
RESERVATIONS TO HUMAN RIGHTS TREATIES: BALANCING UNIVERSALITY AND SOVEREIGNTY

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ABSTRACT

The law of treaties is founded upon the principle of state consent. Reservations constitute one of the principal mechanisms through which states reconcile their sovereign interests with participation in multilateral treaty regimes. While reservations have traditionally facilitated broader participation in international agreements, their application to human rights treaties presents distinctive legal and normative challenges. Unlike reciprocal treaties that primarily regulate inter-state relations, human rights treaties establish obligations owed by states to individuals under their jurisdiction and seek to protect universal values transcending national boundaries. Consequently, reservations that limit or modify treaty obligations may undermine the universality, integrity, and effectiveness of international human rights protection.

This article critically examines the legal framework governing reservations to human rights treaties, focusing on the tension between state sovereignty and the universal character of human rights norms. It analyses the provisions of the Vienna Convention on the Law of Treaties (1969), the jurisprudence of international courts and tribunals, and the evolving practice of human rights treaty bodies. Particular attention is devoted to the landmark General Comment No. 24 of the Human Rights Committee, the jurisprudence of the European Court of Human Rights, and debates surrounding impermissible reservations. The article argues that the traditional consent-based approach embodied in the Vienna Convention inadequately addresses the special nature of human rights treaties. While reservations remain an important instrument for securing state participation, unrestricted reliance upon sovereign prerogatives risks eroding the normative foundation of international human rights law.

The article proposes a balanced framework that preserves state consent while strengthening mechanisms for assessing the compatibility of reservations with the object and purpose of human rights treaties. Such an approach is essential for maintaining both the legitimacy and effectiveness of the international human rights system in an increasingly fragmented international legal order.

Keywords: Reservations, Human Rights Treaties, Vienna Convention on the Law of Treaties, Sovereignty, Universality, Human Rights Committee, Treaty Interpretation, International Human Rights Law, State Consent, Treaty Law.

I. Introduction

The modern international legal order is fundamentally shaped by treaties. Since the adoption of the Charter of the United Nations in 1945, treaties have become the primary instruments through which states establish legal obligations and regulate their relations. Human rights treaties occupy a particularly significant position within this framework because they seek not merely to govern relations among states but to protect the dignity and rights of individuals. Instruments such as 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), and the Convention against Torture (CAT) represent milestones in the institutionalization of universal human rights standards.¹

Despite their universal aspirations, human rights treaties remain dependent upon state consent. States frequently seek to preserve aspects of their domestic legal, political, religious, or cultural systems by entering reservations upon ratification. Reservations enable states to exclude or modify the legal effect of specific treaty provisions while remaining parties to the treaty.² This mechanism has historically facilitated wider participation in multilateral treaties by accommodating diversity among states.

The increasing prevalence of reservations to human rights treaties, however, has generated significant controversy. Many reservations concern core provisions relating to equality, non-discrimination, judicial remedies, family rights, or individual complaint procedures. Critics argue that such reservations undermine the universality and effectiveness of human rights norms by permitting states to selectively comply with treaty obligations.³ Proponents maintain that reservations are an indispensable manifestation of state sovereignty and a practical necessity for securing broad treaty participation.

The controversy reflects a deeper theoretical tension within international law. On one hand lies the principle of sovereign equality, which recognizes the autonomy of states and their freedom to consent to international obligations. On the other hand lies the universalist aspiration of

human rights law, which seeks to establish minimum standards applicable to all human beings regardless of nationality, culture, religion, or political system. Reservations occupy the intersection of these competing principles.

This article examines whether existing international law successfully balances universality and sovereignty in the context of reservations to human rights treaties. It argues that while reservations remain necessary to encourage participation, the special nature of human rights treaties justifies enhanced scrutiny of reservations that threaten treaty integrity. The article further contends that developments in treaty body practice and international jurisprudence demonstrate an emerging departure from traditional treaty law principles toward a more objective assessment of reservation validity.

