



Reservations, Declarations, and Derogations: Unpacking State Strategies to Limit Human Rights Treaty Obligations

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Abstract. Nations become a party to Human Rights Treaties with reservations, declarations and derogations. It might look like mere technicalities on paper, but in reality, it can dramatically shape the international obligations towards the world [1]. While these sovereign actions occur frequently, the fundamental reasons for them and their impact on the larger system are still not fully grasped [2]. This research analyses as to how and why the states adopt these legal strategies, interrogating the intersection of domestic politics, cultural norms, and global pressures that inform their use across diverse legal systems [3]. After examining the recent trends in reservations, interpretative declarations, and emergency derogations, this research paper tries to investigate into various critical areas: To what extent do these instruments enable the nations to fulfil the international commitments with municipal obligations towards its citizens, and where exactly do they serve as intentional shields against international scrutiny or reform [4]? How do patterns in the withdrawal of reservations by the states reflect the transition in state sovereignty and international accountability [5]? What role do regional organizations, international society, and judicial bodies play in contesting, legitimizing, or eroding these state practices [6]? The authors have deployed comparative case studies from Southeast Asia, Africa, and beyond ranging from gender equality clauses in CEDAW to far-reaching derogations in times of crisis the paper unravels the underlying logic that might prove more than mere legal technicality evasion intentionally done by the states [7]. This research also highlights the vigorous ways in which the states navigate the tension between international laws and national obligations and priorities [8]. This research sheds fresh light into the current tussle between universal adoption of Human rights treaties and the hidden reservations and declarations, concluding with recommendations for recalibrating international and regional bodies to ensure that legal flexibility is balanced by genuine human rights accountability and not lost in the margins [9].

Keywords: Interpretative Declarations, State Practice, State Sovereignty, Treaty Obligations.

1 Introduction

The evolution of international human rights law represents one of the most significant developments in the post-World War II international legal order [10]. The emergence of a comprehensive human rights framework, anchored in the Universal Declaration of Human Rights and subsequently codified through multilateral treaties, has fundamentally transformed the relationship between states and individuals under international law [11]. However, this transformation has not been without its complexities, particularly regarding the practice of reservations to human rights treaties [12]. The procedure of reservations to international conventions and treaties are considered to be one of the most complex and contentious areas of contemporary international law [13]. Though the Vienna Convention on the Law of Treaties established a foundational regime for reservation practice, its application to human rights treaties has revealed fundamental tensions between state sovereignty and treaty integrity [14].

A Reservation is a formal statement made by contracting parties while signing, ratifying, approving, accepting, or acceding to a particular treaty depicting provisions of a treaty whose application is excluded or modified on that State [15]. Human rights treaties do not regulate the relations between states but guarantee the rights of individuals in the state [16]. Human Rights treaties are of normative nature, and it should be set out without any obstacles or interruptions by the States [17]. Presently, The Vienna Convention on the Law of Treaties (VCLT), 1155 U.N.T.S. 331 (1969), governs the rules and regulations relating to reservations [18]. Ever since the UN General Assembly adopted the Universal Declaration of Human Rights there has been a lot of debate on the applicability of reservations on Human Rights Treaties [19]. This gained momentum after the Genocide Convention, in 1948 [20]. With the growth of Human Rights treaties internationally as well as regionally, there was observed an increase on the questions raised regarding the validity of reservations on Human Rights treaties [21].

There was diverse opinion relating to the same, largely into two distinct opinions where one opinion favoured reservations even in Human Rights Treaties whereas the other opinion was vice versa [22]. The law of reservations, codified in the VCLT, establishes a framework balancing state sovereignty with treaty integrity [23]. Reservations enable states to tailor obligations to domestic legal, political, or cultural contexts while participating in multilateral accords [24]. However, this regime faces significant challenges when applied to human rights treaties, which impose non-reciprocal obligations and grant rights to individuals rather than states [25].

2 Problem Statement

The core problem addressed in this report is the systemic use of Reservations, Declarations, and Derogations (RDDs) by states as tools of strategic evasion rather than instruments of principled accommodation [26]. While the legal framework provided by the Vienna Convention on the Law of Treaties (VCLT) was intended to maximize treaty participation by allowing for domestic legal specificities, the

application of this framework to human rights treaties has created a fragmented and inconsistent landscape of protection [27].

