," in *The Vienna Conventions on the Law of Treaties: A Commentary*, edited by Olivier Corten and Pierre Klein, vol. 1 (Oxford: Oxford University Press, 2011), 405-482. https://doi.org/10.1093/law/9780199573523.003.0039.

regarding reservations.[830] They cannot issue binding determinations or impose sanctions, and this absence of coercive authority has allowed political inertia to persist.

4. Practical and political measures should complement legal and institutional reforms to ensure that such reforms take root and produce tangible results. One important step is to increase transparency and enhance civil society engagement. States, non-governmental organizations, and international bodies should publish, in multilingual and accessible formats, all reservations, objections, comments of judicial or monitoring bodies, and analyses of potential incompatibility.[831] This would strengthen processes of "naming and shaming" and peer pressure, which have often proven more effective in international human rights practice than formal legal compulsion.
5. Furthermore, reform is needed at the national level, particularly for human rights institutions, judiciary bodies, and civil society. This should include legal education and technical support to assess the compatibility of reservations, resources to participate in treaty body proceedings, and encouragement within domestic systems to interpret treaties in line with their object and purpose.[832] Moreover, states could agree on soft-law instruments or treaty-based arrangements to establish deadlines and standard procedures for withdrawing or narrowing problematic reservations, as well as for lodging objections. Such mechanisms may help to reduce the inertia that currently arises from delay or inaction.
6. Future of AI in reservations' regime: Building on the proposed doctrinal, institutional, and practical reforms, this thesis also underscores the potential role of technology, particularly artificial intelligence (AI), in addressing the persistent challenges of the reservations' regime. Although legal and political reforms remain essential, they often rely on lengthy processes of consensus-building and state cooperation. AI, by contrast, offers innovative and complementary tools that can enhance transparency, improve monitoring, and generate comparative insights into state practice.[833] By supporting treaty bodies, non-governmental organizations, and scholars in identifying patterns of incompatible reservations and in making relevant data accessible across jurisdictions, AI can contribute to strengthening both the enforcement and the universality of human rights

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830 *Ibid.*

831 United Nations Human Rights Council. *Joint Statement by a Group of Special Procedures Mandate Holders: Civic Space Must Be Protected and Expanded in Anti-Corruption Efforts*. United Nations, 2025. https://www.ohchr.org/en/statements/2025/09/joint-statement-civic-space-uncac.

832 Office of the High Commissioner for Human Rights (OHCHR). "Treaty Body Capacity Building Programme." *United Nations Human Rights Office* accessed September 14, 2025. https://www.ohchr.org/en/treaty-bodies/treaty-body-capacity-building-programme.

833 Dulka, Anne. "The Use of Artificial Intelligence in International Human Rights Law." *Stanford Technology Law Review* 26, no. 2 (2023): 316-366.

treaties.[834] The following recommendations consider how AI may be applied to assist in the validity assessment of reservations:

6.1. Technical applications of AI should be developed to assist in evaluating the validity of reservations. Natural language processing (NLP) can be used to analyze treaty texts and reservations in order to detect linguistic patterns or recurring phrases that are commonly found in potentially incompatible reservations.[835] Existing scholarship demonstrates the utility of NLP for legal document analysis, clause extraction, summarization, and classification of legal provisions.[836] For example, systematic reviews of NLP in legal document analysis highlight methods for extracting and classifying legal text to identify problematic clauses.[837] Similarly, studies show how structural and syntactic features in legal texts can be parsed with NLP tools to support legal research.[838] These techniques could be adapted to design systems that automatically flag reservations likely to conflict with the "object and purpose" requirement under Article 19(c) of VCLT. To ensure broad accessibility and practical use, multilingual treaty databases should also be developed.[839] Such databases would make reservations, objections, and relevant treaty body responses searchable not only in the six official UN languages but also, where possible, in regional languages.[840] This would enable non-governmental organizations, scholars, and treaty bodies to conduct comparative analyses, monitor trends, and promote greater transparency in the reservations' regime. And, consequently, apply public pressure on states both when they formulate such reservations and when other states fail to raise objections to them.

6.2. The supportive role of treaty bodies, NGOs, and other actors in integrating AI tools should also be formally recognized. Treaty bodies such as the Human Rights Committee, the Committee on the Elimination of Discrimination against Women, and the Committee on the Rights of the Child could make use of AI-generated summaries and preliminary compatibility assessments when reviewing state reports and reservations.[841] NGOs,

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834 *Ibid.*

835 Daniel Martin Katz et al., *Natural Language Processing in the Legal Domain*, arXiv preprint arXiv:2302.12039v1 [cs.CL], February 23, 2023, https://arxiv.org/abs/2302.12039.

836 *Ibid.*

837 *Ibid.*

838 Dale, Robert. 2019. "Law and Word Order: NLP in Legal Tech." *Natural Language Engineering* 25 (1): 211-217. https://doi.org/10.1017/S1351324918000475.

839 *Ibid.*

840 *Ibid.*

841 Helfer, Laurence R., and Veronika Fikfak. "How AI Could Enable Faster Outcomes for International Human Rights Cases." *Duke Law News*, April 22, 2025. https://law.duke.edu/news/how-ai-could-enable-faster-outcomes-international-human-rights-cases/.

academic institutions, private sector for public benefit should also be actively involved in the development of these tools.[842]. An important reference point is the Council of Europe Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law, which reflects an emerging binding international legal framework designed to ensure that AI systems align with human rights standards, democratic principles, and the rule of law.[843] Under this Convention, parties are required to establish oversight mechanisms, accountability procedures, and safeguards.[844] These obligations could support the development of AI-based tools within the reservations regime.

6.3. Appropriate cautions and safeguards are essential to prevent misuse, bias, or the unintended undermining of sovereignty and legal judgment.[845] AI tools should not replace human legal interpretation but should serve only as supportive instruments.[846] The authority to determine the validity of reservations must remain with state parties of international treaties and legally empowered bodies. Ethical concerns also need to be addressed, including the risk of algorithmic bias, the need for transparency in model design, the protection of privacy when analyzing treaties or state documents, and the political sensitivities that may arise if such tools are perceived as imposing external judgments.

Finally, the development and implementation of AI tools in human rights and international treaty law should involve collaborative efforts between states, treaty bodies, civil society, non-governmental organizations, and technical experts. This collaborative approach would enhance legitimacy, ensure that different cultural and legal perspectives are incorporated, and minimize the risk that these new tools reflect the biases or assumptions of any single legal tradition or methodological approach.

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842 Council for International Development. "International NGOs' Vital Role in AI and Human Rights." Accessed September 14, 2025. https://www.cid.org.nz/connect/news/international-ngos-vital-role-in-ai-and-human-rights/.

843 Rotenberg, Marc. "Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law (Council Eur.)." *International Legal Materials* 64, no. 3 (June 2025): 859-902. https://doi.org/10.1017/ilm.2025.1.

844 *Ibid.*

845 "Prioritizing Safety and Rights in AI Technology." Accessed September 14, 2025. https://www.macfound.org/press/perspectives/prioritizing-safety-and-rights-in-ai-technology.

846 *Ibid.*

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3. Constitution of the Islamic Republic of Pakistan, 1973.
4. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), adopted 10 December 1984, entered into force 26 June 1987, 1465 U.N.T.S. 85.
5. Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, adopted 7 November 1962, entered into force 9 December 1964, 521 U.N.T.S. 231.
6. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted 18 December 1979, entered into force 3 September 1981, 1249 U.N.T.S. 13.
7. Convention on the Prevention and Punishment of the Crime of Genocide, adopted 9 December 1948, entered into force 12 January 1951, 78 U.N.T.S. 277.
8. Convention on the Rights of the Child (CRC), adopted 20 November 1989, entered into force 2 September 1990, 1577 U.N.T.S. 3.
9. European Convention on Human Rights, Nov. 4, 1950, E.T.S. 5.
10. International Covenant on Civil and Political Rights (ICCPR), adopted 16 December 1966, entered into force 23 March 1976, 999 U.N.T.S. 171.
11. International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted 16 December 1966, entered into force 3 January 1976, 993 U.N.T.S. 3.
12. Law No. 2019-15 of 12 February 2019, on Inheritance. *Official Gazette of the Republic of Tunisia*, No. 14.
13. OAS, Inter-American Convention to Prevent and Punish Torture. https://www.oas.org/juridico/english/sigs/a-51.html.
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17. Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, entered into force 27 January 1980, 1155 U.N.T.S. 331.


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# RESERVATIONS TO INTERNATIONAL HUMAN RIGHTS TREATIES: PROBLEMATIC ISSUES

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## SUMMARY

### Relevance of the research and the essence of the problem

International human rights treaties form the basis of contemporary international law, establishing states' obligations to respect, protect and fulfil fundamental human rights and freedoms. Since the adoption of the Universal Declaration of Human Rights in 1948, the international community has developed an extensive legal framework comprising both universal multilateral treaties and regional human rights protection systems. Among the main universal instruments to which the most reservations have been made, the following are worth mentioning: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child; at the regional level, the European Convention for the Protection of Human Rights and Fundamental Freedoms.

However, the widespread ratification of these treaties does not always imply an unconditional commitment to their provisions. States often make use of the right granted by the law of international treaties to formulate reservations - unilateral declarations aimed at eliminating or modifying the legal effect of certain provisions of a treaty. The institution of reservations is one of the most topical and contentious issues in the law of international treaties: it reveals a fundamental tension between two conflicting principles - state sovereignty and the universal protection of human rights.

One of the main issues raised in this dissertation is the applicability of the 1969 Vienna Convention on the Law of Treaties (hereinafter referred to as the 1969 Vienna Convention) specifically to international human rights treaties and the reservations made thereto. The Convention establishes a general legal framework for reservations, which was created before the entry into force of many key human rights treaties and was not specifically adapted to their particularities. The author of the dissertation argues that the decentralized mechanism for state objections under the 1969 Vienna Convention, on which the entire system for assessing reservations is based, operates extremely ineffectively in the context of human rights treaties. Furthermore, the object and purpose criteria, based on which the lawfulness of reservations is assessed, are too vague, thereby giving rise to inconsistent interpretations.

According to data from the UN Secretary-General, more than 70 per cent of ratifications of international human rights treaties are accompanied by at least one reservation. The Convention on the Elimination of All Forms of Discrimination against Women has more than 50 reservations submitted by states, many of which are very broad and essentially negate the fundamental rights guaranteed by this convention. This situation raises a fundamental question: are international human rights treaties genuine instruments of legal obligation, or merely symbolic political statements that states are free to 'adapt' to their own convenience by submitting highly general reservations?

The relevance of this study is further emphasized by the fact that the international legal community has devoted significant attention to this issue: The International Law Commission spent 17 years - from 1994 to 2011 - working on the comprehensive International Law Commission's Guide to Practice on Reservations to Treaties, which were published in 2011 following their adoption by the UN General Assembly. Although this instrument represents a significant contribution to international law, unfortunately it has not resolved many fundamental issues that remain relevant to this day.

The author of the dissertation also explores an additional area of research: the potential of artificial intelligence (AI) technology in addressing issues of clause evaluation, compatibility and transparency. This is a new, innovative aspect that has not been given sufficient attention in previous doctrine, and it constitutes a significant contribution of this study to the academic debate.

## Research aim and objectives

The main aim of the dissertation is to develop and propose a new system designed to address the problems of reservations to human rights treaties, to safeguard the integrity of international human rights protection and its practical applicability, by combining legal, institutional and technological aspects.

The following tasks are set to achieve this objective:

1. To conduct a critical analysis of the 1969 Vienna Convention on the Law of Treaties, identifying its strengths and weaknesses in the context of human rights treaties, and to argue why this instrument of general treaty law is insufficient for the specific nature of human rights treaties;
2. Systematically examine and categorize reservations to the core human rights treaties - the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the European Convention for the Protection of Human Rights and Fundamental Freedoms - identifying the predominant types of reservations, their geographical and cultural contexts, and determining which provisions of the treaties are most frequently subject to reservations;
3. To analyze the practice of states' objections to reservations, assessing whether the system of state objections functions as an effective self-monitoring mechanism in the context of human rights treaties, and identifying systemic shortcomings that may render it ineffective;
4. To assess the role and competence of treaty monitoring bodies in evaluating reservations, by analyzing General Comment No. 24 (1994) of the Human Rights Committee, the case law of the European Court of Human Rights in several landmark cases (such as *Belilos v. Switzerland, Loizidou v. Turkey*) and

the practice of the International Law Commission's Guidelines on Reservations to Treaties;

5. To analyze the content, application and legal consequences of the doctrine of severability, assessing whether the principle of severability is a legally sound and practically effective solution for resolving issues relating to reservations;
6. To examine the potential of artificial intelligence (AI) technologies in addressing the challenges of clause monitoring, compatibility assessment and transparency, whilst critically evaluating the associated risks and ethical issues;
7. To provide specific recommendations for improving the exemption assessment system, covering legal, institutional and technological aspects.

## Research methods

The methodological framework of this dissertation is grounded in doctrinal legal analysis, supplemented by empirical examination and technological innovation. The research systematically analyses primary sources, including VCLT, human rights treaty texts, state reservations and objections, treaty body jurisprudence, and ICJ decisions. This doctrinal foundation is complemented by empirical assessment of state practices and institutional effectiveness. Furthermore, the thesis proposes innovative AI applications to enhance reservation analysis and monitoring, whilst emphasizing the primacy of human legal interpretation and the need for appropriate ethical safeguards. This multifaceted approach enables comprehensive evaluation of existing frameworks and development of theoretically sound and practically viable reform proposals.

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## Scientific novelty

The scientific novelty of the dissertation is manifested in four interrelated aspects.

**Firstly**, the dissertation is presented as the first study to integrate doctrinal, empirical, institutional critique and technological (AI) perspectives into a single analytical whole, thereby filling an existing gap. In the author's view, there has hitherto been a lack of comprehensive research that systematically combines an analysis of reservations to human rights treaties, an empirical assessment of problematic state practices, and the application of innovative technologies to evaluate the compatibility of reservations.

**Secondly**, the dissertation aims to propose ways of creating an innovative conceptual framework designed to resolve the long-standing tension between the universality and the integrity of human rights treaties - this framework consists of doctrinal assessment, empirical research and technological innovations, whilst maintaining the primacy of human rights assessment.

**Thirdly**, the author of the dissertation empirically and systematically analyses

examples of state reservations, state objections and the conclusions of treaty monitoring bodies, with the aim of providing an evidence-based assessment of the impact of reservations on the protection of human rights and the functioning of the system itself. This is an important contribution, allowing not only for a description but also for a critical assessment of the effectiveness of the state objection mechanism in the context of human rights protection treaties.

**Fourthly**, the thesis provides a reasoned examination of the potential of artificial intelligence for the monitoring and analysis of reservations, including the application of natural language processing technologies to analyze treaty texts, the automatic identification of potentially incompatible reservations and multilingual comparative analysis, whilst emphasizing the need to apply appropriate safeguards and preserve the primacy of human legal interpretation.

These elements of theoretical and empirical novelty are complemented by a significant comparative analysis of case law, covering judicial practice in which criteria for the assessment of clauses have been formulated, relevant from both a doctrinal and a practical perspective.

## Practical significance

The practical significance of the dissertation is grounded in an empirical assessment and insights based on case law regarding how states, in practice, make reservations to international human rights treaties, why the traditional system of state objections to reservations often fails to achieve its objective, and what structural reforms could strengthen the integrity of treaties and the effective protection of human rights.

The dissertation offers direct benefits to states formulating reservations and national positions: it clearly identifies the most common categories of problematic reservations, i.e. particularly broad, vague reservations based on religious or cultural arguments, and demonstrates how they are incompatible with the object and purpose of the treaty. The author proposes directions for reform, such as giving preference to narrower, more targeted formulations and providing interpretative declarations (in the true sense) in place of broad reservations.

**For UN treaty bodies assessing the compatibility of reservations**, the dissertation highlights the necessity of these bodies' role, particularly where state objections are rare or politically motivated, discusses challenges arising in practice, including a potential lack of resources, coordination shortcomings and undefined consequences under the 1969 Vienna Convention, and justifies the need for a more consistent and methodologically clear assessment of reservations and the strengthening of constructive dialogue with states.

**For international organizations considering measures to enhance monitoring and transparency**, the thesis proposes a practically applicable, artificial intelligence-based approach: to use natural language processing technologies for the systematic monitoring and analysis of reservations, the automatic identification of potentially incompatible reservations, as well as multilingual database solutions for comparative

analysis, whilst maintaining the primacy of human legal assessment and ensuring appropriate ethical safeguards.