II. The Concept and Legal Framework of Reservations

Reservations are a long-established feature of treaty law. The modern definition is contained in Article 2(1)(d) of the Vienna Convention on the Law of Treaties (VCLT), which 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 modify the legal effect of certain provisions of the treaty in their application to that State.”⁴

Reservations serve an important practical function. They allow states to participate in multilateral treaties despite objections to particular provisions. Without reservations, many states might decline to ratify treaties altogether, thereby reducing treaty participation and effectiveness. The reservation mechanism therefore reflects a compromise between legal uniformity and political reality.⁵

Historically, the law governing reservations evolved through state practice and judicial decisions. Early treaty practice often required unanimous acceptance of reservations by all contracting states. This approach proved increasingly impractical as multilateral treaties expanded in scope and membership. The turning point came with the advisory opinion of the International Court of Justice in the Reservations to the Genocide Convention case of 1951.⁶

The Court rejected the strict unanimity principle and held that a reservation could be permissible if it was compatible with the object and purpose of the treaty. The Court

emphasized that universal participation in the Genocide Convention was an important objective and that excessive restrictions on reservations could frustrate this goal.⁷ The advisory opinion significantly influenced the codification of treaty law in the Vienna Convention.

Articles 19 to 23 of the VCLT establish the contemporary legal framework governing reservations. Article 19 provides that a state may formulate a reservation unless:

- (a) the reservation is prohibited by the treaty;
- (b) the treaty permits only specified reservations which do not include the reservation in question; or
- (c) the reservation is incompatible with the object and purpose of the treaty.⁸

The “object and purpose” test constitutes the central criterion for evaluating reservation validity. Yet the Convention offers little guidance regarding its interpretation. Determining whether a reservation is incompatible with a treaty's object and purpose often involves subjective judgments and competing legal perspectives.⁹

Under Articles 20 and 21, other states may accept or object to reservations. Acceptance generally establishes treaty relations subject to the reservation, while objections may modify or prevent treaty relations depending on their nature.¹⁰ These provisions are rooted in traditional reciprocity-based treaty relations. Human rights treaties, however, differ substantially because their obligations are owed primarily to individuals rather than to other states.

The application of these provisions to human rights treaties has therefore generated considerable doctrinal uncertainty. Scholars increasingly question whether the Vienna Convention framework adequately reflects the distinctive nature of human rights obligations.¹¹

III. The Special Nature of Human Rights Treaties

The controversy surrounding reservations cannot be understood without appreciating the unique character of human rights treaties. Unlike commercial, territorial, or security treaties, human rights treaties are not principally based upon reciprocal exchanges of benefits among states. Instead, they establish objective obligations designed to protect individuals against abuses of state power.¹²

The International Court of Justice recognized this distinctive character in the Genocide Convention advisory opinion, observing that the Convention was adopted for a “purely humanitarian and civilizing purpose.”¹³ Similar observations have been made regarding contemporary human rights treaties, which create obligations *erga omnes partes* and, in some instances, reflect norms of *jus cogens*.

Human rights treaties are also characterized by institutional supervision. Monitoring bodies such as the Human Rights Committee, the Committee on the Elimination of Discrimination against Women, and the Committee against Torture evaluate state compliance and issue authoritative interpretations.¹⁴ This institutional dimension distinguishes human rights treaties from many traditional international agreements.

Because human rights obligations are directed toward individuals rather than states, reciprocity plays a diminished role. A reservation entered by one state does not merely affect its relations with other treaty parties; it potentially affects millions of individuals within its jurisdiction. Consequently, permissive approaches to reservations may undermine the protective purpose of the treaty itself.

The challenge is particularly acute where reservations target fundamental rights provisions. For example, numerous states have entered reservations to provisions concerning gender equality, freedom of religion, family law, and judicial remedies, often citing religious or constitutional considerations.¹⁵ Critics contend that such reservations permit selective adherence to universal human rights standards and perpetuate practices inconsistent with treaty objectives.

The tension between universality and sovereignty is therefore more pronounced in human rights treaties than in most other areas of international law. While sovereign consent remains the basis of treaty obligations, excessive deference to state preferences risks weakening the normative authority of international human rights law. Conversely, overly restrictive approaches to reservations may discourage treaty participation and provoke resistance from states concerned about preserving constitutional or cultural autonomy.

The search for an appropriate balance has become one of the most significant debates in contemporary treaty law and human rights jurisprudence.