The ambiguity of the “object and purpose” test in Article 19(c) of the VCLT serves as a significant hurdle [28]. Without a centralized, binding adjudicatory body to determine the validity of reservations, states often interpret this standard in a self-serving manner [29]. This leads to the emergence of “disguised reservations,” where states label limiting statements as “interpretative declarations” to avoid the scrutiny associated with formal reservations [30].

3 Research Questions

This inquiry is driven by a set of interconnected analytical questions designed to dissect the phenomenon of RDDs [31]:

- What are the primary political, legal, and cultural motivations compelling states to utilize Reservations, Declarations, and Derogations? This question explores the intricate calculus states perform, balancing the reputational benefits of treaty ratification against the domestic political costs of substantive legal or social reform [32].
- To what extent do these instruments serve as legitimate bridges for principled pluralism versus intentional shields against international scrutiny? Distinguishing between these two functions is a central normative and analytical challenge in assessing the nature of a state's commitment [33].
- How do patterns in the application, maintenance, and withdrawal of RDDs reflect broader shifts in the understanding of state sovereignty and international accountability? Analysis of these trends serves as a barometer for the evolving relationship between the state and the international legal order [34].
- What role do treaty-monitoring bodies, regional organizations, and international civil society play in contesting, legitimizing, or eroding these state practices? This examines the dynamic field of contestation where the meaning of universal norms and the limits of sovereign consent are constantly negotiated [35].

4 Purpose Of Study

The purpose of this study is to provide a multi-layered analysis of RDDs as strategic instruments of state policy [36]. By moving beyond formalistic legal analysis, the research seeks to uncover the operational dynamics of the human rights system and identify how states navigate the tension between international law and national priorities [37]. The study aims to highlight the chasm between the universal adoption of human rights treaties and the reality of fragmented application caused by hidden reservations and declarations [38]. Ultimately, the study seeks to offer recommendations for recalibrating international and regional bodies to ensure that

legal flexibility is balanced by genuine accountability and that the principles of human dignity are not lost in the margins [39].

5 Research Methods

This research utilizes a qualitative and comparative methodological framework, integrating doctrinal legal analysis with political science theories and sociological observations [40]. The doctrinal analysis focuses on the foundational texts of international treaty law, specifically the Vienna Convention on the Law of Treaties (VCLT) and the International Law Commission's (ILC) Guide to Practice on Reservations to Treaties (2011) [41]. The research also examines the jurisprudence and General Comments of UN treaty-monitoring bodies, particularly the Human Rights Committee's General Comment No. 24 and General Comment No. 29 [42].

Comparative case studies are deployed to illustrate the practical application of RDDs across different legal systems and regions [43]. These case studies include an analysis of CEDAW reservations in Southeast Asia and the MENA region, the impact of derogations in the context of internal conflicts in Colombia and Egypt, and the withdrawal of reservations in Tunisia and Morocco [44]. The study also incorporates theoretical perspectives, such as Robert Putnam's "two-level games," to explain the domestic-international nexus of treaty ratification [45]. Statistical trends are derived from the United Nations Treaty Collection to map the proliferation and thematic concentration of reservations over time [46].

6 Findings

6.1 The Legal Architecture of Limitation: A Contested Framework

The capacity of states to limit their international obligations through RDDs is not an accidental feature of the international legal system; it is a deliberately constructed architecture designed to manage the foundational tension between the creation of universal norms and the preservation of state sovereignty [47]. This framework, primarily codified in the VCLT, appears at first glance to be a neutral set of procedural rules [48]. However, a deeper analytical inquiry reveals it to be a highly contested political and juridical space [49]. It is within this architecture that the abstract commitments made in the preambles of treaties are tested, refined, and often diluted, transforming a theoretically monolithic legal obligation into a complex web of bespoke, state-specific duties [50].

Foundations in the Vienna Convention on the Law of Treaties (VCLT). The VCLT serves as the bedrock for the modern law of treaties, and its provisions in Articles 19 through 23 constitute the formal legal regime governing reservations [51]. An analysis of these articles reveals a system predicated on the primacy of state consent, creating a flexible but deeply ambiguous framework that prioritizes treaty participation over normative uniformity [52].