**For international courts and institutions adjudicating on the legality of reservations**, the dissertation systematizes the dilemma in case law and doctrine regarding the consequences of incompatible reservations, discussing the application of the principles of admissibility, opposability and severability, and demonstrates how the decision to apply the principle of severability might be implemented in practice in cases where a state should have been aware of the illegality of the reservation.

**For civil society organizations and NGOs**, the dissertation provides practical arguments and strategic guidelines, i.e. it demonstrates that sustained pressure from the public and non-governmental organizations can be one of the decisive factors encouraging states to revoke problematic reservations, and that the most effective strategy is often not merely to demand the immediate withdrawal of reservations, but to engage in consistent dialogue with government institutions and the public, and to make active use of UN mechanisms.

## Scope of the study

Although this dissertation proposes institutional reforms, such as joint review committees, and discusses the potential role of artificial intelligence (AI) tools in monitoring exceptions, it does not provide detailed models for the implementation of these mechanisms. Establishing precise allocation procedures, voting mechanisms and funding arrangements, or developing actual AI systems, would require broader interdisciplinary research encompassing legal analysis, political and economic criteria, diplomatic practice, IT expertise and empirical testing – these are tasks that go beyond the scope of the legal research in this dissertation.

Furthermore, this work does not conduct an empirical analysis of the implementation of reservations at the national level in specific states. The dissertation formulates a normative framework and legal principles upon which such institutional mechanisms and technological measures could be developed, should the participating states demonstrate the political will to implement them. The detailed institutional architecture and technical development would be the subject of further interdisciplinary research and negotiations between states.

## Defence statements

1. **VCLT reservation mechanism is insufficient for human rights treaties**: Due to the widespread practice of states making reservations that conflict with the object and purpose of such treaties, the VCLT framework is too narrow and inadequate, necessitating alternative regulatory approaches to safeguard the integrity of human rights law.
2. **State practice and emerging customary norms have outpaced VCLT provisions**: Despite formal rules on objections, the limited use of objections by states

and the development of new customary practices demonstrate that the VCLT regime alone cannot effectively regulate the compatibility of reservations; consequently, the assessment of validity now relies on evolving treaty practice and supplementary interpretative mechanisms.

3. **Innovative mechanisms, including AI-assisted tools, can enhance the assessment and management of reservations**: Integrating advanced technological solutions and extending procedural timelines could reduce subjectivity, improve transparency, and enable national and international actors to more accurately identify invalid or incompatible reservations, addressing gaps left by both the VCLT and existing ILC guidelines.

## The structure of the thesis

The first part traces the historical and conceptual development of the law of reservations. In classical international law, the so-called unanimity rule prevailed: a state could only become a party to a multilateral treaty if all existing parties accepted its reservation, and a single objection could block participation entirely. Whilst this rule had a certain internal logic in the context of bilateral or small multilateral treaties, it became an increasingly serious obstacle after the Second World War, when the international community began drafting universal treaties intended to attract the widest possible participation. The decisive turning point came with the 1951 Advisory Opinion of the International Court of Justice in the case concerning *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, in which the Court held that the unanimity rule was not an absolute norm applicable to all multilateral treaties. Given the Genocide Convention's humanitarian objectives and universal character, the Court reasoned that a more flexible approach was warranted: a state may become a party with a reservation to which others object, provided the reservation is compatible with the object and purpose of the Convention. This opinion was significant on two levels - it replaced the unanimity rule with a flexibility-based system prioritizing universality over integrity, and it established the 'object and purpose' criterion as the primary standard for assessing the legality of reservations. However, as the dissertation demonstrates, the Court did not clearly resolve what happens when a reservation is found to be incompatible - whether the state remains a party without the reservation (the severability position) or loses its status as a party altogether - a question that would become one of the central controversies of international treaty law.

The 1969 Vienna Convention on the Law of Treaties (VCLT), which entered into force in 1980, codified these developments. Article 2(1)(d) defines a reservation as any unilateral statement made by a state when signing, ratifying, accepting, approving, or acceding to a treaty, whereby it purports to exclude or modify the legal effect of certain provisions. Article 19 sets out three grounds on which a reservation is impermissible: where the treaty itself prohibits reservations; where only specific reservations are permitted, and the proposed reservation falls outside them; or where the reservation is incompatible with the object and purpose of the treaty. Articles 20 and 21 regulate

the procedure for accepting or objecting to reservations, providing a 12-month window for objections and specifying the legal effects of accepted reservations. A critical contextual point, developed throughout the dissertation, is that when the VCLT was drafted, most core human rights treaties had not yet been adopted. Its framers had traditional inter-state treaties in mind - treaties premised on reciprocity - without adequately accounting for the objective nature of human rights treaties, their erga omnes obligations, or the institutional role of treaty monitoring bodies. This historical circumstance is identified as the fundamental source of the problems the dissertation seeks to address. In 2011, the International Law Commission adopted comprehensive Guidelines on Reservations to Treaties following 17 years of work, confirming that Articles 19–23 of the VCLT reflect customary international law, recognizing the role of treaty bodies in assessing compatibility, and adopting a flexible approach to the consequences of invalid reservations. Whilst a significant contribution, the Guidelines left unresolved the question of severability, failed to establish a centralized assessment mechanism, and did not confer treaty monitoring bodies with clear and universally recognized competence to definitively rule on the legality of reservations.

The second part evaluates the effectiveness of the current regulatory framework by examining how reservations have operated in practice across the core human rights treaties. Human rights treaties differ from traditional international agreements in several fundamental respects that make the standard VCLT framework ill-suited to their character. First, they do not create reciprocal obligations between states but rather establish obligations on states in the interests of individuals, meaning that problematic reservations harm individuals within the reserving state's jurisdiction regardless of whether other states act. Second, the existence of treaty monitoring bodies - independent expert committees established to oversee implementation - creates an institutional dimension entirely absent from the VCLT's design. Third, individual complaints mechanisms under certain human rights treaties mean that reservations can directly restrict individuals' access to international protection. Against this background, the dissertation analyses reservations to four core treaties in detail. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has attracted the most reservations of all core human rights treaties, with more than 50 states submitting reservations, many of them broad and incompatible with the Convention's core obligations. Reservations based on Islamic law - such as those made by Bangladesh, Egypt, Libya, Pakistan, and Saudi Arabia - frequently target Article 2 (the obligation to eliminate discrimination) and Article 16 (equal rights in marriage and family), often invoking Sharia law in broad and non-specific terms that make it impossible for other parties to assess the precise scope of the reservation. The CEDAW Committee has consistently criticized such reservations as incompatible with the object and purpose of the Convention but, as its recommendations are not binding, many states have maintained their position. The International Covenant on Civil and Political Rights (ICCPR) had attracted approximately 150 reservations from 173 states parties as of 2025, ranging from narrow exclusions of specific obligations to broad formulations asserting the supremacy of domestic law. Pakistan's reservation to Article 3, for example,

conditions its application on compatibility with the national constitution and Sharia law - a formulation considered insufficiently specific and problematic under the principle enshrined in Article 27 of the VCLT, which prohibits a state from invoking internal law to justify failure to fulfil treaty obligations. The Human Rights Committee's General Comment No. 24 (1994) is the most significant attempt by an international body to define the limits of permissible reservations to the ICCPR, identifying four categories of inherently impermissible reservations: reservations to jus cogens norms; reservations to non-derogable rights; reservations to provisions having the status of customary law; and general, non-specific reservations that create legal uncertainty and violate the principle of transparency. General Comment No. 24 also endorsed the severability principle - treating invalid reservations as severed from the state's consent whilst leaving the state bound by the full treaty - a position that attracted formal objections from the United Kingdom, the United States, and France on the grounds that it exceeded the Committee's mandate. The International Covenant on Economic, Social and Cultural Rights (ICESCR) has attracted relatively fewer reservations, with approximately 15-20% of states parties having submitted reservations or declarations as of 2025, most frequently concerning Article 8 (the right to form trade unions and to strike) and Article 13 (the right to education). A recurring problem is the use of interpretative declarations - such as Egypt's declaration conditioning acceptance on compliance with Islamic Sharia, or Kuwait's declaration making the treaty's application subject to national constitutional law - which function as reservations in substance whilst seeking to avoid the stricter legal scrutiny applicable to formal reservations. The Committee on Economic, Social and Cultural Rights has maintained that equal rights of men and women under Articles 3 and 6–15 constitute a binding and immediately enforceable obligation, and that a state cannot justify failure to fulfil core obligations regardless of any reservation. The Convention on the Rights of the Child (CRC), the most widely ratified human rights treaty with 196 states parties as of 2025, permits reservations under Article 51 but prohibits those incompatible with the object and purpose of the Convention. Despite this, states including Iran, Qatar, Saudi Arabia, and Brunei have entered broad reservations based on Islamic law or domestic legislation without specifying which provisions are affected - a lack of transparency that effectively precludes meaningful monitoring. The dissertation also examines the European Convention on Human Rights (ECHR) as a comparative model. The ECHR system has fewer reservations than UN treaties but has produced significant jurisprudence. In *Belilos v. Switzerland*, the European Court of Human Rights asserted its jurisdiction to assess the validity of interpretative declarations functioning as reservations, establishing that states cannot circumvent the legal regime of reservations by relabeling them. In *Loizidou v. Turkey*, the Court effectively nullified a territorial reservation, holding Türkiye responsible for human rights violations in Northern Cyprus. The ECHR system thus demonstrates that stricter requirements for reservations and an active judicial role in reviewing their validity can effectively safeguard a convention's integrity - a model the dissertation proposes as instructive for the reform of the broader international human rights treaty system.

The third part examines the practice of state objections to reservations and the reasons for their persistent ineffectiveness. Under Articles 20 and 21 of the VCLT, a state may raise an objection to a reservation within 12 months of notification, and failure to object within that period is deemed to constitute acceptance. In theory, this mechanism should function as an instrument of self-regulation. In practice, however, empirical data presented in the dissertation reveal that most reservations to core human rights treaties receive few or no objections, with the notable exception of a small group of Northern European states - Finland, the Netherlands, Denmark, Norway, and Sweden - whose objections, whilst principled, do not constitute systematic and universal scrutiny. The dissertation identifies four main reasons for this pattern. First, political motives: states are reluctant to damage diplomatic relations, particularly with important economic or political partners, and criticism of reservations may be perceived as interference in internal affairs. Second, legal uncertainty: states are often unclear about the precise legal consequences of an objection - whether the treaty enters into force between the two states or not, and what effect the objection has on human rights protection within the reserving state's jurisdiction. Third, resource constraints: smaller and developing states lack sufficient legal and diplomatic capacity to monitor reservations systematically across all human rights treaties and to formulate well-reasoned objections. Fourth, limited practical impact: even where an objection is raised, the reserving state is not obliged to withdraw or amend the reservation, and the objection alters only the bilateral legal relationship without directly improving human rights protection within the reserving state's borders. A particularly important dimension of this analysis is the question of state "silence" - whether states that have not raised an objection within the 12-month period should be deemed to have consented to the reservation. The dissertation argues that in the context of human rights treaties, systematic state silence cannot be treated as legally significant approval of problematic reservations, since it is individuals - not states - who are the primary victims of incompatible reservations. The failure of the objections mechanism thus reinforces the argument for enhanced institutional oversight. The dissertation examines in depth the contested principle of severability, which holds that where a reservation is found incompatible with the object and purpose of a treaty, the reservation is severed from the state's consent, and the state remains bound by the full treaty. Whilst the Human Rights Committee, the ECtHR in *Belilos case*, and many international law scholars have endorsed this position, it raises serious questions about the principle of state consent - a foundational axiom of treaty law - and may create a deterrent effect on ratification. The ILC sought a compromise in its 2011 Guidelines, proposing a flexible approach under which the consequences of an invalid reservation depend on whether the state would have agreed to be bound without it. The dissertation takes a critical view of this approach, arguing that determining a state's hypothetical intention retrospectively lacks clear criteria and creates additional legal uncertainty. The dissertation also notes that, in practice, sustained pressure from treaty bodies, civil society, and the international community has in some cases prompted states to withdraw problematic reservations - as illustrated by Pakistan's 1997 withdrawal of its reservation to the

CRC on Islamic law grounds, and Morocco's progressive withdrawal of CEDAW reservations following a broad national consultative process involving religious scholars, women's rights activists, legal experts, and civil society organizations. These examples demonstrate that long-term domestic dialogue, public education, and consistent international pressure can create the conditions for meaningful change, even where formal legal mechanisms have proved insufficient.

The fourth part investigates how artificial intelligence can support the monitoring and assessment of reservations, addressing a fundamental institutional gap in the current system. The dissertation identifies four core shortcomings of the existing monitoring arrangements: the sheer volume and linguistic diversity of reservations published in the UN Treaty Register make systematic monitoring highly complex; there is often a significant delay before a new problematic reservation is identified and analyzed; treaty monitoring bodies operate on severely limited budgets insufficient for thorough reservation analysis; and there is no centralized platform where data on reservations, objections, treaty body assessments, and compliance progress are systematically collected, analyzed, and made publicly accessible. Against this background, the dissertation proposes several specific applications of AI technologies. First, automated monitoring using natural language processing (NLP) could enable rapid identification, classification - by type such as general, religious, constitutional, federal, or territorial - and comparison of new reservations with prior treaty body positions, providing real-time alerts to relevant stakeholders about potentially problematic reservations. Second, a compatibility assessment tool could be developed in which AI systems are trained on the accumulated practice of treaty monitoring bodies, international court judgments, ILC guidelines, and state practice, offering preliminary compatibility analyses to be reviewed by human experts before any decisions are made - with the dissertation explicitly emphasizing that AI should function as an auxiliary tool rather than the final decision-maker. Third, multilingual analysis capabilities would enable consistent assessment of reservations submitted in any of the UN's official languages, ensuring that reservations in less widely reviewed languages receive equivalent scrutiny. Fourth, publicly accessible interactive databases with visualizations - including geographical distribution maps, trend lines, and rights-gap analyses - could significantly increase transparency and facilitate monitoring by civil society, researchers, and other stakeholders. The dissertation engages seriously with the associated risks and ethical concerns. The risk of algorithmic bias is particularly significant: if an AI system is trained predominantly on practice reflecting Western legal traditions, it may systematically disadvantage reservations grounded in other legal traditions, such as Islamic law or African customary law. The proposed mitigation is the use of a diverse, multi-regional training dataset and regular algorithmic audits. Concerns about the concentration of institutional power in bodies controlling the AI system, the risk of false positives and false negatives with potentially serious legal consequences, and data privacy and security issues are also addressed, with the dissertation arguing that robust human expert oversight, transparent algorithms subject to public scrutiny, and strict data protection standards are essential safeguards.

# CONCLUSIONS

**Key findings** of the study. This doctoral thesis provides a comprehensive and critical analysis of the issue of reservations to human rights treaties - one of the most pressing and controversial areas of contemporary international treaty law. The findings reveal that the current system of reservations based on the 1969 Vienna Convention is fundamentally inadequate for effectively protecting human rights and ensuring the integrity of treaties in the context of human rights treaties.

**First conclusion**: the object and purpose criterion, whilst theoretically suitable as the primary standard for the lawfulness of reservations, is too vague in practice. This vagueness allows different institutions - states, treaty bodies, international courts - to offer conflicting interpretations of the same reservation. This has a negative impact on legal certainty and means that many clearly problematic reservations remain formally valid insofar as they do not conflict with clearly formulated jus cogens norms or completely negate the essence of the treaty.

**Second conclusion**: the system of state objections, which under the 1969 Vienna Convention is intended to function as the primary mechanism for controlling reservations, is essentially ineffective in human rights treaties. Empirical data show that the vast majority of reservations receive no objections or only a few - mostly from Northern European states. The reasons are political (protection of diplomatic relations), legal (uncertainty regarding the consequences), practical (lack of resources) and structural (the objective nature of human rights treaties, where states have no direct interest in objecting to other states' reservations, as it is not they but individuals who are directly affected by such reservations).

**Third conclusion**: treaty monitoring bodies, although lacking formal competence enshrined in international law, are increasingly and more actively involved in the assessment of reservations through their observations, general comments and decisions. Their role is constructive and significant but faces resistance from states. This dispute over competence undermines the effectiveness of the system.

**Fourth conclusion**: the doctrine of the principle of severability, applied by the ECtHR and supported by many treaty bodies, provides better protection of human rights (in that a state is not a party to the treaty if its reservation is void), but raises serious theoretical questions regarding a breach of the principle of state consent. The fundamental dilemma that arises is this: can it be correctly held that a state is bound by a treaty without its reservation if the state has clearly stated that it agrees to be a party only subject to that reservation? This is a conflict of irreconcilable values: the principle of consent versus the effective protection of human rights.