IV. Reservations to Human Rights Treaties: Emerging Jurisprudence and Institutional Responses

The application of reservations to human rights treaties became increasingly controversial during the latter half of the twentieth century as international monitoring bodies confronted reservations directed at substantive rights provisions. While the Vienna Convention established a general framework applicable to all treaties, human rights institutions gradually developed interpretations reflecting the distinctive nature of human rights obligations. This evolution produced one of the most significant debates in contemporary international law: whether the traditional law of reservations should be modified when applied to human rights treaties.

The most influential development occurred in 1994 when the Human Rights Committee adopted General Comment No. 24 concerning reservations to the International Covenant on Civil and Political Rights (ICCPR).¹⁶ The Committee emphasized that the ICCPR was not a network of reciprocal obligations among states but a treaty designed to protect the rights of individuals. Consequently, the Committee argued that traditional principles governing inter-state treaties could not be mechanically applied to human rights instruments.¹⁷

General Comment No. 24 advanced several controversial propositions. First, it asserted that reservations incompatible with the object and purpose of the Covenant were invalid. Second, it claimed that the Human Rights Committee possessed the authority to determine whether a reservation was compatible with the Covenant. Third, and most controversially, it suggested that an invalid reservation could be severed from a state's consent, leaving the state bound by the treaty without the benefit of the reservation.¹⁸

The Committee's position represented a significant departure from classical treaty law. Under the traditional Vienna Convention framework, states determine the legal effects of reservations through acceptance and objection procedures. The Human Rights Committee, however, proposed an institutional approach in which treaty-monitoring bodies would play a central role in assessing reservation validity.

Supporters of General Comment No. 24 argued that it was necessary to preserve the integrity of the Covenant. They observed that states frequently failed to object to problematic reservations for political or diplomatic reasons. Reliance upon inter-state objections therefore provided insufficient protection against reservations that undermined fundamental rights.¹⁹ If

human rights treaties were intended to establish universal standards, some mechanism was needed to prevent states from selectively excluding essential obligations.

Critics, however, contended that the Committee exceeded its legal authority. Several states, including the United States, the United Kingdom, and France, challenged the Committee's interpretation, arguing that it was inconsistent with the consensual foundation of treaty law.²⁰ They maintained that treaty-monitoring bodies could not unilaterally alter the legal consequences established by the Vienna Convention.

The controversy surrounding General Comment No. 24 illustrates the broader tension between universality and sovereignty. The Committee sought to strengthen the effectiveness of human rights protection by limiting the scope of reservations, while states emphasized the importance of preserving consent as the basis of international legal obligations.

V. Reservations to Major Human Rights Treaties: Patterns and Problems

A. Reservations to the ICCPR

The ICCPR has attracted numerous reservations since its adoption in 1966. Many of these reservations concern provisions relating to equality, criminal justice, religious freedom, and political participation. Some states have entered reservations based upon constitutional limitations, while others have invoked religious or cultural considerations.²¹

Particularly controversial have been reservations affecting Articles 2 and 26, which establish general principles of non-discrimination and equality before the law. Because these provisions are central to the Covenant's normative framework, reservations directed at them raise serious concerns regarding treaty integrity.²²

Several states have also entered reservations concerning Article 18 on freedom of religion and Article 23 relating to family rights. Such reservations often reflect attempts to reconcile international obligations with domestic legal systems grounded in religious norms. Critics argue that these reservations create a hierarchy of rights inconsistent with the universal aspirations of the Covenant.²³

The Human Rights Committee has repeatedly expressed concern that broad and vaguely worded reservations may deprive individuals of meaningful protection. In numerous

concluding observations, the Committee has urged states to withdraw reservations that appear incompatible with the Covenant's object and purpose.²⁴

B. Reservations to CEDAW

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has generated perhaps the most extensive debate concerning reservations. Despite widespread ratification, many states have entered reservations to core provisions relating to marriage, family relations, nationality, and gender equality.²⁵

Articles 2 and 16 of CEDAW have been particularly affected. Article 2 requires states to pursue policies eliminating discrimination against women, while Article 16 guarantees equality in marriage and family relations. Reservations to these provisions frequently invoke religious law, customary practices, or constitutional traditions.²⁶

Numerous scholars argue that reservations to Articles 2 and 16 strike at the heart of the Convention. If states may reserve against the principal obligations designed to eliminate gender discrimination, the Convention's transformative purpose is significantly weakened.²⁷

The Committee on the Elimination of Discrimination against Women has repeatedly characterized certain reservations as incompatible with the Convention's object and purpose. Nevertheless, the absence of an effective enforcement mechanism has limited the practical impact of these determinations.²⁸

CEDAW thus illustrates the central dilemma of reservations in human rights law. Broad participation has been achieved, but often at the cost of substantial modifications to treaty obligations. The resulting tension raises fundamental questions concerning the relationship between universality and cultural diversity.