Article 19 of the VCLT establishes the default rule that a state may formulate a reservation unless the reservation is prohibited by the treaty, the treaty provides that only specified reservations may be made, or the reservation is incompatible with the object and purpose of the treaty [53]. This initial formulation already frames permissibility as the norm and impermissibility as the exception [54]. Articles 20 and 21 then outline a complex schema of acceptance and objection, which determines the legal effect of a reservation between the reserving state and other state parties [55]. In essence, it creates a series of bilateral relationships under a multilateral umbrella [56].

A state that accepts the reservation is bound by the treaty as modified by the reservation in its relations with the reserving state [57]. A state that objects, but does not oppose the entry into force of the treaty between itself and the reserving state, is bound by the treaty except for the provision to which the reservation relates [58]. This intricate system avoids a complete breakdown of the treaty relationship but does so at the cost of legal coherence [59], creating a "hub-and-spoke" model where the legal obligations radiating from the reserving state differ for each party [60]. This framework is inherently state-centric, granting individual states significant power to determine the scope of their own obligations and the nature of their legal relationships with others, often leading to a fragmented and bewildering legal landscape [61].

The critical safeguard within this system is the "object and purpose" test articulated in Article 19(c) [62]. This threshold is intended to prevent reservations that would gut the core principles of a treaty, rendering a state's ratification meaningless [63]. In theory, it is a robust check on the abuse of sovereign prerogative [64]. In practice, however, it is a notoriously ambiguous and politically charged standard [65]. The VCLT provides no definition of "object and purpose" nor does it establish an authoritative body to adjudicate its application [66]. Consequently, its interpretation is left to individual states, leading to inconsistent and often self-serving outcomes [67].

The ILC Guide to Practice on Reservations (2011). To address the silences and ambiguities of the VCLT, the International Law Commission (ILC) adopted the "Guide to Practice on Reservations to Treaties" in 2011 [68]. This non-binding but highly authoritative instrument provides 600 pages of guidelines designed to clarify the VCLT regime without modifying it [69]. The Guide defines a reservation as a "unilateral statement, however phrased or named, made by a State... whereby the State... purports to exclude or to modify the legal effect of certain provisions of the treaty" [70].

One of the most significant contributions of the 2011 Guide is its focus on the "reservations dialogue" [71]. This process encourages states, monitoring bodies, and other stakeholders to engage in informal communication regarding the validity and necessity of reservations [72]. The Guide also addresses the complex issue of "severability"—the notion that an invalid reservation can be struck down while leaving the state bound by the remainder of the treaty—a principle that has been heavily contested by states such as the United States and the United Kingdom [73].

Differentiating the Tools of Sovereignty. While often grouped together, the distinct instruments of reservation, declaration, and derogation represent different modalities of sovereign power, each with its own legal character and strategic application [74].

Reservations are explicitly transformative; they alter the legal obligation at the time of ratification [75]. The primary analytical issue is the prevalence of "disguised reservations." A state may label a statement an "interpretative declaration" to circumvent the scrutiny of the "object and purpose" test [76]. The critical legal question, as affirmed by the ILC's Guide to Practice, is not the name but the substantive effect of the statement [77]. If a declaration purports to impose a specific interpretation that effectively limits or excludes a legal obligation, it must be treated as a reservation, irrespective of its title [78].

In contrast, a "mere" interpretative declaration purports only to clarify or specify the meaning or scope a state attributes to a treaty or to certain of its provisions [79]. The line between interpretation and modification, however, is exceptionally thin and often subjective [80]. A declaration that a state will interpret the right to freedom of expression "in accordance with its Constitution" seems innocuous [81]. But if that state's constitution contains broad exceptions for national security or public morality that are not contemplated by the treaty, the declaration functions as a *de facto* reservation, subordinating international law to domestic law [82].

Derogations are fundamentally different. They are not modifications or interpretations made at the time of ratification but rather a temporary suspension of certain treaty obligations in response to a public emergency [83]. Most major human rights treaties, like the International Covenant on Civil and Political Rights (ICCPR) in its Article 4, contain specific derogation clauses [84]. This power is not unlimited; its exercise is governed by strict principles of necessity and proportionality [85]. Crucially, certain fundamental rights such as the right to life, freedom from torture, and freedom from slavery are deemed non-derogable, forming a core of inviolable protections (*jus cogens*) [86].