**Fifth conclusion**: the use of artificial intelligence has significant potential to address the problems of monitoring reservations, assessing compatibility and ensuring transparency, but its application must be extremely cautious and accompanied by appropriate safeguards to avoid bias, errors and the problem of decision-making being dominated. AI should be a tool to assist human experts in their assessments, rather than the final decision-maker, as the assessment of exceptions involves not only technical but also value-based judgements.

## RECOMMENDATIONS FOR IMPROVING THE RESERVATION SYSTEM

Based on the analysis carried out, the dissertation presents detailed recommendations addressed to states, international organizations, treaty monitoring bodies, courts and civil society.

**Clarification of the object and purpose criterion for each treaty.** It is proposed that treaty monitoring bodies, in cooperation with states, experts from the academic community and representatives of civil society, develop more detailed guidelines on the content of the object and purpose criterion for specific treaties. These guidelines should: firstly, clearly specify what types of reservations are, in principle, considered incompatible with the object and purpose of a specific treaty; secondly, provide specific examples from past practice illustrating compatible and incompatible clauses; thirdly, establish clear assessment criteria that could be relied upon when assessing new clauses.

**Clear recognition of the competence of the treaty monitoring bodies.** It is recommended that the competence of the treaty bodies to assess the compatibility of reservations with the object and purpose of the treaties be strengthened and expanded. This would reduce disputes over institutional authority and ensure that the assessment of reservations by treaty monitoring bodies carries greater authority and weight, even if not binding like court rulings.

**Dialogue as a key methodological tool.** It is recommended that, when assessing reservations, treaty monitoring bodies give priority to constructive dialogue with states rather than conflict. Treaty monitoring bodies should clearly and comprehensively explain why a specific reservation is considered problematic, propose alternative formulations that are compatible with the object and purpose of the treaty, allow the State sufficient time and, if necessary, technical assistance to review or withdraw the reservation, as well as to recognize when a state faces legitimate constitutional or practical difficulties in implementing certain provisions, and to seek appropriate and mutually effective solutions.

**A centralized monitoring system and a public access platform.** The dissertation recommends addressing the current shortcomings of the fragmented and conventional monitoring system, i.e. the situation where, even after several states have raised objections and treaty bodies have issued conclusions, there is no centralized system allowing one to track whether a reservation has been modified or withdrawn. It is proposed to create an open, publicly accessible platform that would present data on reservations, objections and withdrawals in a centralized and comprehensible manner, featuring interactive summary dashboards, search functions, country profiles and visualizations – maps and timelines. Such a system would ensure continuous and automated monitoring and comparative analysis, including multilingual data processing.

**Involvement of civil society.** It is recommended that civil society organizations be actively encouraged to participate in the monitoring of reservations. Civil society organizations could provide treaty monitoring bodies with information and analysis

on the impact of reservations on the protection of human rights in specific states, carry out public campaigns aimed at encouraging states to withdraw problematic reservations, submit amicus curiae briefs to courts and other bodies in cases where the legality of reservations is at issue.

**AI-based monitoring systems**. The author of the dissertation recommends developing an artificial intelligence system that would automatically monitor new reservations and provide an initial assessment of their compatibility with the object and purpose of the treaties. Such a system should be based on four principles: algorithms must be publicly available and verifiable; training data must cover various legal traditions to ensure a multilateral assessment; the final decision is always made by human experts, with AI performing only a supporting role; the system is continuously updated in line with new practice and feedback received.

**An advisory tool for states**. In addition to its monitoring function, the AI system could assist states even before a reservation is submitted: a state would enter the text of the planned reservation and receive an analysis of how similar reservations have been assessed in the past and what the risk is that the reservation will be deemed incompatible with the object and purpose of the treaty. This would allow the wording of the reservation to be refined in advance, avoid future disputes and contribute to increasing the overall clarity and transparency of reservations.

**Public monitoring platform**. Finally, it is recommended to create a public platform for representatives of civil society, researchers and other interested groups. The platform would allow for the monitoring of the practice of reservations, the submission of comments, the sharing of information and the coordination of advocacy efforts, thereby strengthening transparency and increasing civil society's involvement in the process of international human rights protection.

**Prior consultation before submitting problematic reservations.** It is recommended that states planning to submit broad or potentially problematic reservations first consult with treaty monitoring bodies and other interested states to reach a consensus. This would help to avoid objections and provide an opportunity to find solutions that satisfy both the State's legitimate interests and the integrity of the treaty.

**Periodic review of reservations.** It is proposed to establish a practice whereby states periodically review their reservations and assess whether they are still necessary and proportionate. Many historical reservations have become redundant due to changes in national circumstances (e.g. amendments to constitutional provisions, developments in case law), but the state has not withdrawn them. Periodic review could encourage the withdrawal of obsolete reservations.

**Improving the effectiveness of objections.** It is recommended that States raising objections clearly set out the reasons and legal grounds on which they consider the reservation to be incompatible with the object and purpose of the treaty. Many of the current objections are terse and formal, whereas more detailed, reasoned objections would have a greater political and moral impact on the State that has made the reservation and would contribute to a dialogue on the possible withdrawal of an inappropriate reservation.

## LIST OF SCIENTIFIC PUBLICATIONS

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## CURRICULUM VITAE

**Name:** Aistė Augustauskaitė-Keršienė

**Education**

**2013 – 2025** Doctoral Studies, Mykolas Romeris University, Law School, Vilnius. Dissertation topic: *Reservations to International Human Rights Treaties: problematic issues* (written in English).

**2010 – 2012** Master's Degree in International Law (studies conducted in English), Mykolas Romeris University, Law School, Vilnius.

**2006 – 2010** Bachelor's Degree in Law, Mykolas Romeris University, Law School, Vilnius.

**Academic and Professional Experience**

**2012 – present** Lecturer, Institute of International and European Union Law, Mykolas Romeris University. Courses taught: Public International Law; International Treaty Law (delivered in Lithuanian and English).

**2023 – present** Head of Legal and Compliance Department, UAB "Hautica".

**June – July 2010** Traineeship, EUROJUST, The Hague, Netherlands.

**Research Stays and Academic Traineeships**

- Traineeship at Riga Graduate School of Law (May 2025)
- Traineeship at Lund University, Sweden (September 2014).
- Traineeship at the Peace Palace, The Hague, Netherlands (May-June 2015).
- Intensive Programme (IP Erasmus): "Women, Religion and Immigration 2010", Madrid, Spain (September 2010).

**Conference Presentations**

- "Reservations to Human Rights Treaties: Boundaries and Prospects in Modern Society." International Conference SOCIN 2019 (paper prepared and presented in English).
- "Consequences of Reservations to International Human Rights Treaties, Concluded in the Aftermath of WWII." International Conference "Past and the Future Issues and Challenges of Prevention of International Crimes and Rise of Intolerance", December 2015 (paper presented in English).

- "Freedom of Association - Reality or Declaration." International Conference "Problematic Issues of Protection of Human Rights" (paper presented in English).
- Papers on the dissertation topic presented in 2014 and 2015 at the Young Lawyers' Section project "Petras Leonas Academy", Mykolas Romeris University.
- "Corporations and Human Rights." International Human Rights Law Summer School, July 2014 (paper presented in English).
- "Reservations to Human Rights Treaties: Issues Related to Discrimination of Minorities and Hate Speech." International Conference, Poland, 2014 (paper presented in English).
- "Prohibition of Discrimination under International and EU Law." International Human Rights Law Summer School, 2012 (paper presented in English).
- Participation in the International Humanitarian Law Competition "Youth for Peace 2011", Minsk.
- "Islamic Reservations to Human Rights Treaties." International Conference "International Human Rights Day 2011: All Different, All Equal?" (paper presented in English).
- Presentation at International Conference "Human Rights Day 2010", Poland (paper presented in English).
- Participation in "International Human Rights Law Summer School", 2010.

**Languages**

- Lithuanian (native)
- English (proficient)
- Russian (intermediate)
- German (basic)

MYKOLO ROMERIO UNIVERSITETAS

**Aistė Augustauskaitė-Keršienė**

# IŠLYGOS TARPTAUTINĖMS ŽMOGAUS TEISIŲ APSAUGOS SUTARTIMS: PROBLEMINIAI ASPEKTAI

Mokslo daktaro disertacijos santrauka
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## DISERTACIJOS SANTRAUKA

# IŠLYGOS TARPTAUTINĖMS ŽMOGAUS TEISIŲ APSAUGOS SUTARTIMS: PROBLEMINIAI ASPEKTAI

## Tyrimo aktualumas ir problemos esmė

Tarptautinės žmogaus teisių apsaugos sutartys sudaro šiuolaikinės tarptautinės teisės pagrindą, įtvirtindamos valstybių įsipareigojimus gerbti, saugoti ir įgyvendinti fundamentalias žmogaus teises ir laisves. Nuo Visuotinės žmogaus teisių deklaracijos priėmimo 1948 metais tarptautinė bendruomenė sukūrė išplėtotą teisinę sistemą, apimančią tiek universalaus pobūdžio daugiašales sutartis, tiek regionines žmogaus teisių apsaugos sistemas. Tarp pagrindinių universalių instrumentų, kuriems daroma daugiausiai išlygų, paminėtini šie: Tarptautinis pilietinių ir politinių teisių paktas, Tarptautinis ekonominių, socialinių ir kultūrinių teisių paktas, Jungtinių Tautų konvencija dėl visų formų diskriminacijos panaikinimo moterims ir Vaiko teisių konvencija, regioniniu lygiu - Europos žmogaus teisių ir pagrindinių laisvių apsaugos konvencija.

Tačiau platus šių sutarčių ratifikavimas ne visada reiškia besąlygišką įsipareigojimą jų nuostatoms. Valstybės dažnai naudojasi tarptautinių sutarčių teisės suteikta teise formuluoti išlygas - vienašalius pareiškimus, kuriais siekiama pašalinti ar pakeisti tam tikrų sutarties nuostatų teisinį poveikį. Išlygų institutas yra vienas iš aktualiausių ir labiausiai ginčijamų tarptautinių sutarčių teisės klausimų: jis atskleidžia esminę įtampą tarp dviejų vienas kitam prieštaraujančių principų - valstybės suvereniteto ir universalios žmogaus teisių apsaugos.

Šios disertacijos viena iš pagrindinių keliamų problemų yra 1969 m. Vienos konvencijos dėl tarptautinių sutarčių teisės (toliau tekste – 1969 m. Vienos konvencija) pritaikomumas būtent tarptautinėms žmogaus teisių apsaugos sutartims ir daromoms išlygoms. Minėta konvencija nustato bendrąją išlygų teisinę sistemą, kuri buvo sukurta dar iki daugelio pagrindinių žmogaus teisių sutarčių įsigaliojimo ir nebuvo specialiai pritaikyta jų specifiškumui. Disertacijos autorė teigia, kad 1969 m. Vienos konvencijos decentralizuotas valstybių prieštaravimų mechanizmas, kuriuo grindžiama visa išlygų vertinimo sistema, žmogaus teisių sutarčių kontekste veikia itin neveiksmingai. Be to, objekto ir tikslo kriterijus, kuriuo remiantis vertinamas išlygų teisėtumas, yra pernelyg neapibrėžtas, todėl sudaro sąlygas nevienodam aiškinimui.

Vadovaujantis JT Generalinio Sekretoriaus duomenimis, daugiau nei 70 procentų tarptautinių žmogaus teisių sutarčių ratifikavimo yra lydima bent vienos išlygos. Konvencija dėl visų formų diskriminacijos panaikinimo moterims turi daugiau nei 50 valstybių pateiktų išlygų, daugelis kurių yra labai plačios ir iš esmės paneigia pagrindines šios konvencijos garantuojamas teises. Tokia situacija kelia esminį klausimą: ar tarptautinės žmogaus teisių apsaugos sutartys yra realūs teisinio įsipareigojimo instrumentai, ar tik simboliniai politiniai pareiškimai, kuriuos valstybės gali laisvai „pritaikyti“ savo patogumui, teikdamos itin bendras išlygas?

Tyrimo aktualumą papildomai pabrėžia tai, kad tarptautinė teisinė bendruomenė šiai problemai skyrė reikšmingą dėmesį: Tarptautinės teisės komisija 17 metų - nuo 1994 iki 2011 metų - dirbo prie išsamios Tarptautinės teisės komisijos Gairių dėl sutarčių išlygų (angl. „Guide to Practice on Reservations to Treaties"), kurios buvo paskelbtos 2011 metais, kai JT Generalinė Asamblėja jas patvirtino. Nors šis instrumentas yra reikšmingas tarptautinės teisės indėlis, deja, jis neišsprendė daugelio esminių problemų, kurios išlieka aktualios iki šiol.

Disertacijos autorė taip pat pasitelkia ir papildomą tyrimo sritį - dirbtinio intelekto (DI) technologijos potencialą, sprendžiant išlygų vertinimo, suderinamumo ir skaidrumo problemas. Tai yra naujas, inovatyvus aspektas, kuriam ankstesnėje doktrinoje nebuvo skirta pakankamo dėmesio, ir jis sudaro reikšmingą šio tyrimo indėlį į mokslinę diskusiją.

**Tyrimo tikslas ir uždaviniai**

Pagrindinis disertacijos tikslas - sukurti ir pasiūlyti naują sistemą, skirtą spręsti išlygų žmogaus teisių apsaugos sutartims problemas, kad būtų apsaugotas tarptautinės žmogaus teisių apsaugos vientisumas ir jos realus pritaikomumas, derinant teisinius, institucinius ir technologinius aspektus.

Tikslui pasiekti keliami šie **uždaviniai**:

1. Atlikti kritinę 1969 m. Vienos konvencijos dėl tarptautinių sutarčių teisės išlygų režimo analizę, nustatant stipriąsias ir silpnąsias puses žmogaus teisių sutarčių kontekste, ir argumentuoti, kodėl šis bendrosios sutarčių teisės instrumentas yra nepakankamas žmogaus teisių sutarčių specifinei prigimčiai;
2. Sistemingai išnagrinėti ir kategorizuoti išlygas pagrindinėms žmogaus apsaugos teisių sutartims - Tarptautiniam pilietinių ir politinių teisių paktui, Tarptautiniam ekonominių, socialinių ir kultūrinių teisių paktui, Jungtinių Tautų konvencijai dėl visų formų diskriminacijos panaikinimo moterims, Vaiko teisių konvencijai ir Europos žmogaus teisių ir pagrindinių laisvių apsaugos konvencijai – identifikuojant dominuojančius išlygų tipus, geografines ir kultūrines prielaidas, taip pat nustatant, kurios sutarties nuostatos dažniausiai yra išlygų objektas;
3. Išanalizuoti valstybių prieštaravimų padarytoms išlygoms praktiką, vertinant, ar valstybių prieštaravimų sistema veikia kaip efektyvus savikontrolės mechanizmas žmogaus teisių apsaugos sutarčių kontekste, ir nustatant sisteminius trūkumus, dėl kurių ji galimai yra neveiksminga;
4. Įvertinti sutarčių stebėjimo organų vaidmenį ir kompetenciją vertinant išlygas, analizuojant Žmogaus teisių komiteto Bendrąjį komentarą Nr. 24 (1994 m.), Europos Žmogaus Teisių Teismo praktiką keliose pagrindinėse bylose (tokiose kaip Belilos prieš Šveicariją, Loizidou prieš Turkiją) bei Tarptautinės teisės komisijos Gairių dėl sutarčių išlygų praktiką;
5. Išanalizuoti atskiriamumo (angl. severability) doktrinos turinį, taikymą ir teisines pasekmes, vertinant, ar atskiriamumo principas yra teisiškai pagrįstas ir praktiškai veiksmingas sprendimas išlygų klausimams spręsti;

6. Išnagrinėti dirbtinio intelekto (DI) technologijų potencialą sprendžiant išlygų stebėjimo, suderinamumo vertinimo ir skaidrumo problemas, kartu kritiškai įvertinant su tuo susijusias rizikas ir etinius klausimus;
7. Pateikti konkrečias rekomendacijas dėl išlygų vertinimo sistemos tobulinimo, apimančias teisinius, institucinius ir technologinius aspektus.

**Šaltiniai**

Ši daktaro disertacija pateikia išsamią pirminių tarptautinės teisės dokumentų analizę, įskaitant 1969 m. Vienos konvenciją ir pagrindines aukščiau minėtas žmogaus teisių apsaugos sutartis. Tyrime taip pat lyginama skirtingų valstybių praktika, dėmesys skiriamas konkrečioms išlygoms, padarytoms šioms pagrindinėms žmogaus teisių apsaugos sutartims, bei kitų valstybių pareikštiems prieštaravimams joms.