C. Reservations to the Convention Against Torture

Reservations to the Convention against Torture (CAT) present a somewhat different picture because the prohibition of torture is widely recognized as a norm of *jus cogens*.²⁹ Since no derogation from a peremptory norm is permitted under international law, reservations that seek to limit the prohibition of torture itself would generally be considered invalid.

Nevertheless, states have entered reservations concerning procedural obligations, jurisdictional provisions, and mechanisms for dispute settlement.³⁰ While such reservations do not directly challenge the substantive prohibition of torture, they may weaken the effectiveness of enforcement mechanisms intended to ensure compliance.

The CAT experience demonstrates that the permissibility of reservations often depends upon the normative status of the rights involved. Reservations affecting rights associated with jus cogens norms are more difficult to justify than those concerning administrative or procedural provisions.

VI. The Jurisprudence of Regional Human Rights Courts

Regional human rights courts have played a significant role in shaping the law of reservations. Their jurisprudence has frequently adopted a more restrictive approach than that reflected in traditional treaty law.

The most influential decisions originate from the European Court of Human Rights. In *Belilos v. Switzerland*, the Court examined a Swiss declaration that purported to limit the application of certain provisions of the European Convention on Human Rights.³¹ The Court concluded that the declaration functioned as a reservation and assessed its validity under the Convention.

Importantly, the Court determined that the reservation was invalid because it failed to satisfy the requirements of the Convention. Rather than releasing Switzerland from its obligations, however, the Court treated the reservation as severable and held Switzerland bound by the relevant treaty provisions.³²

The severability doctrine was subsequently reinforced in *Loizidou v. Turkey*.³³ In that case, Turkey sought to limit the jurisdiction of the European Court through restrictive declarations. The Court rejected these limitations and affirmed its jurisdiction.

These decisions significantly influenced subsequent debates regarding reservations to human rights treaties. By treating invalid reservations as severable, the Court prioritized treaty effectiveness over strict adherence to state consent. The underlying rationale was that states should not be permitted to undermine fundamental human rights guarantees through impermissible reservations.

Supporters view the severability doctrine as essential for preserving the integrity of human rights treaties. Critics, however, argue that it risks imposing obligations upon states beyond those they expressly accepted.³⁴ The doctrine therefore remains one of the most controversial aspects of contemporary treaty law.

Regional jurisprudence has nevertheless contributed to an emerging consensus that human rights treaties require a distinct approach to reservations. Courts increasingly emphasize the protective purpose of such treaties and the need to ensure effective rights protection.

VII. The Object and Purpose Test: A Critical Analysis

The object and purpose test occupies a central position in the law of reservations. Article 19(c) of the Vienna Convention prohibits reservations incompatible with a treaty's object and purpose, yet the Convention provides little guidance concerning how this standard should be applied.³⁵

In the context of human rights treaties, determining the object and purpose of a treaty is particularly challenging. Human rights instruments often pursue multiple objectives, including the protection of individual rights, promotion of equality, enhancement of democratic governance, and prevention of state abuse. Different interpreters may emphasize different aspects of these objectives.

The ambiguity of the object and purpose test has generated inconsistent state practice. Some states adopt expansive interpretations that permit a wide range of reservations, while others advocate stricter approaches designed to preserve treaty integrity.³⁶

One criticism of the test is its indeterminacy. Because no authoritative methodology exists for identifying a treaty's object and purpose, determinations often reflect subjective value judgments. This uncertainty may undermine legal predictability and create opportunities for political manipulation.³⁷

At the same time, abandoning the object and purpose test would create even greater difficulties. Without some substantive limitation, states could enter reservations excluding virtually any obligation, thereby reducing treaties to collections of optional commitments. Such an outcome would be particularly problematic in the human rights context, where universality constitutes a central normative objective.