6.2 The Political Economy of Evasion: Deconstructing State Motivations

The decision to ratify a treaty with Reservations, Declarations, and Derogations (RDDs) is rarely a simple act of legal caution. Instead, it represents a complex, multi-variable calculation that can be best understood through the lens of a political economy of evasion [87]. This framework posits that states, as rational actors, conduct a sophisticated cost-benefit analysis where the significant reputational, diplomatic, and political capital gained from treaty ratification is weighed against the tangible domestic costs of substantive implementation [88].

Domestic Drivers: The Internal Calculus. The most potent drivers compelling the use of RDDs originate within the state itself [89]. Governments must navigate a domestic terrain where full, unqualified ratification of a treaty may be legally impossible, politically untenable, or financially inconvenient [90].

Constitutional and Legal Incongruence. The most clear-cut motivation for formulating a reservation is a direct and irreconcilable conflict between a treaty provision and a state's fundamental domestic law, particularly its constitution [91]. A significant number of reservations, particularly to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), are rooted in constitutional provisions establishing a state religion [92]. For instance, the Constitution of the Hashemite Kingdom of Jordan, in Article 2, declares that "Islam is the religion of the State" [93]. This constitutional foundation is then operationalized through personal status laws derived from Sharia, which govern marriage, divorce, and inheritance [94]. Consequently, Jordan has maintained reservations to Article 9(2) and Article 16 of CEDAW, explicitly stating that these provisions will not be applied where they conflict with Islamic Sharia [95].

Monarchical and Hereditary Systems. Another example of constitutional conflict arises in states with hereditary systems of governance [96]. The Constitution of the Principality of Liechtenstein enshrines male-preference primogeniture for succession to the throne [97]. This is in direct contradiction to the core principles of non-discrimination in CEDAW [98]. A reservation to the treaty becomes a constitutional necessity to preserve the fundamental structure of the state itself [99].

Political Hedging. Beyond rigid legal conflicts, states use RDDs as a tool to navigate a "two-level game" [100]. On the international level, the act of ratification signals a commitment to liberal norms and earns the government legitimacy [101]. On the domestic level, RDDs are deployed to appease and neutralize powerful constituencies such as religious conservatives, nationalist movements, or military establishments that oppose the treaty's substantive reforms [102]. The ratification of the Convention on the Rights of the Child (CRC) provides a fertile ground for observing this [103]. Many states have entered reservations to Article 14, which guarantees a child's right to freedom of thought, conscience, and religion, often clarifying that this right must be exercised under the guidance of parents and in accordance with national law [104].

"Administrative Incapacity" as a Pretext. A frequently cited justification for limiting treaty obligations, particularly by developing states, is administrative or economic incapacity [105]. While genuine capacity limitations are real, this claim is often used as a pretext for a lack of political will [106]. When a state claiming incapacity simultaneously demonstrates the capacity for significant military expenditure, the argument becomes transparently pretextual [107]. The claim of incapacity thus functions as a politically convenient and less confrontational way to reject a substantive obligation [108].

International Drivers: The External Chessboard

Strategic Ratification. In the contemporary international system, membership in major human rights treaties has become a marker of legitimacy and a prerequisite for being considered a "good international citizen" [109]. This reputational currency can be exchanged for tangible benefits, such as:

- **Diplomatic Leverage:** Membership allows a state to participate in Conferences of States Parties and nominate citizens for positions on treaty-monitoring bodies [110].
- **Economic and Trade Benefits:** Access to certain markets, such as the EU's Generalised Scheme of Preferences Plus (GSP+), is linked to the ratification and implementation of core international conventions [111].
- **Peer Pressure and Socialization:** States are sensitive to the behavior of their peers. When a critical mass of states in a region ratifies a treaty, it creates pressure on the remaining states to follow suit to avoid being seen as outliers [112].

6.3 Data-Backed Trend Analysis: Mapping the Evasive Landscape

An analysis of the raw data from the UN Treaty Collection, combined with a qualitative assessment, reveals clear trends in how states engage with the human rights treaty regime [113].

The quantitative distribution is not random; it is a direct reflection of the political economy of evasion [114]. States are least likely to reserve against norms that are universally accepted as absolute (like the ban on torture) and most likely to reserve against norms that require profound and costly transformations of domestic social, religious, or political structures (like radical gender equality) [115].