Be to, disertacijoje remiamasi Tarptautinės teisės komisijos (TTK) darbais, ypač jos gairėmis dėl išlygų, taip pat Žmogaus teisių komiteto Bendruoju komentaru Nr. 24, teikiančia aiškinamąsias gaires dėl išlygų taikymo ir leistinumo. Svarbus analizės šaltinis yra ir teismų praktika. Svarbios bylos, tokios kaip byla dėl *Genocido konvencijos* ir *Belilos prieš Šveicariją* byla, įtvirtino pagrindinius principus, susijusius su išlygų samprata, o reikšmingiausios šių sprendimų nuostatos nagrinėjamos išsamiai. Taip pat atsižvelgiama į kitą aktualią regioninių žmogaus teisių teismų, įskaitant Europos Žmogaus Teisių Teismo jurisprudenciją, siekiant iliustruoti praktines išlygų pasekmes.

Tyrime naudojamasi nusistovėjusiomis teorinėmis sistemomis ir tarptautinės teisės mokslinės diskusijos šaltiniais. Tai apima tokių autorių kaip Alain Pellet, Malcolm N. Shaw, Ian Brownlie ir Olivier Corten darbus dėl sutarčių aiškinimo ir išlygų reglamentavimo. Disertacijoje taip pat nagrinėjami doktrininiai ginčai dėl pusiausvyros tarp valstybės suvereniteto ir visuotinės žmogaus teisių apsaugos, sutarčių objekto ir tikslo sąvokos bei negaliojančių ar nesuderinamų išlygų teisinių pasekmių. Monografijos, specializuoti straipsniai ir kritiniai komentarai analizuojami siekiant identifikuoti esamos teisinės sistemos spragas ir pagrįsti pasiūlymus dėl sutarčių priežiūros institucijų įgaliojimų stiprinimo.

Galiausiai, disertacijoje nagrinėjamos Jungtinių Tautų institucijų ir sutarčių priežiūros komitetų ataskaitos, pastabos ir kiti aiškinamieji dokumentai, kurie suteikia praktinių įžvalgų apie tai, kaip išlygos vertinamos ir susijusios problemos sprendžiamos praktikoje. Derinant doktrininio, jurisprudencinio ir empirinio pobūdžio šaltinius, šiuo moksliniu darbu siekiama sukurti išsamią ir teoriškai pagrįstą analizę, kuri galėtų tapti naujovių, skirtų didinti žmogaus teisių sutarčių teisės veiksmingumą ir vientisumą, kūrimo pagrindu.

**Tyrimo metodai**

Disertacinis tyrimas remiasi keliais teisinių tyrimų metodais, taikomais kompleksiškai. **Sisteminės analizės metodas** naudojamas išlygų institutui nagrinėti kaip sistemai, atskleidžiant jo vidinius elementus ir išorinius ryšius su kitais tarptautinės teisės institutais (pacta sunt servanda, valstybių suverenitetas, jus cogens, erga omnes įsipareigojimai). **Lyginamasis metodas** taikomas dviem lygiais: pirma, lyginamos skirtingos tarptautinės ir regioninės žmogaus teisių apsaugos sistemos ir jų požiūris į išlygas; antra, lyginamos valstybių grupės pagal jų išlygų pobūdį ir geografinius bei kultūrinius

veiksnius. **Teleologinis metodas** naudojamas siekiant nustatyti išlygų instituto tikslą žmogaus teisių apsaugos sutarčių kontekste ir vertinant, ar dabartinė sistema tinkama šiam tikslui. **Dokumentų analizės metodas** apima išsamią sutarčių tekstų, parengiamųjų darbų (travaux préparatoires), valstybių išlygų ir prieštaravimų, sutarčių organų bendrųjų komentarų ir baigiamųjų pastabų, tarptautinių teismų sprendimų ir Tarptautinės teisės komisijos dokumentų analizę. **Empirinė analizė** apima statistinių duomenų apie išlygas, prieštaravimus ir jų dinamiką rinkimą ir analizę. **Tarpdisciplininis metodas** naudojamas nagrinėjant DI technologijų taikymo galimybes, derinant teisinius tyrimus su informacinių technologijų taikymo ir etiniais aspektais.

**Mokslinis naujumas**

Disertacijos mokslinis naujumas pasireiškia keturiais tarpusavyje susijusiais aspektais.

**Pirma**, disertacija pateikiama kaip pirmasis tyrimas, integruojantis doktrininį, empirinį, institucinės kritikos ir technologinį (DI) požiūrius į vieną analitinę visumą, taip užpildydama egzistuojančią spragą. Autorės nuomone, iki šiol trūko visapusiško tyrimo, kuris sistemingai sujungtų žmogaus teisių apsaugos sutarčių išlygų analizę, empirinį probleminės valstybių praktikos vertinimą ir inovatyvių technologijų taikymą išlygų suderinamumui vertinti.

**Antra**, disertacija siekia pateikti pasiūlymus, kaip sukurti inovatyvią konceptualią sistemą, skirtą spręsti ilgalaikei įtampai tarp žmogaus teisių sutarčių universalumo ir jų integralumo - šią sistemą sudaro doktrininis vertinimas, empirinis tyrimas ir technologinės inovacijos, išlaikant žmogaus teisinio vertinimo pirmenybę.

**Trečia**, disertacijos autorė empiriškai ir sistemingai analizuoja valstybių išlygų pavyzdžius, valstybių prieštaravimus ir sutarčių stebėjimo organų išvadas, siekdama įrodymais pagrįstai įvertinti išlygų poveikį žmogaus teisių apsaugai bei pačios sistemos funkcionavimui. Tai yra svarbus indėlis, leidžiantis ne tik aprašyti, bet ir kritiškai įvertinti valstybių prieštaravimų mechanizmo efektyvumą žmogaus teisių apsaugos sutarčių kontekste.

**Ketvirta**, disertacija argumentuotai nagrinėja dirbtinio intelekto potencialą išlygų stebėsenai ir analizei, įskaitant natūralios kalbos apdorojimo technologijų taikymą sutarčių tekstams analizuoti, potencialiai nesuderinamų išlygų automatinį identifikavimą ir daugiakalbę lyginamąją analizę, kartu pabrėžiant būtinybę taikyti atitinkamus saugiklius ir išsaugoti žmogaus teisinio aiškinimo viršenybę.

Šiuos teorinio ir empirinio naujumo elementus papildo reikšminga lyginamoji jurisprudencijos analizė, apimanti teismų praktiką, kurioje suformuluoti išlygų vertinimo kriterijai, aktualūs tiek doktrinos, tiek praktikos požiūriu.

**Praktinė reikšmė**

Disertacijos praktinė reikšmė grindžiama empiriniu vertinimu ir jurisprudencija paremtomis įžvalgomis apie tai, kaip valstybės praktikoje teikia išlygas tarptautinėse žmogaus teisių apsaugos sutartyse, kodėl tradicinė valstybių prieštaravimų išlygoms sistema dažnai nepasiekia tikslo, ir kokios struktūrinės reformos galėtų sustiprinti sutarčių integralumą bei veiksmingą žmogaus teisių apsaugą.

**Valstybėms, formuluojančioms išlygas ir nacionalinę poziciją**, disertacija teikia

tiesioginę naudą: ji aiškiai identifikuoja dažniausiais probleminių išlygų kategorijas, t.y. ypač plačias, neapibrėžtas, religiniais ar kultūriniais argumentais grindžiamas išlygas ir parodo, kaip jos nesuderinamos su sutarties objektu ir tikslu. Autorė siūlo kryptis reformai, tokias kaip siauresnių, tikslingesnių formuluočių pirmenybė bei aiškinamųjų deklaracijų (tikrąją prasme) teikimas vietoje plačių išlygų.

**JT sutarčių organams, vertinantiems išlygų suderinamumą**, disertacija atskleidžia šių organų vaidmens būtinybę, ypač tada, kai valstybių prieštaravimai yra reti ar politiškai motyvuoti, aptaria praktikoje kylančius iššūkius, įskaitant galimą resursų stoką, koordinacijos trūkumus ir neapibrėžtas pasekmes pagal 1969 m. Vienos konvenciją, bei pagrindžia poreikį nuoseklesniam ir metodologiškai aiškesniam išlygų vertinimui ir konstruktyvaus dialogo su valstybėmis stiprinimui.

**Tarptautinėms organizacijoms, svarstančioms stebėsenos ir skaidrumo didinimo priemones**, disertacija siūlo praktiškai pritaikomą dirbtinio intelekto grįstą kryptį: naudoti natūralios kalbos apdorojimo technologijas sistemingam išlygų stebėjimui ir analizei, automatiniam potencialiai nesuderinamų išlygų identifikavimui, taip pat daugiakalbiams duomenų bazių sprendimams palyginamajai analizei, kartu išlaikant žmogaus teisinio vertinimo viršenybę ir užtikrinant tinkamus etinius saugiklius.

**Tarptautiniams teismams ir institucijoms, sprendžiančioms išlygų teisėtumo klausimus**, disertacija sistemina teismų praktikos ir doktrinos dilemą dėl nesuderinamų išlygų pasekmių, aptardama priimtinumo (angl. „admissibility“), priešpriešos (angl. „opposability“) ir atskyrimo (angl. „severability“) principų taikymą, bei parodo, kaip praktikoje gali būti taikomas atskyrimo principo taikymo sprendimas tais atvejais, kai valstybė turėjo žinoti apie išlygos neteisėtumą.

**Pilietinės visuomenės organizacijoms ir NVO**, disertacija suteikia praktinių argumentų ir strateginių gairių, t. y. parodoma, kad ilgalaikis visuomenės ir nevyriausybinių organizacijų spaudimas gali būti vienas iš lemiamų veiksnių, skatinančių valstybes atšaukti probleminės išlygas, o veiksmingiausia strategija dažnai yra ne vien nedelsiant reikalauti išlygų panaikinimo, bet nuoseklus dialogas su valdžios institucijomis ir visuomene, aktyvus naudojimasis JT mechanizmais.

**Tyrimo apimtis**

Nors šioje disertacijoje siūlomos institucinės reformos, tokios kaip bendri peržiūros komitetai, ir aptariamas galimas dirbtinio intelekto (DI) priemonių vaidmuo stebint išlygas, joje nepateikiami detalūs šių mechanizmų įgyvendinimo modeliai. Tikslių skyrimo procedūrų, balsavimo mechanizmų, finansavimo tvarkos nustatymas ar realių DI sistemų kūrimas reikalautų platesnių tarpdisciplininių tyrimų, apimančių teisinę analizę, politinius, ekonominius kriterijus, diplomatinę praktiką, informatikos žinias ir empirinius bandymus - tai uždaviniai, peržengiantys šio disertacijos teisinio tyrimo ribas.

Taip pat šiame darbe neatliekama empirinė išlygų įgyvendinimo nacionaliniu lygmeniu analizė konkrečiose valstybėse. Disertacijoje suformuluojamas normatyvinis pagrindas ir teisiniai principai, kuriais remiantis galėtų būti kuriami tokie instituciniai mechanizmai ir technologinės priemonės, jei valstybės dalyvės parodytų politinę valią juos įgyvendinti. Detali institucinė architektūra ir techninis vystymas būtų tolesnių

tarpdisciplininių tyrimų ir valstybių derybų objektas.

**Ginamieji teiginiai**

1. 1969 m. Vienos konvencijos dėl tarptautinių sutarčių teisės išlygų mechanizmas yra nepakankamas žmogaus teisių apsaugos sutartims: dėl plačiai paplitusios valstybių praktikos daryti išlygas, nesuderinamas su tokių sutarčių objektu ir tikslu, Konvencijos sistema yra pernelyg siaura ir nepakankama, todėl būtini alternatyvūs reguliavimo modeliai, siekiant užtikrinti žmogaus teisių apsaugos vientisumą.
2. Valstybių praktika ir besiformuojančios paprotinės normos pralenkė 1969 m. Vienos konvencijos nuostatas: nepaisant formalių taisyklių dėl prieštaravimų, ribotas valstybių naudojimasis šiuo mechanizmu ir naujų paprotinių praktikų formavimasis rodo, kad vien 1969 m. Vienos konvencijos režimas nėra pakankamas veiksmingai reguliuoti išlygų suderinamumą; todėl jų galiojimo vertinimas vis labiau grindžiamas besivystančia sutarčių praktika ir papildomais aiškinimo mechanizmais.
3. Inovatyvūs mechanizmai, įskaitant DI pagrįstas priemones, gali pagerinti išlygų vertinimą ir valdymą: pažangių technologinių sprendimų integravimas ir procedūrinių terminų išplėtimas galėtų sumažinti subjektyvumą, padidinti skaidrumą ir sudaryti sąlygas nacionaliniams bei tarptautiniams subjektams tiksliau identifikuoti negaliojančias ar nesuderinamas išlygas, taip užpildant spragas, likusias tiek pagal 1969 m. Vienos konvenciją, tiek pagal Tarptautinės teisės komisijos parengtas gaires.

## PIRMASIS SKYRIUS

**Klasikinė vienbalsio pritarimo taisyklė.** Norint suprasti šiuolaikines problemas, susijusias su išlygomis žmogaus teisių apsaugos sutartyse, pirmiausiai būtina išanalizuoti, kaip išlygų institutas formavosi istoriškai. Klasikinėje tarptautinėje teisėje, galiojusioje iki XX amžiaus vidurio, vyravo griežtas požiūris į daugiašalių sutarčių vientisumą. Pagal šią poziciją, kurią gynė Tautų Sąjungos sekretoriatas, vykdydamas depozitaro funkcijas, valstybė galėjo tapti daugiašalės sutarties šalimi tik tada, jei visos kitos sutarties šalys sutiko su jos išlyga. Jei bent viena valstybė prieštaravo, valstybė, pateikusi išlygą, arba turėjo ją atšaukti, arba negalėjo tapti sutarties šalimi. Ši vadinamoji „vienbalsio pritarimo“ (angl. „unanimity rule“) arba „vientisumo“ (angl. „integrity rule“) taisyklė buvo laikoma logiškai išplaukiančia iš sutarties prigimties: kadangi sutarties šalys privalo sutikti su visomis sutarties sąlygomis, vienašalis jų keitimas be visų kitų šalių sutikimo prieštarautų pačiai tarptautinių sutarčių teisės esmei.

Vienbalsio sutikimo taisyklė turėjo tam tikrą loginį pagrindimą dvišalių sutarčių ir nedidelių daugiašalių sutarčių kontekste. Tačiau po Antrojo pasaulinio karo tarptautinė bendruomenė pradėjo kurti universalaus pobūdžio sutartis su kuo platesniu valstybių dalyvavimu, ir vienbalsiškumo taisyklė tapo rimta kliūtimi, nes ji iš esmės suteikė bet kuriai valstybei veto teisę blokuoti kitos valstybės dalyvavimą sutartyje.

**Tarptautinio Teisingumo Teismo patariamoji išvada dėl Genocido konvencijos**

**(1951 m.)** Verta pastebėti, kad rimtą pasikeitimą žymėjo 1951 metų Tarptautinio Teisingumo Teismo (TTT) patariamoji išvada byloje dėl Išlygų prie Genocido konvencijos (*Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, 1951 ICJ Reports 15*). Šią bylą inicijavo JT Generalinė Asamblėja, paprašiusi TTT atsakyti į esminius klausimus: ar valstybė gali tapti Genocido konvencijos šalimi, pateikusi išlygas, kurioms kitos šalys prieštarauja? Kokios yra tokio prieštaravimo teisinės pasekmės?

TTT atsakė, kad vienbalsio sutikimo taisyklė nėra absoliuti norma, taikytina visoms daugiašalėms sutartims. Teismas pabrėžė, kad Genocido konvencija yra ypatingos prigimties: ji siekia universalaus dalyvavimo, jos tikslai yra humanitarinio pobūdžio ir ji nepagrįsta abipusiškumo (angl. „reciprocity“) principu - valstybės prisiima įsipareigojimus ne viena kitai, bet visai tarptautinei bendruomenei. Tokiomis aplinkybėmis, Teismo vertinimu, reikia taikyti lankstesnę taisyklę: valstybė gali tapti Genocido konvencijos šalimi su išlyga, kuriai kitos šalys prieštarauja, jeigu išlyga suderinama su konvencijos objektu ir tikslu. Valstybės, laikančios išlygą nesuderinama, gali vertinti išlygą pateikusią valstybę kaip nesančią konvencijos šalimi jų atžvilgiu.