A balanced approach therefore requires a more structured interpretation of the object and purpose test. Several scholars have proposed identifying core provisions that embody the essential normative commitments of a treaty. Reservations directed at these provisions would be presumed incompatible with the treaty's object and purpose, while reservations affecting peripheral obligations would receive greater deference.³⁸

This approach offers a compromise between universality and sovereignty. States would retain flexibility regarding secondary provisions while being prevented from undermining the fundamental objectives of human rights treaties.

VIII. Sovereignty versus Universality: The Continuing Tension

The debate over reservations ultimately reflects competing conceptions of international law itself. The traditional model views international law as a system grounded in state consent. From this perspective, reservations are a legitimate expression of sovereignty and an indispensable mechanism for accommodating diversity among states.³⁹

According to this view, imposing obligations beyond those accepted by states would undermine the legitimacy of international law. Reservations encourage participation by allowing states to reconcile international commitments with domestic constitutional, political, and cultural realities. Without reservations, many states might decline to join human rights treaties altogether.

The universalist perspective, by contrast, emphasizes the special nature of human rights norms. Human rights are often described as inherent and universal entitlements that do not depend upon state consent for their moral validity.⁴⁰ Consequently, excessive deference to sovereignty may permit states to evade obligations designed to protect fundamental human dignity.

This debate has become increasingly significant in a globalized world characterized by legal pluralism, cultural diversity, and competing conceptions of human rights. While universality remains a foundational principle of international human rights law, states continue to insist upon preserving space for domestic autonomy.

The challenge for contemporary international law is therefore not to eliminate either universality or sovereignty but to reconcile them. Human rights treaties cannot function effectively without widespread participation, yet participation alone is insufficient if core rights

protections are substantially weakened through reservations.

The evolving jurisprudence of treaty bodies and international courts suggests an emerging effort to strike this balance. Although consensus remains elusive, the trend appears to favor greater scrutiny of reservations that threaten the essential objectives of human rights treaties.

IX. The International Law Commission and the Modern Law of Reservations

Recognizing the growing complexity of reservation practice, the International Law Commission (ILC) undertook a comprehensive study of reservations to treaties that culminated in the adoption of the *Guide to Practice on Reservations to Treaties* in 2011.⁴¹ Although the Guide does not possess binding legal force, it represents the most authoritative attempt to clarify and systematize the law governing reservations after the Vienna Convention.

The ILC sought to reconcile competing positions regarding the validity and consequences of reservations. On the one hand, it acknowledged the fundamental role of state consent in treaty law. On the other hand, it recognized that certain reservations may undermine the integrity and effectiveness of treaties, particularly those establishing human rights obligations. The Guide therefore adopted a nuanced approach that combines elements of traditional treaty law with developments emerging from human rights jurisprudence.⁴²

A significant contribution of the Guide lies in its treatment of invalid reservations. Rather than automatically applying the severability doctrine advocated by some human rights bodies, the ILC emphasized the importance of determining the intention of the reserving state. Where a reservation is invalid, the critical question becomes whether the state intended to be bound by the treaty without the reservation. If such intention cannot reasonably be presumed, the state may not be regarded as bound by the treaty provision in question.⁴³

This approach reflects a deliberate effort to preserve the consensual foundation of treaty obligations while preventing abuse of the reservation mechanism. It represents an intermediate position between the strict consent-based model favored by many states and the more objective approach adopted by certain human rights institutions.

The ILC's work demonstrates that the law of reservations remains in a state of evolution. While the Vienna Convention continues to provide the basic framework, contemporary developments increasingly recognize the need to account for the distinctive nature of human rights treaties

and the interests of individuals who are not formal parties to treaty negotiations.