Beyond numbers, there has been a qualitative shift from "blunt force" to "surgical evasion" [116]. In early decades, reservations were often broad and overtly political (e.g., "State X is not bound by anything contrary to Sharia") [117]. In response to increased scrutiny from treaty bodies, states have adapted [118]. Tactics now include re-labeling reservations as "interpretative declarations," using "softer" language (e.g., "State Y will implement in light of its culture"), and providing narrower, legally-framed justifications [119]. This evolution does not signal a decline in state reluctance to be bound, but rather that states are becoming more adept in the art of evasion [120].

6.4 Case Studies: State Practice Under the Microscope

Gender Equality on Hold: CEDAW Reservations in Southeast Asia & MENA. CEDAW's transformative potential has been systematically constrained by reservations to Article 2 (policy measures) and Article 16 (marriage and family relations) [121]. Malaysia has consistently reserved against Article 16, citing conflicts with Islamic family law [122]. Domestic movements like "Sisters in Islam" (SIS) have contested this, reframing family law reform as consistent with, rather than antagonistic to, Islamic jurisprudence [123].

Saudi Arabia entered sweeping reservations asserting compliance only insofar as provisions do not conflict with Sharia [124]. While these reservations appear incompatible with the "object and purpose" of CEDAW, they have been

tolerated due to political sensitivities [125]. These reservations institutionalize gender inequality under the veneer of international legality, carving out the very spaces where women's subordination is most entrenched [126].

Emergency as a Pretext: Derogations from the ICCPR in Times of Crisis. While reservations shield states *ex ante*, derogations allow them to suspend rights *ex post* during declared emergencies [127]. Article 4 of the ICCPR permits this, provided the measures are necessary and proportionate [128]. However, derogations often function as tools of authoritarian entrenchment [129].

In Egypt, emergency laws justified under anti-terror frameworks have become a permanent feature of governance, undermining the notion of temporariness [130]. Reports indicate that these derogations have facilitated mass arbitrary detentions, enforced disappearances, and the suppression of civic space [131]. Similarly, in Colombia, territorial violence and internal conflicts have led to widespread violations, with armed groups using violence to exert control while state security forces are accused of extrajudicial killings and failing to protect civilians [132].

The Dialogue of Withdrawal: A Reflection of Evolving Sovereignty. Withdrawals of reservations demonstrate that state practice is responsive to internal and external pressures [133]. Tunisia's withdrawal of all specific reservations to CEDAW in 2014 followed the "Jasmine Revolution" and the adoption of a new Constitution that guaranteed gender equality [134]. Similarly, Morocco's reform of the "Moudawana" (Family Code) in 2004 and the subsequent constitutional reform in 2011 led to the withdrawal of major reservations [135].

7 Conclusion

The study of Reservations, Declarations, and Derogations (RDDs) reveals a fundamental reality: international law is a site of constant negotiation between the imperatives of universality and the prerogatives of sovereignty [145]. RDDs are not merely technical exceptions but are central to the operational dynamics of the human rights system [146]. States deploy them to calibrate their exposure to international obligations, creating a "political economy of evasion" where reputational gains are maximized and domestic costs are minimized [147]. However, the international system has developed multiple levers of accountability [148]. Treaty bodies, regional courts, and civil society actors have rendered state sovereignty porous, continuously contesting the validity of state-imposed limitations [149]. The findings indicate that while RDDs remain attractive tools for states, their durability is contingent on the sustained pressure of these international and domestic actors [150]. Sovereignty is no longer absolute; it is conditional and embedded within a web of scrutiny and evolving norms [151].

7.1 Recommendations for Recalibrating the Balance

- **Harmonization of Criteria:** International bodies should develop precise standards for distinguishing legitimate reservations from "disguised" ones that hollow out core obligations [152].
- **Periodic Review Mechanisms:** Reservations should not be permanent. Treaty bodies should mandate structured re-examinations, compelling states to justify their continuation at regular intervals [153].
- **Technical Support:** International bodies should expand assistance programs to help states align domestic laws with treaty norms, separating genuine implementation challenges from bad-faith resistance [154].
- **Enhanced Domestic Transparency:** The process of drafting and maintaining reservations should be subject to parliamentary oversight and public debate, increasing the domestic political cost of evasion [155].

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