Šis sprendimas buvo itin reikšmingas dviem aspektais. Pirma, jis pakeitė vienbalsio sutikimo taisyklę lankstesne sistema, teikiančia prioritetą universalumui prieš vientisumą bent jau tam tikrų tipų sutartyse. Antra, jis įtvirtino objekto ir tikslo kriterijų kaip pagrindinį išlygų teisėtumo standartą - kriterijų, kuris, kaip bus aptarta vėliau, yra iš esmės neapibrėžtas ir sukelia reikšmingų aiškinimo problemų.

Tačiau Genocido bylos patariamoji išvada taip pat paliko neišspręstų klausimų. Svarbiausia - TTT nepateikė aiškaus atsakymo, kokios yra negaliojančios išlygos teisinės pasekmės. Ar valstybė, pateikusi nesuderinamą išlygą, laikoma sutarties šalimi be tos išlygos (atskiriamumo pozicija), ar ji nėra laikoma sutarties šalimi apskritai? Teismas iš esmės paliko šį klausimą valstybių individualiam sprendimui, kas vėliau tapo vienu iš pagrindinių ginčytinų tarptautinių sutarčių teisės klausimų.

**1969 m. Vienos konvencijos dėl tarptautinių sutarčių teisės taikymo problemos išlygų kontekste.** Vienos konvencija dėl tarptautinių sutarčių teisės, priimta 1969 m. ir įsigaliojusi 1980 m., kodifikavo išlygų klausimus, remdamasi Genocido bylos patariamąja išvada. 1969 m. Vienos konvencijos 2 straipsnio 1 dalies d punkte pateikiamas išlygos apibrėžimas: išlyga yra bet koks vienašalis pareiškimas, nepaisant jo formos ar pavadinimo, kurį valstybė padaro pasirašydama, ratifikuodama, priimdama, patvirtindama ar prisijungdama prie sutarties, ir kuriuo ji siekia pašalinti ar pakeisti tam tikrų sutarties nuostatų teisinį poveikį jų taikyme tai valstybei.

1969 m. Vienos konvencijos 19 straipsnis nustato tris atvejus, kuriais išlyga nėra leidžiama: (a) kai pati sutartis draudžia išlygas; (b) kai sutartis leidžia tik konkrečias išlygas ir numatytoji joms nepriklauso; (c) kai išlyga yra nesuderinama su sutarties objektu ir tikslu. 1969 m. Vienos konvencijos 20 straipsnis reglamentuoja išlygų priėmimą ir prieštaravimą, nustatydamas 12 mėnesių terminą prieštaravimui pateikti. 1969 m. Vienos konvencijos 21 straipsnis nustato priimtos išlygos teisinius padarinius: ji modifikuoja sutarties nuostatas tarp išlygą pateikusios ir ją priėmusios valstybės tiek, kiek numatyta išlygoje.

Svarbu pabrėžti, kad 1969 metais, kai 1969 m. Vienos konvencija buvo priimta, dauguma pagrindinių žmogaus teisių sutarčių dar nebuvo priimtos arba nebuvo įsigaliojusios. 1969 m. Vienos konvencijos kūrėjai turėjo omenyje tradicines tarpvalstybines sutartis, pagrįstas abipusiškumo principu, o žmogaus teisių sutarčių specifika - jų objektyvi prigimtis, erga omnes įsipareigojimai, sutarčių priežiūros organų egzistavimas - tai klausimai, į kuriuos nebuvo pakankamai atsižvelgta. Ši istorinė aplinkybė yra esminis problemos šaltinis ir pagrindinis argumentas, pagrindžiantis poreikį kurti specialų požiūrį ir reguliavimą išlygų žmogaus teisių apsaugos sutartims problematikoje.

**Tarptautinės teisės komisijos Gairių dėl išlygų sutartims taikymas.** Tarptautinės teisės komisija pradėjo tyrimą dėl išlygų klausimo 1994 metais, paskyrus specialų pranešėją prof. Alain Pellet. Po 17 metų intensyvaus darbo 2011 metais Tarptautinės teisės komisija priėmė išsamias Gaires dėl sutarčių išlygų (angl. Guide to Practice on Reservations to Treaties). Šis instrumentas, nors ir teisiškai neprivalomas, yra reikšmingas kodifikacijos šaltinis. Jo svarbiausieji elementai žmogaus teisių apsaugos sutarčių kontekste yra: patvirtinimas, kad 1969 m. Vienos konvencijos 19–23 straipsniai atspindi tarptautinę paprotinę teisę ir taikomi visoms valstybėms nepriklausomai nuo to, ar jos yra 1969 m. Vienos konvencijos šalys; pripažinimas, kad sutarčių stebėjimo organai gali vertinti išlygų suderinamumą su sutarties objektu ir tikslu; nustatymas, kad netinkama išlyga iš principo yra niekinė, tačiau jos teisinės pasekmės priklauso nuo konkrečių aplinkybių, ypač nuo išlygą pateikusios valstybės ketinimų.

Tačiau, kaip disertacijoje argumentuojama, Gairių dėl sutarčių išlygų praktika neišsprendė kelių esminių problemų. Visų pirma, ji nepateikė aiškaus atsakymo į atskiriamumo (angl. „severability“) klausimą. Antra, ji nesukūrė centralizuoto išlygų vertinimo mechanizmo, palikdama valstybių prieštaravimų sistemą kaip pagrindinį instrumentą. Trečia, Gairių dėl sutarčių išlygų praktika nesuteikė sutarčių stebėjimo organams aiškios ir visuotinai pripažintos kompetencijos galutinai spręsti išlygų teisėtumo klausimus.

**Žmogaus teisių apsaugos sutarčių ypatumai.** Žmogaus teisių apsaugos sutartys skiriasi nuo tradicinių tarpvalstybinių sutarčių keliais esminiais aspektais. Šių skirtumų supratimas yra būtinas norint argumentuoti, kodėl standartinė 1969 m. Vienos konvencijos sistema yra nepakankama žmogaus teisių apsaugos sutarčių kontekste.

**Abipusiškumo principo netaikymas.** Žmogaus teisių apsaugos sutartys išsiskiria tuo, kad jos nesukuria abipusių (angl. „reciprocity“) santykių tarp valstybių šalių, o nustato valstybių pareigas individų interesais, taip sukurdamos objektyvų žmogaus teisių apsaugos režimą. Kitaip tariant, tokiose sutartyse individai yra pareigų, nustatytų valstybėms, gavėjai. Dėl to net jei kitos valstybės šalys nesiima jokių veiksmų, išlygos vis tiek realiai sumažina individų apsaugą išlygą teikiančios valstybės jurisdikcijoje, nes pagrindiniai naudos gavėjai yra individai, o ne kitos valstybės. Be to, išlygos, prieštaraujančios sutarties objektui ir tikslui, paveikia ne tik individų teisių apsaugą išlygas teikiančioje valstybėje, bet ir kitų sutarties dalyvių teisinius lūkesčius bei bendrą interesą išlaikyti aukštą žmogaus teisių apsaugos standartą.

**Sutarčių stebėjimo organų egzistavimas.** Dauguma pagrindinių žmogaus teisių

apsaugos sutarčių numato specialius sutarčių stebėjimo organus, sudarytus iš nepriklausomų ekspertų: Žmogaus teisių komitetas stebi Tarptautinio pilietinių ir politinių teisių pakto įgyvendinimą; Moterų diskriminacijos panaikinimo komitetas - Jungtinių Tautų konvencijos dėl visų formų diskriminacijos panaikinimo moterims; Vaiko teisių komitetas - Vaiko teisių konvenciją. Šie organai ne tik stebi, kaip valstybės įgyvendina savo įsipareigojimus tarptautinių sutarčių atžvilgiu, bet ir nagrinėja valstybių ataskaitas, priima bendruosius komentarus ir rekomendacijas, dažnai turi kompetenciją nagrinėti individualius skundus.

**Individuali peticijų sistema.** Daugelis žmogaus teisių apsaugos sutarčių numato galimybę individams tiesiogiai kreiptis į tarptautinius organus su skundais prieš valstybes. Ši aplinkybė turi tiesioginę reikšmę išlygų atžvilgiu: išlyga, kuri riboja valstybės įsipareigojimus, tiesiogiai veikia individų galimybes naudotis savo teisėmis ir kreiptis tarptautinės gynybos.

**Išlygos Jungtinių Tautų konvencijai dėl visų formų diskriminacijos panaikinimo moterims.** Ši konvencija turi daugiausiai išlygų iš visų pagrindinių žmogaus teisių apsaugos sutarčių. Daugiau nei 50 valstybių yra pateikusios išlygas, o daugelis jų yra labai plačios. Ypač problemiškos yra išlygos, grindžiamos islamo teise. Pvz. Bangladešas pateikė išlygas Konvencijos 2 straipsniui (pareiga panaikinti diskriminaciją) ir 16 straipsniui (lygios teisės santuokoje ir šeimoje), nurodydamas, kad šios nuostatos prieštarauja islamo teisei ir nebus taikomos. Egiptas, Libija, Mauritanija, Maldyvai, Pakistanas ir kitos šalys pateikė panašias išlygas. Saudo Arabija šios konvencijos ratifikavimo metu pareiškė, kad sutartis bus įgyvendinama tik tiek, kiek tai neprieštarauja šariato teisės principams, bet nekonkretizavo, kokios nuostatos laikomos prieštaraujančiomis - tai klasikinis plačios ir itin bendros išlygos pavyzdys.

Šios konvencijos Komitetas nuosekliai kritikuoja tokias išlygas savo pastabose, pabrėždamas, kad išlygos, prieštaraujančios Konvencijos objektui ir tikslui - panaikinti visų formų diskriminaciją moterų atžvilgiu - yra neleistinos pagal 1969 m. Vienos konvencijos 19 straipsnio c punktą. Komitetas ragina valstybes atšaukti ar patikslinti tokias išlygas, tačiau jo rekomendacijos nėra privalomos, ir daugelis valstybių iki šiol išlaiko savo poziciją.

**Išlygos Tarptautiniam pilietinių ir politinių teisių paktui.** Disertacijos rengimo duomenimis, 2025 m. prie Pakto prisijungusios 173 valstybės šalys, o bendra išlygų apimtis siekia apie 150. Išlygos apima tiek konkrečių pareigų eliminavimą ar susiaurinimą, tiek bendro pobūdžio formuluotes, kuriomis siekiama užtikrinti vidaus teisės „viršenybę“, o tai gali iš esmės silpninti Pakto įgyvendinimą.

Pvz. Pakistanas ratifikuodamas Paktą, pateikė nemažai išlygų o būtent išlyga Pakto 3 straipsniui suformuluota taip, kad jis būtų taikomas tik tiek, kiek „neprieštarauja“ Pakistano Konstitucijai ir šariato teisei. Tokia išlyga laikoma nepakankamai konkreti, nes sutarties dalyvėms sudėtinga vertinti, kokių tiksliai įsipareigojimų valstybė nesilaikys, be to, ji remiasi vidaus dokumentais, kurie gali būti kintantys ir skirtingai vertinami. Tokios formuluotės de facto sukuria normų hierarchiją, kurioje nacionalinė teisė ima „viršyti“ tarptautinius įsipareigojimus.

Taip pat disertacijoje nagrinėjama Žmogaus teisių komiteto Bendrasis komentaras

Nr. 24 (1994), kuris analizuoja tarptautinės teisės principus dėl Paktui padarytų išlygų, nustato jų ribas ir apibrėžia Komiteto vaidmenį suderinamumo vertinime. Pagal Bendrąjį komentarą Nr. 24, visos Paktui padarytos išlygos turi būti vertinamos pagal suderinamumą su Pakto objektu ir tikslu, o tam tikros išlygos yra iš esmės neleistinos. Jei išlyga pripažįstama nesuderinama, Komitetas taiko „atskyrimo" (angl. „severability") principą: negaliojanti išlyga atskiriama nuo bendrų įsipareigojimų, tačiau valstybė lieka saistoma Pakto, įskaitant ir tą nuostatą, kuriai buvo padaryta išlyga. Pažymėtina, kad kitos valstybės šalys teikė prieštaravimus dėl Pakistano išlygų, laikydamos jas nesuderinamomis su Pakto objektu ir tikslu bei remiantis 1969 m. Vienos konvencijos 27 straipsnio principu, jog valstybė negali remtis vidaus teise nevykdydama sutarties; visgi prieštaraujančios valstybės paprastai nurodo, kad prieštaravimas netrukdo Pakto įsigaliojimui jų tarpusavio santykiuose.

**Išlygos Tarptautiniam ekonominių, socialinių ir kultūrinių teisių paktui.** Palyginti su kitomis pagrindinėmis žmogaus teisių apsaugos sutartimis, šis Paktas turi santykinai nedaug išlygų - 2025 m. duomenimis, apie 15-20 % valstybių šalių buvo pateikusios išlygas ar deklaracijas, dažniausiai dėl 8 straipsnio (profesinių sąjungų ir streikų teisės) ir 13 straipsnio (teisė į švietimą).

Kadangi šis Paktas neturi specialios nuostatos dėl išlygų, jam taikomos bendros 1969 m. Vienos konvencijos taisyklės. Problemiškiausios yra išlygos, kuriomis Pakto taikymą daroma priklausomą nuo nacionalinės konstitucijos ar vidaus teisės - vadinamosios bendros išlygos, kurios nurodo, kad Paktas bus taikomas tiek, kiek neprieštarauja nacionalinės teisės aktams. Dalis valstybių savo apribojimus pateikia ne kaip išlygas, bet kaip aiškinamąsias deklaracijas, taip siekdamos išvengti griežtesnio teisinio vertinimo.

Tipinis pavyzdys - Egipto deklaracija, kurioje nurodoma, kad Paktas priimamas „atsižvelgiant į islamo šariato nuostatas ir į tai, kad jos neprieštarauja pridėtam dokumentui". Nors šariato teisė turi daug nuostatų dėl ekonominių, socialinių ir kultūrinių teisių, tačiau neatitinka tarptautinių žmogaus teisių standartų lyčių lygybės srityje, kuri laikoma viena iš pagrindinių šio Pakto pareigų. Taip pat kitas pavyzdys – Kuveitas, kuris savo ruožtu pateikė aiškinamąją deklaraciją dėl Pakto 2 straipsnio 2 dalies ir 3 straipsnio, nurodydamas, kad teisės turi būti įgyvendinamos laikantis Kuveito konstitucijos ir vidaus teisės ribų. Kitos valstybės pažymėjo, kad tokia Kuveito deklaracija iš esmės paverčia Pakto taikymą priklausomu nuo nacionalinės teisės ir todėl laikytina bendro pobūdžio išlyga, keliančia abejonių dėl suderinamumo su Pakto objektu ir tikslu.

Šio pakto priežiūros organas - Ekonominių, socialinių ir kultūrinių teisių komitetas – yra pabrėžęs, kad vyrų ir moterų lygi teisė naudotis ekonominėmis, socialinėmis ir kultūrinėmis teisėmis yra privaloma ir nedelsiant vykdytina valstybių pareiga, o 3 straipsnis nustato neatskiriamą standartą įgyvendinant 6-15 straipsniuose įtvirtintas teises. Komitetas laikosi pozicijos, kad valstybė jokiomis aplinkybėmis negali pateisinti esminių (angl. „core") įsipareigojimų nevykdymo. Jei išlyga pripažįstama nesuderinama su šio pakto objektu ir tikslu, ji laikoma negaliojančia, o valstybė lieka pakto šalimi be tokios išlygos teikiamos „naudos".

**Išlygos Vaiko teisių konvencijai**. Konvencija, priimta 1989 m. ir įsigaliojusi 1990 m., yra plačiausiai ratifikuota žmogaus teisių apsaugos sutartis - 196 valstybės šalys prisijungusios prie šios Konvencijos (2025 m. duomenimis). Pažymėtina, kad Konvencijos 51 straipsnis leidžia daryti išlygas, tačiau draudžia išlygas, nesuderinamas su Konvencijos objektu ir tikslu. Nepaisant to, nemaža dalis valstybių pateikė išlygas, grindžiamas islamo teise ar vidaus konstitucinėmis nuostatomis.

Kaip pavyzdį būtų galima paminėti Iraną, kuris išlygos kontekste išreiškė teisę netaikyti jokių Konvencijos nuostatų, kurias laiko nesuderinamas su islamo teise ir galiojančiais vidaus teisės aktais, nekonkretindamas, kurios tai nuostatos. Panašios pozicijos laikosi ir Kataras, Saudo Arabija, Brunėjus, Sirija bei Omanas. Tokio pobūdžio išlygos ypač probleminės dėl skaidrumo stokos: kitos valstybės ir priežiūros organai negali nustatyti tikslios išlygos apimties, o tai iš esmės panaikina galimybę veiksmingai kontroliuoti jos suderinamumą su Konvencijos objektu ir tikslu.