X. Reservations and Jus Cogens Norms

One of the most significant limitations upon state sovereignty in contemporary international law arises from the concept of *jus cogens*. Peremptory norms occupy the highest position within the hierarchy of international legal rules and are binding upon all states irrespective of consent.⁴⁴

Article 53 of the Vienna Convention defines a peremptory norm as a norm accepted and recognized by the international community of states as a whole from which no derogation is permitted. Examples commonly include the prohibitions of genocide, torture, slavery, apartheid, crimes against humanity, and aggressive war.⁴⁵

The existence of *jus cogens* has profound implications for reservations to human rights treaties. Since derogation from a peremptory norm is legally impermissible, reservations purporting to exclude or modify obligations reflecting such norms are generally considered invalid.⁴⁶

The Human Rights Committee has repeatedly emphasized that reservations affecting non-derogable rights require particularly close scrutiny. Similar positions have been adopted by other treaty-monitoring bodies and regional human rights courts.⁴⁷

The prohibition of torture provides a useful illustration. Even if a state sought to reserve against treaty provisions prohibiting torture, such a reservation would likely be regarded as void because it conflicts with a universally binding peremptory norm. The same reasoning applies to reservations seeking to legitimize genocide, slavery, or systematic racial discrimination.⁴⁸

The relationship between reservations and *jus cogens* demonstrates that sovereignty is not absolute in contemporary international law. While states remain free to consent to treaties and formulate reservations within certain limits, their freedom is constrained by fundamental norms regarded as essential to the international legal order.

At the same time, determining whether a particular treaty provision reflects *jus cogens* remains controversial. Not all human rights enjoy peremptory status, and disagreement persists regarding the precise content and scope of many alleged peremptory norms. Consequently, *jus cogens* provides only a partial solution to the broader problem of reservations.

XI. The Indian Perspective on Reservations to Human Rights Treaties

India's engagement with international human rights treaties reflects the broader tension between commitment to universal human rights norms and preservation of constitutional sovereignty. India is a party to numerous major human rights instruments, including the ICCPR, ICESCR, CEDAW, CRC, and the Convention on the Rights of Persons with Disabilities.⁴⁹

At the time of ratification, India entered several declarations and reservations designed to preserve flexibility in implementing treaty obligations. These reservations frequently related to matters involving federalism, personal laws, constitutional arrangements, and socio-economic realities.⁵⁰

The Indian constitutional framework reflects a dualist approach to international law. International treaties do not automatically become enforceable domestic law unless implemented through legislation. Article 253 of the Constitution empowers Parliament to enact laws for implementing international obligations, while judicial decisions have increasingly relied upon international human rights norms in constitutional interpretation.⁵¹

The Supreme Court of India has played a particularly important role in integrating international human rights principles into domestic jurisprudence. In *Vishaka v. State of Rajasthan*, the Court relied upon CEDAW to formulate guidelines addressing sexual harassment in the workplace.⁵² Similarly, in *People's Union for Civil Liberties v. Union of India* and numerous subsequent cases, the Court has referred to international human rights instruments as interpretive aids in expanding constitutional protections.⁵³

Despite this judicial openness, India has occasionally expressed concern regarding interpretations of treaty obligations that appear to encroach upon domestic constitutional autonomy. This position reflects a broader pattern among states seeking to balance international commitments with democratic self-governance and constitutional identity.

India's experience demonstrates that reservations cannot be understood solely as obstacles to human rights protection. In some contexts, reservations function as transitional mechanisms enabling states to participate in international regimes while gradually adapting domestic legal systems. Nevertheless, the legitimacy of such reservations depends upon whether they facilitate

eventual compliance or become permanent barriers to implementation.

XII. Towards a Balanced Framework: Reforming the Law of Reservations

The preceding analysis reveals that neither unrestricted sovereignty nor uncompromising universality provides a satisfactory solution to the problem of reservations. A sustainable approach requires a framework capable of preserving treaty participation while safeguarding the essential integrity of human rights obligations.

First, greater clarity is needed regarding the application of the object and purpose test. Treaty bodies, courts, and states should develop more precise criteria for identifying core provisions that embody the fundamental objectives of particular treaties. Reservations directed at such provisions should be presumed incompatible with the treaty's object and purpose.⁵⁴

Second, enhanced institutional review mechanisms should be established. Human rights treaty bodies possess specialized expertise and are often better positioned than states to assess the implications of reservations for treaty effectiveness. While their determinations may not possess binding force, they should carry significant persuasive authority.⁵⁵

Third, greater transparency in reservation practice is essential. States should provide detailed legal justifications for reservations and periodically review their continued necessity. Such review mechanisms would encourage gradual withdrawal of reservations that are no longer required.⁵⁶