Atsižvelgiant į išlygų analizę, išskiriamos dvi pagrindinės problemos: pirma, išlygas darančios valstybės gali tiesiogiai remtis išlyga pateisindamos Konvencijos normų pažeidimus nacionalinėje praktikoje; antra, prieštaraujančios valstybės dažniausiai nereikalauja išlygų atšaukimo ir leidžia Konvencijai įsigalioti santykiuose su išlyga padariusia valstybe, taip de facto pripažindamos esamą padėtį ir susilpnindamos kolektyvinį spaudimą. Vaiko teisių konvencijos Komitetas nuosekliai ragina valstybes peržiūrėti ar atšaukti tokias išlygas, tačiau, kaip ir kitų JT sutarčių atveju, jo rekomendacijos nėra privalomos ir daugelis valstybių išlaiko savo poziciją.

**Europos Žmogaus teisių ir pagrindinių laisvių apsaugos konvencijos išlygos.** EŽTK turi mažiau išlygų nei JT sutartys, tačiau jos buvo daugelio reikšmingų bylų objektas. Šveicarija, Austrija, Belgija ir kitos valstybės pateikė įvairių išlygų dėl specifinių Konvencijos nuostatų. Reikšmingiausia buvo Šveicarijos išlyga prie EŽTK 6 straipsnio (teisė į teisingą teismą), kuri tapo bylos *Belilos prieš Šveicariją* objektu. Šioje byloje Teismas patvirtino savo jurisdikciją vertinti aiškinamųjų deklaracijų galiojimą kaip išlygų, taip nustatydamas, kad valstybės negali išvengti išlygoms taikomo teisinio reguliavimo tiesiog pakeisdamos jų pavadinimą.

Kita aktuali EŽTT byla buvo *Loizidou prieš Turkiją*. Turkija pateikė teritorinę išlygą, kuria Šiaurės Kipras buvo pašalintas iš EŽTK taikymo srities, tačiau EŽTT byloje nustatė, kad Turkija lieka atsakinga už teisių pažeidimus šioje teritorijoje, iš esmės panaikindamas išlygos poveikį. Šioje byloje Teismas taip pat suformulavo svarbų kriterijų: atsisakė vertinti Turkijos išlygų esmę, remiantis jos pačios pareiškimais, nurodydamas, kad Turkija turėjo žinoti apie savo išlygos neleistinumą, atsižvelgiant į nuoseklią kitų valstybių praktiką ir jų pateiktus prieštaravimus.

Taigi, EŽTK sistema parodė, kad griežtesni išlygų reikalavimai ir aktyvus teismo vaidmuo tikrinant jų galiojimą gali veiksmingai apsaugoti sutarties integralumą, ir tai gali pasitarnauti kaip tinkamas pavyzdys tarptautinių žmogaus teisių apsaugos sutarčių reformai išlygų atžvilgiu.

## ANTRASIS SKYRIUS

**Sutarties objekto ir tikslo neapibrėžtumo problema.** Objekto ir tikslo (angl. „object and purpose“) kriterijus, įtvirtintas 1969 m. Vienos konvencijos 19 straipsnio c punkte, yra pagrindinis išlygų teisėtumo standartas tais atvejais, kai pati sutartis nedraudžia išlygų ir nenumato, kokios konkrečios išlygos yra leidžiamos. Tačiau nei 1969 m. Vienos konvencija, nei Tarptautinio teisingumo teismo išvada Genocido byloje tiksliai neapibrėžia, ką reiškia „sutarties objektas ir tikslas“. Disertacijos autorė teigia, kad šis neapibrėžtumas sukelia reikšmingų praktinių problemų. Doktrinoje skiriamos kelios pozicijos. Aiškinant pagal teksto prasmę, sutarties objektas ir tikslas turi būti nustatomas iš sutarties teksto, ypač preambulės ir pagrindinių nuostatų. Taip pat egzistuoja ir teleologinis požiūris: objektas ir tikslas turi būti nustatomas atsižvelgiant į tai, kokie yra sutarties tikslai, net jei tai aiškiai neįtvirtinta pačiame sutarties tekste. Dar vienas - sisteminis požiūris. Šiuo atveju objektas ir tikslas turi būti nustatomas atsižvelgiant į sutartį kaip visumą, kartu su susijusiais tarptautiniais instrumentais ir tarptautinės teisės principais. Svarbu įvertinti ir Tarptautinės teisės komisijos gairių praktiką. Vadovaujantis Tarptautinės teisės komisijos gairių 3.1.5 punktu, vertinant išlygos suderinamumą su sutarties objektu ir tikslu, šis objektas ir tikslas turi būti nustatomas vadovaujantis geros valios principu (angl. „good faith“), atsižvelgiant į sutarties tekstą ir kontekstą. Tačiau tai iš esmės tik patvirtina 1969 m. Vienos konvencijos 31 straipsnio aiškinimo taisykles - nesuteikiama papildomo aiškumo konkrečių išlygų vertinimui. Disertacijos autorė teigia, kad objekto ir tikslo kriterijaus neapibrėžtumas nėra šalutinė problema, bet esminis trūkumas, dėl kurio skirtingos suinteresuotos šalys - valstybės, sutarčių stebėjimo organai, tarptautiniai teismai - gali pateikti kardinaliai skirtingas išvadas dėl tos pačios išlygos. Tai sukuria teisinį netikrumą, kuris turi neigiamos įtakos tiek valstybių dalyvavimui sutartyse, tiek efektyviai žmogaus teisių apsaugai.

**Žmogaus teisių komiteto Bendrasis komentaras Nr. 24 (1994 m.). Žmogaus teisių komiteto 1994 m.** Bendrasis komentaras Nr. 24 (angl. „*General Comment No. 24 on Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols Thereto, or in Relation to Declarations under Article 41 of the Covenant*“) yra labiausiai išplėtotas tarptautinės institucijos bandymas apibrėžti, kokio tipo išlygos yra nesuderinamos su Tarptautinio politinių ir pilietinių teisių pakto objektu ir tikslu. Komitetas išskyrė kelias kategorijas išlygų, kurios iš principo laikomos nesuderinamomis su sutarties objektu ir tikslu. Pirma, išlygos jus cogens normoms - imperatyvioms tarptautinės teisės normoms. Tokios išlygos būtų niekinės ne tik kaip nesuderinamos su Tarptautinio pilietinių ir politinių teisių pakto objektu ir tikslu, bet ir kaip prieštaraujančios imperatyviajai tarptautinės teisės normai. Antra, išlygos neatskiriamoms teisėms (angl. „non-derogable rights“). Komiteto nuomone, jeigu šios teisės negali būti apribotos net ypatingosios padėties metu pagal paties Pakto nuostatas, juo labiau jos negali būti apribotos išlygomis sutarties ratifikavimo metu. Trečia, išlygos nuostatoms, turinčioms tarptautinės papročių teisės statusą, nes valstybė negali atsisakyti papročių teisės įsipareigojimų vien sutarties išlygos forma.

Ketvirta, bendrosios nekonkrečios išlygos nenurodo tiksliai, kurioms nuostatoms ar įsipareigojimams pateikiama išlyga, todėl pažeidžia skaidrumo principą ir sukelia teisinį netikrumą.

**Valstybių reakcija į Bendrąjį komentarą Nr. 24.** Pažymėtina, kad Bendrasis komentaras Nr. 24 sulaukė skirtingų valstybių reakcijų. Jungtinė Karalystė, JAV ir Prancūzija teigė, kad Komitetas peržengė jam suteiktą mandatą, nes Paktas aiškiai nesuteikia Komitetui įgaliojimų spręsti dėl išlygų galiojimo; jų nuomone, tokie vertinimai turi likti valstybių prerogatyva, o kai kuriais atvejais - ir Tarptautinio Teisingumo Teismo kompetencija. Nors šie prieštaravimai nebuvo daugumos pozicija, jie išryškina neišspręstą įtampą tarp sutarties vientisumo apsaugos ir valstybių sutikimo principo. Be to, vien bendrųjų komentarų kaip neįpareigojančių aiškinamųjų dokumentų nepakanka sisteminei problemai išspręsti - tam reikalingi aiškesni, autoritetingi ir instituciškai įtvirtinti mechanizmai dėl išlygų suderinamumo ir jų teisinių pasekmių. Komitetas savo atsakymuose ir vėlesnėje praktikoje laikėsi pozicijos, kad jo funkcija - užtikrinti Pakto taikymo efektyvumą - neišvengiamai apima ir išlygų, kurios pažeidžia Pakto esmę, vertinimą. Komitetas pripažino, kad jo išvados nėra saistančios teismo sprendimų prasme, bet turi aiškinimo vertę ir turi būti vertinamos geros valios principo taikymo kontekste.

**1969 m. Vienos konvencijos prieštaravimų išlygoms taikymo problematika.** 1969 m. Vienos konvencijos 20 straipsnis nustato, kad valstybė, gavusi pranešimą apie kitos valstybės išlygą, per 12 mėnesių gali pateikti prieštaravimą. Jei prieštaravimas nepateikiamas, valstybė laikoma priėmusia išlygą. 1969 m. Vienos konvencijos 21 straipsnis nustato skirtingus prieštaravimo teisinius padarinius priklausomai nuo jo pobūdžio: „minimalaus efekto" prieštaravimas reiškia, kad sutartis įsigalioja tarp dviejų valstybių, tačiau išlygoje nurodytos nuostatos netaikomos; „maksimalaus efekto" prieštaravimas, kai prieštaraujanti valstybė aiškiai nurodo, kad nepageidauja sutarties įsigaliojimo, reiškia, kad sutartis apskritai neįsigalioja tarp šių dviejų valstybių. Teoriškai šis mechanizmas turėtų veikti kaip efektyvus savikontrolės instrumentas: valstybės, laikančios išlygą nesuderinama su sutarties objektu ir tikslu, pateikia prieštaravimą, o tai sustabdo išlygos taikymą jų atžvilgiu ir siunčia politinį signalą išlygą pateikusiai valstybei.

**Prieštaravimų išlygoms sistemos neveiksmingumas žmogaus teisių apsaugos sutartyse.** Praktika rodo, kad šis mechanizmas žmogaus teisių apsaugos sutartyse veikia itin silpnai. Disertacijos empiriniai duomenys atskleidžia, kad absoliuti dauguma išlygų pagrindinėms žmogaus teisių apsaugos sutartims nesulaukia jokių prieštaravimų arba sulaukia labai nedaug - dažniausiai iš kelių Šiaurės Europos valstybių (Suomija, Nyderlandai, Danija, Norvegija, Švedija), kurios yra aktyvios šioje srityje, bet jų prieštaravimai nesudaro sisteminės ir universalios kontrolės. Disertacijos autorės nuomone, yra kelios pagrindinės priežastys, kodėl valstybės vengia teikti prieštaravimus. Pirma, politiniai motyvai. Valstybės nenori bloginti diplomatinių santykių su kitomis valstybėmis, ypač jei šios yra svarbios ekonominės ar politinės partnerės. Žmogaus teisių apsaugos sutarčių išlygų kritikavimas gali būti interpretuojamas kaip kišimasis į valstybės vidaus reikalus. Antra, teisinė neapibrėžtis dėl prieštaravimo pasekmių.

Valstybėms dažnai neaišku, kokios konkrečios teisinės pasekmės kyla iš prieštaravimo - ar sutartis įsigalioja tarp šalių, ar ne; kaip prieštaravimas realiai veikia žmogaus teisių apsaugą konkrečios valstybės jurisdikcijoje. Trečia, išteklių apribojimai. Mažesnės ir besivystančios valstybės neturi pakankamai diplomatinio ir teisinio personalo sistemingai stebėti išlygas prie visų žmogaus teisių sutarčių ir formuluoti prieštaravimus. Prieštaravimų formulavimas reikalauja teisinės ekspertizės ir diplomatinių išteklių. Ketvirta, menkas pragmatinis poveikis. Net pateikus prieštaravimą, išlygą pateikusi valstybė nebūtinai ją atšaukia ar pakeičia. Prieštaravimas keičia teisinį ryšį tarp dviejų valstybių, bet tiesiogiai neįpareigoja išlygą pateikusios valstybės keisti savo pozicijos dėl žmogaus teisių apsaugos savo viduje.

**Valstybių „tylėjimo" problema.** Susijęs su prieštaravimų neveiksmingumu yra valstybių „tylos" klausimas: ar valstybės, nepateikusios prieštaravimo per 12 mėnesių terminą, laikomos sutinkančiomis su išlyga, ir ar tokiu atveju išlyga turėtų būti laikoma galiojančia visų atžvilgiu? Disertacijos autorė pabrėžia, kad šis klausimas yra ypač svarbus žmogaus teisių sutarčių kontekste: nuo problemiškų išlygų labiausiai nukenčia ne valstybės, o individai. Todėl valstybių sistemingo tylėjimo fakto negalima interpretuoti kaip teisiškai reikšmingo „pritarimo" problemiškoms išlygoms - tai tik patvirtina, kad valstybių prieštaravimų sistema neveikia kaip veiksmingas kontrolės mechanizmas.

**Sutarčių organų vaidmuo ir jo ribos.** Pažymėtina, kad sutarčių stebėjimo organai vis aktyviau įsitraukia į išlygų vertinimą per savo apibendrinamąsias pastabas, bendruosius komentarus ir sprendimus individualių skundų bylose. Žmogaus teisių komteto Bendrasis komentaras Nr. 24, kaip aptarta, yra reikšmingiausias tokio aktyvumo pavyzdys. Jungtinių tautų visų formų diskriminacijos panaikinimo moterims Komitetas reguliariai reiškia susirūpinimą dėl problematiškų šios konvencijos išlygų savo pateiktose pastabose kiekvienai valstybei. Vaiko teisių komitetas nuosekliai kritikuoja plačias ir neapibrėžtas Vaiko teisių konvencijos išlygas. Visgi disertacijos autorė pažymi, kad sutarčių stebėjimo organų kompetencija turi aiškias ribas. Pirma, jų išvados nėra teismo sprendimai ir nėra saistančios taip, kaip TTT ar EŽTT sprendimai. Antra, sutarčių organai neturi tiesioginių priemonių įgyvendinti savo rekomendacijas. Trečia, kai kurios valstybės atvirai ginčija sutarčių organų kompetenciją vertinti išlygas, laikydamos tai viršijant jų turimas galias. Dėl šios priežasties, autorės nuomone, pateikiamos išvados, kaip būtų galima stiprinti sutarčių stebėjimo organų galią išlygų vertinimo kontekste.

## TREČIASIS SKYRIUS

Trečioji disertacijos dalis nagrinėja prieštaravimų išlygoms praktiką ir jų neveiksmingumą žmogaus teisių sutarčių sistemoje. Prieštaravimas yra valstybės pareiškimas, kuriuo ji nesutinka su kitos valstybės pateikta išlyga, siekdama, kad ši išlyga neturėtų numatyto teisinio poveikio. Tačiau šioje dalyje argumentuojama, kad prieštaravimų mechanizmas iš esmės yra nepakankamas žmogaus teisių sutarčių kontekste: valstybės dažnai visiškai nepateikia prieštaravimų arba pateikia juos

neveiksmingai, o net ir pateikus prieštaravimą, išlygas formulavusios valstybės retai keičia savo poziciją.

**Prieštaravimų teikimo problematika.** Pagal 1969 m. Vienos konvenciją, prieštaravimas turi būti pateiktas raštu per 12 mėnesių nuo išlygos gavimo dienos. Jeigu prieštaravimas nepateikiamas per šį terminą, išlyga laikoma priimta. Kai valstybė pateikia prieštaravimą, bet neprieštarauja sutarties įsigaliojimui apskritai, sutartis tarp abiejų valstybių galioja, tačiau išlygoje nurodytos nuostatos jų tarpusavio santykiuose netaikomos.

Nuo pagrindinių žmogaus teisių sutarčių įsigaliojimo iš viso buvo pateikta daugiau nei 400 prieštaravimų keturioms pagrindinėms sutartims - Tarptautiniam pilietinių ir politinių teisių paktui, Tarptautiniam ekonominių, kultūrinių socialinių teisių paktui, Jungtinių Tautų konvencijai dėl visų formų diskriminacijos panaikinimo moterims ir Vaiko teisių konvencijai. 2025 m. duomenimis, daugiausiai prieštaravimų sulaukė Jungtinių Tautų konvencija dėl visų formų diskriminacijos panaikinimo moterims - 228, po to Tarptautinis pilietinių ir politinių teisių paktas - 99, Vaiko teisių konvencija - 94, Tarptautinis ekonominių, kultūrinių socialinių teisių paktas - 35. Tarp aktyviausiųjų prieštaraujančių valstybių - Nyderlandai, Vokietija, Švedija, Suomija ir Norvegija, tačiau pažymėtina, kad ne visos prieštaravimus teikiančios valstybės griežtai reikalauja atšaukti išlygos, kurios savo esme akivaizdžiai prieštarauja sutarties objektui ir tikslui.

Nors prieštaravimai yra svarbi diplomatinė priemonė nesutikimui išreikšti, jų galimybės priversti valstybes atšaukti išlygas yra ribotos. Ši riba kyla todėl, kad išlygos dažnai formuluojamos siekiant spręsti vidaus teisines, kultūrines ar politines problemas, o jų atšaukimas gali būti suvokiamas kaip suvereniteto ribojimas. Dažniausia prieštaravimų priežastis - išlyga pažeidžia sutarties objektą ir tikslą, tai sudaro beveik trisdešimt procentų visų pateiktų prieštaravimų. Kitos priežastys apima išlygų neaiškumą, rėmimąsi vidaus ar religiniais įstatymais, pavojingų precedentų kūrimą bei mėginimą itin plačiai nukrypti nuo tarptautinės sutarties straipsnių. Vienas reikšmingesnių pokyčių - Europos Sąjungos koordinuotas požiūris į prieštaravimus. ES valstybės narės pradėjo derinti savo pozicijas ir teikti bendrus prieštaravimus dėl tų išlygų, kurios laikomos nesuderinamos su žmogaus teisių apsaugos sutartimis. Kai dvidešimt septynios ES valstybės narės vienu metu pareiškia prieštaravimą, sukuriamas vadinamasis „kolektyvinio prieštaravimo efektas“, galintis daryti poveikį išlygos teisiniam statusui tarptautinėje teisėje.

Pastebėtina, kad kai kuriais atvejais formalūs prieštaravimai paskatino valstybes atšaukti arba pakeisti išlygas, o tai rodo, kad tarptautinė kontrolė gali turėti teisinį ir normatyvinį poveikį. Pavyzdžiui, Pakistanas atšaukė išlygą Vaiko teisių konvencijai, nurodančią į islamo teisę, po Nyderlandų ir kitų valstybių pateiktų prieštaravimų. Vis dėlto centrinė šios dalies argumentacija yra tokia: prieštaravimu grindžiamas mechanizmas, paremtas abipusiškumo ir dvišalių sutartinių santykių logika, negali tinkamai reguliuoti išlygų neabipusių žmogaus teisių sutarčių, kurių pagrindiniai naudos gavėjai yra ne valstybės, o individai, atžvilgiu.

**Praktiniai pavyzdžiai išlygų atšaukimo kontekste.** Pažymėtina, kad nors sutarčių

stebėjimo organų įtaka dažniausiai yra patariamoji, o ne teisiškai privaloma, praktikoje egzistuoja atvejų, kai nuoseklus dialogas ir tarptautinis spaudimas paskatino valstybes atsisakyti probleminių išlygų. Pavyzdžiui, Pakistanas 1997 m. atšaukė išlygą Vaiko teisių apsaugos konvencijai, susijusią su islamo teise. Be to, disertacijoje pabrėžiama, kad ilgalaikis pilietinės visuomenės ir viešasis spaudimas gali būti lemiamas veiksnys, skatinantis valstybes ilgainiui atsisakyti probleminių išlygų. Kita vertus, yra ir priešingų pavyzdžių, kai valstybės griežtai atsisakė atšaukti savo išlygas nepaisant tarptautinės kritikos. Daugelis islamą išpažįstančių valstybių išlaikė savo plačias išlygas Jungtinių Tautų konvencijai dėl visų formų diskriminacijos panaikinimo moterims, grindžiamas šariato teise, argumentuodamos, kad jos atspindi pagrindines religines ir kultūrines vertybes, kurių jos negali atsisakyti. Disertacijoje taip pat atkreipiamas dėmesys į tai, kad veiksmingiausi išlygų atšaukimo atvejai dažniausiai kyla ne vien iš formalių sutarčių organų pastabų, o iš ilgalaikių vidaus procesų - nacionalinio dialogo, pilietinės visuomenės susitelkimo ir tarptautinio spaudimo. Šiame kontekste ypač reikšmingas Maroko pavyzdys Jungtinių Tautų konvencijos dėl visų formų diskriminacijos panaikinimo moterims kontekste: nuoseklus nacionalinis procesas, apėmęs komisiją su religijos žinovais, moterų teisių aktyvistais, teisės ekspertais ir pilietine visuomene bei plačias konsultacijas, sudarė prielaidas iš naujo vertinti tariamus nesuderinamumus ir judėti išlygų atsisakymo link. Be to, kai valstybės per vidaus konsultacijas rimtai svarsto, ar tikrai egzistuoja esminis konfliktas tarp universalių žmogaus teisių normų ir vietinės religinės doktrinos, dažnai prieinama prie išvados, jog visaapimančio nesuderinamumo nėra, todėl problemines, religija grįstas išlygas galima atšaukti. Vis dėlto tokie pokyčiai paprastai yra ilgi ir politiškai jautrūs: Maroke išlygos buvo naudojamos kaip laikinas kompromisas konservatyvios opozicijos akivaizdoje, o jų atšaukimo prielaidas sustiprino ilgalaikis viešinimas, visuomenės švietimas ir nuoseklus spaudimas reformuoti šeimos teisę.

## KETVIRTASIS SKYRIUS

**Dabartinės stebėjimo sistemos problemos.** Disertacijos autorė pabrėžia, kad dabartinė išlygų stebėjimo sistema turi keletą esminių trūkumų. Pirma, nors visos išlygos yra formaliai skelbiamos JT sutarčių registre, jų apimtis (keletas šimtų) ir skirtingų kalbų vartojimas daro jų sistemingą stebėjimą gana sudėtingu. Antra, dažnai praeina nemažai laiko, kol nauja problematiška išlyga yra identifikuojama ir analizuojamas jos suderinamumas su sutarties objektu ir tikslu. Trečia, išteklių trūkumas: sutarčių stebėjimo organai, dirbantys su labai ribotu biudžetu, negali skirti pakankamų išteklių išsamiai išlygų analizei. Ketvirta, skaidrumo stoka: nėra centralizuotos platformos, kurioje būtų sistemingai stebima, analizuojama ir viešai prieinami duomenys apie išlygas, prieštaravimus, sutarčių stebėjimo organų vertinimą ir jo įgyvendinimo eigą.

**Dirbtinio intelekto taikymo galimybės.** Disertacijos autorė siūlo keletą konkrečių DI technologijų taikymo galimybių išlygų stebėjimo ir vertinimo srityje.

**Automatizuotas išlygų stebėjimas.** Natūralios kalbos apdorojimo (NLP)

technologijos gali būti naudojamos automatizuotam naujų išlygų stebėjimui JT sutarčių registre, greitam turinio identifikavimui, suskirstymui pagal tipą (bendrosios išlygos, religinės, konstitucinės, federalinės, teritorinės ir t.t.) ir lyginimui su ankstesnėmis panašiomis išlygomis bei sutarčių stebėjimo organų pozicijomis dėl jų. Tokia sistema galėtų realiuoju laiku informuoti sutarčių stebėjimo organus, valstybes, nevyriausybines organizacijas ir pilietinę visuomenę apie naujas potencialiai problematiškas išlygas.

**Suderinamumo vertinimo pagalbinė priemonė.** DI sistemos galėtų būti apmokytos analizuoti išlygų tekstą, lyginant jį su sutarčių stebėjimo organų ankstesne praktika (bendrieji komentarai, pastabos, sprendimai), tarptautinių teismų sprendimais dėl panašių išlygų, Tarptautinės teisės komisijos gairių praktikos kriterijais, valstybių praktika. Tokia DI sistema galėtų identifikuoti potencialiai problematiškas išlygas ir pateikti pirminę suderinamumo analizę, kuri būtų toliau nagrinėjama žmogaus (tarptautinės žmogaus teisių apsaugos ekspertų). Svarbu pabrėžti, kad DI turėtų būti pagalbinė priemonė, o ne galutinis sprendimo priėmėjas - galutinis vertinimas turi likti žmogaus eksperto rankose, nes toks vertinimas apima ne tik techninius, bet ir vertybinius sprendimus.

**Daugiakalbė analizė.** DI daugiakalbio apdorojimo (angl. „multilingual processing“) galimybės leistų analizuoti išlygas, pateiktas įvairiomis kalbomis - anglų, prancūzų, ispanų, arabų, rusų, kinų ir kt. - ir užtikrinti, kad visos išlygos, nepriklausomai nuo kalbos, būtų vertinamos nuosekliai ir lyginamos tarpusavyje.

**Skaidrumo didinimas per vizualizacijas.** DI pagrindu sukurta viešai prieinama interaktyvi duomenų bazė su vizualiai pateikta informacija (žemėlapiai, grafikai, tendencijų linijos) galėtų rodyti geografinę išlygų pasiskirstymą (kokios šalys, regionai turi daugiausia išlygų), laiko eilutes (išlygų kiekio kaita per laiką, atšaukimų tendencijos), sutarčių organų pozicijų ir valstybių atsakymų dinamiką, individualių teisių apsaugos spragas dėl išlygų (kurios teisės daugiausiai apribotos). Autorės nuomone, tokia sistema gerokai padidintų skaidrumą ir leistų pilietinei visuomenei, tyrėjams ir kitoms suinteresuotoms šalims lengviau stebėti ir analizuoti išlygų poveikį žmogaus teisių apsaugai.

**DI taikymo rizikos ir etiniai klausimai.** Disertacijos autorė kartu su pasiūlymais dėl DI taikymo išsamiai aptaria ir su tuo susijusias rizikas bei etinius klausimus. Pirma, šališkumo (angl. bias) rizika. Jei DI sistema apmokoma remiantis istorine praktika, kurioje dominuoja Vakarų valstybių ir Vakarų teisės tradicijų perspektyvos, sistema gali teikti pirmenybę šiam požiūriui vertinant išlygas. Tai ypač svarbu vertinant išlygas, grindžiamas kitomis teisinėmis tradicijomis, kaip pvz., islamo teise arba Afrikos teisinėmis tradicijomis, kurios gali turėti savą vidinę logiką, nesutampančią su Vakarų koncepcija. Visgi čia sprendimas galėtų būti toks, kad DI apmokyme būtų galima naudoti įvairiapusišką duomenų bazę, apimančią skirtingų regionų ir teisinių tradicijų perspektyvas, reguliariai atlikti auditus dėl galimo algoritmo šališkumo. Antra, vertinimo hierarchijos problema. Jei DI sistema tampa pagrindiniu išlygų vertinimo šaltiniu, tai gali sukurti naują valdžios koncentraciją tuose organuose, kurie kontroliuoja sistemą (pvz., JT sekretoriatas, tam tikra valstybė ar tarptautinė organizacija). Autorė teigia,

kad užtikrinti, DI sistemos skaidrumą, jos algoritmai turėtų būti viešai prieinami ekspertiniam tikrinimui, taip pat turėtų būti įtraukti įvairių regionų ir teisinių tradicijų atstovai į šios sistemos valdymą. Trečia, klaidų rizika. DI sistemų klaidos - neteisingi teigiami rezultatai (angl. false positives, kai sistema klaidingai pažymi galiojančią išlygą kaip nesuderinamą su sutarties objektu ir tikslu) ar neteisingi neigiami rezultatai (angl. false negatives, kai sistema praleidžia problemišką išlygą) - gali turėti rimtų teisinių pasekmių. Autorė teigia, kad siekiant išvengti šios problemos, turėtų būti užtikrina, kad DI sistema turėtų aiškų žmogaus eksperto kontrolės mechanizmą, t.y. visos DI sistemos išvados turi būti tikrinamos ekspertų prieš priimant bet kokius sprendimus. Ketvirta, duomenų privatumas ir saugumas. Nors išlygos yra viešo pobūdžio dokumentai, jų analizėje gali atsirasti duomenų saugos klausimų, jei sistema taip pat analizuoja susijusią medžiagą (pvz., valstybių vidaus diskusijas, individualius skundus). Autorės nuomone, privaloma laikytis griežtų duomenų apsaugos standartų, taip pat būtina užtikrinti, kad tik viešai prieinami duomenys būtų naudojami išlygų vertinimo kontekste.

## IŠVADOS

**Pagrindiniai tyrimo rezultatai.** Šis disertacijos tyrimas pateikia išsamią ir kritinę analizę išlygų žmogaus teisių apsaugos sutartyse problematikos - vienos iš aktualiausių ir kontraversiškiausių šiuolaikinės tarptautinės sutarčių teisės sričių. Tyrimo rezultatai atskleidžia, kad dabartinė 1969 m. Vienos konvencija grindžiama išlygų sistema yra iš esmės nepakankamai efektyvi apsaugoti žmogaus teises ir užtikrinti sutarčių vientisumą žmogaus teisių apsaugos sutarčių kontekste.

1. Šioje disertacijos analizė įrodė, kad 1969 m. Vienos konvencijoje pateikiamas išlygų mechanizmas yra iš esmės nepakankamas žmogaus teisių apsaugos sutartims. Plačiai paplitusi valstybių praktika daryti išlygas, prieštaraujančias sutarčių objektui ir tikslui, atskleidžia 1969 m. Vienos konvencijos sistemos siaurumą, kuris neatspindi (ar nepakankamai atspindi) unikalaus žmogaus teisių dokumentų norminio pobūdžio. Todėl būtini alternatyvūs reguliavimo metodai, skirti užtikrinti žmogaus teisių apsaugos vientisumą.
2. Valstybių praktika ir atsirandančios paprotinės teisės normos pralenkė 1969 m. Vienos konvencijoje įtvirtintas nuostatas dėl išlygų. Prieštaravimo mechanizmas retai naudojamas ir yra neveiksmingas. Sutarčių priežiūros institucijų vykdoma veikla rodo, kad išlygų suderinamumo vertinimas vis labiau priklauso nuo besikeičiančios praktikos ir papildomų mechanizmų.
3. Autorė pažymi, kad vien pasikliauti valstybių prieštaravimais yra nepakankamas metodas, nes politiniai aspektai sistemingai nusveria teisinius įsipareigojimus. Byla *Cudak prieš Lietuvą* patvirtino, kad žmogaus teisės turi būti praktinės, o ne iliuzinės. Esamas mechanizmas leidžia nesuderinamoms išlygoms išlikti neginčijamoms, todėl būtina institucinė reforma, suteikianti sutarčių priežiūros organams privalomų įgaliojimų.

4. Žmogaus teisių komiteto Bendrasis komentaras Nr. 24 ir Tarptautinės teisės komisijos gairės dėl sutarčių išlygų patvirtino, kad neprivalomas jų teisinis poveikis negali pašalinti sisteminio vykdymo trūkumo. Reikšmingai reformai būtina iš esmės pertvarkyti priežiūros mechanizmus ir stiprinti sutarčių institucijų įgaliojimus.
5. Autorė teigia, kad prieštaravimų išlygoms mechanizmas iš esmės yra ydingas - prieštaravimai nėra nuoseklūs, pakankami ir nulemti strateginių, o ne principinių žmogaus teisių apsaugos principų. Diplomatinis pasyvumas ir strateginė valstybių tyla sudaro palankias sąlygas nesuderinamoms išlygoms išlikti, nepaisant formaliai išreikšto nepritarimo. Privalomų vykdymo mechanizmų nebuvimas atskleidžia esminius struktūrinius trūkumus ir suponuoja visapusiškos institucinės reformos poreikį.
6. Disertacijos analizė parodė, kad dirbtinis intelektas (DI) suteikia galimybę stiprinti sutarčių laikymąsi ir skaidrumą. DI technologijos gali efektyviai padėti išlygų stebėsenai, sistemingai fiksuoti atitiktį ir padėti sutarčių priežiūros organams, nevyriausybinėms organizacijoms bei nacionalinei žmogaus teisių stebėjimo institucijoms. Visgi akcentuojama, kad DI negali pakeisti žmonių teisinio vertinimo, tačiau, išplėsdamas prieigą prie informacijos, gali didinti atskaitingumą ir daryti viešą spaudimą valstybėms.
7. Nuolatinis viešasis spaudimas yra lemiamas veiksnys siekiant pokyčių išlygų žmogaus teisių apsaugos sutartims srityje. Pilietinės visuomenės aktyvus spaudimas buvo esminis veiksnys, įtikinant valstybes atšaukti problemines išlygas Jungtinių Tautų konvencijai dėl visų formų diskriminacijos panaikinimo moterims ir Tarptautiniam Pilietinių ir politinių teisių paktui. Viešasis spaudimas veikia ne tik kaip išorinis veiksnys, bet ir kaip neatskiriama demokratinio valdymo dalis, užtikrinanti, kad formalūs sutartiniai įsipareigojimai virstų realia žmogaus teisių apsauga.