Fourth, stronger emphasis should be placed upon dialogue rather than confrontation. Reservations often arise from genuine constitutional, cultural, or political concerns. Constructive engagement between treaty bodies and states may facilitate progressive harmonization of domestic law with international standards.⁵⁷

Fifth, the doctrine of severability should be applied cautiously. While automatic severance may strengthen treaty effectiveness, it risks undermining the consensual basis of international law. The ILC's emphasis on the intention of the reserving state provides a more balanced approach capable of respecting both sovereignty and treaty integrity.⁵⁸

Finally, particular attention should be devoted to reservations affecting non-derogable rights and *jus cogens* norms. Such reservations should be regarded as presumptively invalid because

they conflict with obligations that transcend ordinary treaty consent.⁵⁹

These reforms would not eliminate the tension between universality and sovereignty, but they would provide a more coherent framework for managing it. The objective should not be to abolish reservations altogether but to ensure that they remain compatible with the fundamental purposes of human rights treaties.

XIII. Scholarly Observations

Several broader observations emerge from the foregoing analysis.

First, the debate concerning reservations reflects a transformation in the nature of international law itself. Traditional treaty law was developed primarily for agreements governing reciprocal relations among sovereign states. Human rights treaties challenge this paradigm because they are directed toward the protection of individuals and embody values that transcend state interests.⁶⁰

Second, the controversy demonstrates the gradual constitutionalization of international law. The increasing prominence of human rights norms, treaty-monitoring bodies, and concepts such as *jus cogens* suggests the emergence of legal principles that operate independently of purely consensual state relations.⁶¹

Third, the practice of reservations reveals persistent tensions between universal human rights standards and cultural diversity. While cultural pluralism deserves respect, it cannot justify reservations that undermine the essential content of fundamental rights. International law must therefore distinguish between legitimate diversity in implementation and impermissible derogation from core human rights guarantees.⁶²

Fourth, developments in jurisprudence indicate a growing preference for effectiveness-oriented interpretations of human rights treaties. Courts and treaty bodies increasingly prioritize the protection of rights over strict adherence to traditional notions of reciprocity and consent. This trend is likely to continue as international human rights law becomes further institutionalized.⁶³

Finally, the future of reservations will depend upon the ability of international institutions to maintain legitimacy while respecting state sovereignty. Human rights treaties derive their authority not only from moral principles but also from state participation. Preserving this

balance remains one of the central challenges of contemporary international law.

XIV. Conclusion

Reservations constitute one of the most important and controversial features of modern treaty law. They facilitate broad participation in multilateral treaties by accommodating differences among states, yet they also possess the potential to undermine the effectiveness and integrity of international legal regimes. Nowhere is this tension more evident than in the field of international human rights law.

Human rights treaties occupy a distinctive position within the international legal order because they seek to protect individuals rather than merely regulate inter-state relations. Consequently, reservations affecting fundamental rights raise concerns that extend beyond traditional questions of reciprocity and consent. The challenge is to reconcile the sovereign prerogative of states to determine the scope of their treaty obligations with the universal aspirations of human rights law.

The jurisprudence of international courts, the practice of treaty-monitoring bodies, and the work of the International Law Commission reveal an ongoing effort to adapt the traditional law of reservations to the special characteristics of human rights treaties. Although significant disagreements remain regarding the authority of treaty bodies, the consequences of invalid reservations, and the meaning of the object and purpose test, a general trend toward enhanced scrutiny of reservations is evident.

The future development of international human rights law requires a balanced approach. Absolute deference to sovereignty risks weakening the universality of human rights norms, while excessive disregard for consent threatens the legitimacy of treaty obligations. The most persuasive solution lies in preserving reservations as instruments of participation while ensuring that they do not undermine the essential objectives of human rights treaties.

Ultimately, the law of reservations serves as a microcosm of a broader debate concerning the nature of international law itself. The continuing search for equilibrium between universality and sovereignty reflects the evolving effort of the international community to reconcile state autonomy with the protection of human dignity. As human rights challenges become increasingly global, the importance of achieving this balance will only continue to grow.

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62. Brems, *supra* note 23.
63. Crawford, *supra* note 39.