## REKOMENDACIJOS DĖL IŠLYGŲ SISTEMOS TOBULINIMO

Remiantis atlikta analize, disertacijoje pateikiamos išsamios rekomendacijos, skirtos valstybėms, tarptautinėms organizacijoms, sutarčių stebėjimo organams, teismams ir pilietinei visuomenei.

**Teisinės ir institucinės reformos**

**Objekto ir tikslo kriterijaus konkretinimas kiekvienai sutarčiai.** Siūloma, kad sutarčių stebėjimo organai, bendradarbiaudami su valstybėmis, akademinės bendruomenės ekspertais ir pilietinės visuomenės atstovais išplėtotų išsamesnes gaires dėl objekto ir tikslo kriterijaus turinio konkrečioms sutartims. Šios gairės turėtų: pirma, aiškiai nurodyti, kokio tipo išlygos iš principo laikomos nesuderinamomis su konkrečios sutarties objektu ir tikslu; antra, pateikti konkrečius pavyzdžius iš ankstesnės praktikos, iliustruojančius suderinamas ir nesuderinamas išlygas; trečia, nustatyti aiškius vertinimo kriterijus, kuriems būtų galima remtis vertinant naujai daromas išlygas.

**Sutarčių stebėjimo organų kompetencijos aiškus pripažinimas.** Rekomenduojama, kad sutarčių organų kompetencija vertinti išlygų suderinamumą su sutarčių objektu ir tikslu būtų stiprinama ir plečiama. Tai sumažintų ginčus dėl institucinio autoriteto ir užtikrintų, kad sutarčių stebėjimo organų išlygų vertinimas turėtų didesnį autoritetą ir galią, nors ir ne privalomi kaip teismų sprendimai.

**Dialogas kaip pagrindinė metodinė priemonė.** Rekomenduojama, kad sutarčių stebėjimo organai, vertindami išlygas, pirmenybę teiktų konstruktyviam dialogui su valstybėmis, o ne konfliktui. Sutarčių stebėjimo organai turėtų aiškiai ir išsamiai paaiškinti, kodėl konkreti išlyga laikoma problematiška, pasiūlyti alternatyvias formuluotes, kurios būtų suderinamos su sutarties objektu ir tikslu, suteikti valstybei pakankamai laiko ir, jei reikia, techninę pagalbą išlygos peržiūrėjimui ar atšaukimui, taip pat pripažinti, kai valstybė susiduria su teisėtais konstituciniais ar praktiniais sunkumais įgyvendinant tam tikras nuostatas, ir ieškoti tinkamų ir abipusiai veiksmingų sprendimų.

**Centralizuota stebėsenos sistema ir viešos prieigos platforma.** Disertacijoje rekomenduojama šalinti šiuo metu egzistuojantį fragmentuotos ir įprasto stebėjimo sistemos trūkumą, t. y. situaciją, kai net po kelių valstybių prieštaravimų ir sutarčių stebėjimo organų išvadų nėra centralizuotos sistemos, leidžiančios sekti, ar išlyga buvo pakeista ar atšaukta. Siūloma sukurti atvirą, viešai prieinamą platformą, kuri centralizuotai ir suprantamai pateiktų duomenis apie išlygas, prieštaravimus ir atšaukimus, su interaktyviais suvestinių skydeliais, paieška, valstybių profiliais ir vizualizacijomis - žemėlapiais bei laiko juostomis. Tokia sistema užtikrintų nuolatinę ir automatizuotą stebėseną bei lyginamąją analizę, įskaitant daugiakalbį duomenų apdorojimą.

**Pilietinės visuomenės įtraukimas.** Rekomenduojama aktyviai skatinti pilietinės visuomenės organizacijas dalyvauti išlygų stebėjime. Pilietinės visuomenės organizacijos galėtų pateikti sutarčių stebėjimo organams informaciją ir analizę dėl išlygų poveikio žmogaus teisių apsaugai konkrečiose valstybėse, vykdyti viešąsias akcijas, skirtas skatinti valstybes atšaukti problemiškas išlygas, pateikti teismams ir kitiems organams amicus curiae pozicijas bylose, kuriose keliamas išlygų teisėtumo klausimas.

**Technologinės naujovės.**

**DI pagrindu veikiančios stebėsenos sistemos**. Disertacijos autorė rekomenduoja sukurti dirbtinio intelekto sistemą, kuri automatiškai stebėtų naujas išlygas ir teiktų pirminį jų suderinamumo su sutarčių objektu ir tikslu vertinimą. Tokia sistema turėtų būti grįsta keturiais principais: algoritmai turi būti viešai prieinami ir patikrinami; mokymo duomenys turi apimti įvairias teisines tradicijas, kad vertinimas būtų daugiašalis; galutinį sprendimą visada priima žmonės ekspertai, o DI atliktų tik pagalbinę funkciją; sistema nuolat atnaujinama atsižvelgiant į naują praktiką ir gautą grįžtamąjį ryšį.

**Konsultacinė priemonė valstybėms**. Be stebėsenos funkcijos, DI sistema galėtų padėti valstybėms dar prieš pateikiant išlygą: valstybė įvestų planuojamos išlygos tekstą ir gautų analizę, kaip panašios išlygos buvo vertinamos anksčiau ir kokia yra rizika, kad išlyga bus pripažinta nesuderinama su sutarties objektu ir tikslu. Tai leistų iš anksto patikslinti išlygos formuluotę, išvengti ginčų ateityje ir prisidėti prie bendro išlygų aiškumo ir skaidrumo didinimo.

**Viešos stebėsenos platforma**. Galiausiai rekomenduojama sukurti viešą platformą, skirtą pilietinės visuomenės atstovams, tyrėjams ir kitoms suinteresuotoms grupėms. Platforma leistų stebėti išlygų praktiką, teikti komentarus, dalytis informacija ir koordinuoti atstovavimo veiksmus, taip stiprinant skaidrumą ir didinant pilietinės visuomenės įsitraukimą į tarptautinės žmogaus teisių apsaugos procesą.

**Procesinės rekomendacijos**

**Išankstinė konsultacija prieš pateikiant problemiškas išlygas.** Rekomenduojama, kad valstybės, planuojančios pateikti plačias ar potencialiai problematiškas išlygas, pirmiau konsultuotųsi su sutarčių stebėjimo organais ir kitomis suinteresuotomis valstybėmis, siekdamos rasti konsensusą. Tai padėtų išvengti prieštaravimų ir suteiktų galimybę rasti sprendimus, tenkinančius tiek valstybės teisėtus interesus, tiek sutarties vientisumą.

**Periodinis išlygų peržiūrėjimas.** Siūloma įtvirtinti praktiką, kad valstybės periodiškai peržiūrėtų savo išlygas ir vertintų, ar jos vis dar yra būtinos ir proporcingos. Daugelis istorinių išlygų yra tapusios nebereikalingos dėl pasikeitusių nacionalinių aplinkybių (pvz., konstitucinio reguliavimo pakeitimo, teismų praktikos raidos), bet valstybės jų neatšaukė. Periodinis peržiūrėjimas galėtų paskatinti atsisakyti neaktualių išlygų.

**Prieštaravimų teikimo efektyvumo didinimas.** Rekomenduojama, kad valstybės, pateikiančios prieštaravimus, aiškiai nurodytų priežastis ir teisinius pagrindus, kodėl jos laiko išlygą nesuderinama su sutarties objektu ir tikslu. Daugelis dabartinių prieštaravimų yra lakoniški ir formalūs, o išsamesni, argumentuoti prieštaravimai turėtų didesnį politinį ir moralinį poveikį išlygą pateikusiai valstybei ir prisidėtų prie dialogo dėl galimo netinkamos išlygos atšaukimo.

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2. Reservations to UN human rights treaties: sovereign states seeking to avoid their obligations? International comparative jurisprudence. Vilnius: Mykolas Romeris University, 2020, vol. 6, iss. 2., p. 118-133. https://cris.mruni.eu/cris/entities/publication/2d750869-bd5b-448d-9e32-6f53101465d1
3. Probleminiai išlygų iš tarptautinių sutarčių aspektai ir praktinė analizė XXI amžiaus iššūkiai tarptautinei teisei. Liber Amicorum Sauliui Katuokai : [mokslo straipsnių rinkinys]. Vilnius : Mykolo Romerio universitetas, 2020. ISBN 9789955199953., p. 269-296. https://cris.mruni.eu/cris/entities/publication/d816cf95-1fd9-4ce2-ae17-12f8c424d910
4. Tarptautinių sutarčių ir kitų tarptautinio pobūdžio susitarimų sudarymas: praktiniai aspektai ir poreikio tobulinti reguliavimą Lietuvoje vertinimas. A. Augustauskaitė, A. Limantė, Teisės institutas, 2016. ISBN 978-9986-704-42-3 . https://teise.org/kategorija/leidiniai/autoriai/aiste-augustauskaite/

## CURRICULUM VITAE

**Vardas ir pavardė:** Aistė Augustauskaitė-Keršienė

**Išsilavinimas**

| | |
|---|---|
| **2013–2025 m.** | Doktorantūros studijos, Mykolo Romerio universitetas, Teisės mokykla, Vilnius. Disertacijos tema: *Išlygos tarptautinėms žmogaus teisių apsaugos sutartims: probleminiai aspektai* (disertacija rengiama anglų kalba, numatomas gynimas 2026 m.). |
| **2010–2012 m.** | Tarptautinės teisės magistro laipsnis (studijos anglų kalba), Mykolo Romerio universitetas, Teisės mokykla, Vilnius. |
| **2006–2010 m.** | Teisės bakalauro laipsnis, Mykolo Romerio universitetas, Teisės mokykla, Vilnius. |

**Akademinė ir profesinė patirtis**

| | |
|---|---|
| **2012 m. – dabar** | Lektorė, Tarptautinės ir Europos Sąjungos teisės institutas, Mykolo Romerio universitetas. Dėstomi dalykai: Tarptautinė (viešoji) teisė; Tarptautinių sutarčių teisė (šiuo metu dėstoma lietuvių ir anglų kalbomis). |
| **2023 m. – dabar** | Teisės ir atitikties skyriaus vadovė, UAB „Hautica“ |
| **2010 m. birželis–liepa** | Stažuotė, EUROJUST, Haga, Nyderlandai. |

**Mokslinės stažuotės ir akademinės praktikos**

- Stažuotė Rygos teisės aukštojoje mokykloje (2025 m. gegužė).
- Stažuotė Peace Palace, Haga, Nyderlandai (2015 m. gegužė–birželis).
- Stažuotė Lundo universitete, Švedija (2014 m. rugsėjis).
- Intensyvi programa (IP Erasmus): „Moterys, religija ir imigracija 2010“, Madridas, Ispanija (2010 m. rugsėjis).

**Pranešimai konferencijose**

- „Reservations to Human Rights Treaties: Boundaries and Prospects in Modern Society.” Tarptautinė konferencija SOCIN 2019 (pranešimas parengtas ir skaitytas anglų kalba).
- „Consequences of Reservations to International Human Rights Treaties, Concluded in the Aftermath of WWII.” Tarptautinė konferencija „Past and the Future Issues and Challenges of Prevention of International Crimes and Rise of Intolerance”, 2015 m. gruodis (pranešimas skaitytas anglų kalba).

- „Freedom of Association — Reality or Declaration." Tarptautinė konferencija „Problematic Issues of Protection of Human Rights" (pranešimas skaitytas anglų kalba).
- Pranešimai disertacijos tema skaityti 2014 m. ir 2015 m. Jaunųjų teisininkų skyriaus projekte „Petro Leono akademija", Mykolo Romerio universitetas.
- „Corporations and Human Rights." Tarptautinė žmogaus teisių teisės vasaros mokykla, 2014 m. (pranešimas skaitytas anglų kalba).
- „Reservations to Human Rights Treaties: Issues Related to Discrimination of Minorities and Hate Speech." Tarptautinė konferencija, Lenkija, 2014 m. (pranešimas skaitytas anglų kalba).
- „Prohibition of Discrimination under International and EU Law." Tarptautinė žmogaus teisių teisės vasaros mokykla, 2013 m. (pranešimas skaitytas anglų kalba).
- Dalyvavimas tarptautinės humanitarinės teisės konkurse „Youth for Peace 2011", Minskas.
- „Islamic Reservations to Human Rights Treaties." Tarptautinė konferencija „International Human Rights Day 2011: All Different, All Equal?" (pranešimas skaitytas anglų kalba).
- Pranešimas tarptautinėje konferencijoje „Human Rights Day 2010", Lenkija (pranešimas skaitytas anglų kalba).
- Dalyvavimas tarptautinėje žmogaus teisių teisės vasaros mokykloje, 2010 m.

**Kalbos**

- Lietuvių (gimtoji)
- Anglų (puikiai)
- Rusų (patenkinamai)
- Vokiečių (pagrindai)

Augustauskaitė-Keršienė, Aistė
RESERVATIONS TO INTERNATIONAL HUMAN RIGHTS TREATIES: PROBLEMATIC ISSUES: daktaro disertacija. – Vilnius: Mykolo Romerio universitetas, 2026. P. 280.

Bibliogr. 204-234 p.

*Disertacijoje analizuojamos išlygos tarptautinėms žmogaus teisių apsaugos sutartims kaip vienas esminių probleminių tarptautinių sutarčių teisės institutų, atskleidžiantis įtampą tarp valstybės suvereniteto ir universalios žmogaus teisių apsaugos. Kritiškai vertinamas 1969 m. Vienos konvencijos dėl tarptautinių sutarčių teisės decentralizuotas išlygų vertinimo modelis, ypač valstybių prieštaravimų mechanizmas, kuris žmogaus teisių sutarčių kontekste veikia neveiksmingai, o „sutarties objekto ir tikslo" kriterijus išlieka pernelyg neapibrėžtas. Išanalizuotos išlygos pagrindinėms žmogaus teisių apsaugos sutartims atskleidžia sistemines spragas: plataus pobūdžio išlygos, dažnai grindžiamos religijos ar kultūrinėmis teisėmis, politiškai sąlygotą prieštaravimų praktiką ir sutarčių stebėjimo organų neprivalomojo pobūdžio išvadų ribotumą. Inovatyvioji tyrimo dalis skirta dirbtinio intelekto (DI) potencialui: siūloma DI taikyti automatizuotai išlygų stebėsenai, daugiakalbei analizei ir skaidrumo didinimui per viešas duomenų bazes, kartu pabrėžiant etines rizikas ir žmogaus eksperto kontrolės būtinybę. Disertacijos išvadose teigiama, kad 1969 m. Vienos konvencijos mechanizmas žmogaus teisių apsaugos sutartims yra nepakankamas, todėl būtinos institucinės reformos, didesnis skaidrumas ir atskaitingumas, kuriuos gali sustiprinti DI sprendimai ir pilietinės visuomenės spaudimas.*

*This dissertation examines reservations to international human rights treaties as one of the most contentious issues in international treaty law, exposing the tension between state sovereignty and universal human rights protection. It critically assesses the decentralized reservation regime under the 1969 Vienna Convention on the Law of Treaties, demonstrating that the "object and purpose" test remains insufficiently defined and that the state objection mechanism operates ineffectively in the human rights context. Through analysis of reservations to key instruments, the study identifies systemic weaknesses: widespread religion and culture-based reservations, politically driven objection practices, and the non-binding character of treaty body determinations. Empirical review of state practice demonstrates that objections rarely produce meaningful change without sustained civil society pressure. The dissertation's innovative contribution proposes the use of artificial intelligence to enhance monitoring and transparency, including automated tracking, natural language processing, and multilingual databases for identifying potentially incompatible reservations, whilst preserving the primacy of human legal judgement. Reform proposals include clarifying the "object and purpose" standard, strengthening institutional oversight, and integrating AI-supported monitoring with appropriate ethical safeguards.*

Aistė Augustauskaitė-Keršienė

RESERVATIONS TO INTERNATIONAL HUMAN RIGHTS TREATIES: PROBLEMATIC ISSUES

Daktaro disertacija
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