

International Treaties Reservations: Legal Structure and Practical Implications

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Abstract:

This article analyzes the mechanism of reservations to international treaties, which is a necessary legal tool to achieve a balance between the universality of multilateral treaties and the national sovereignty of states. Reservation is defined as a unilateral declaration issued by a state or international organization upon joining a treaty, with the aim of excluding or modifying the legal effect of certain provisions. The article is divided into two main sections. The first section focuses on the concept of reservations and their limits, explaining that reservations to treaties are subject to formal and substantive conditions, the most important of which is that the reservation must be consistent with the subject and purpose of the treaty. As for the second section, it addresses the stance of the other parties on the reservation and its legal effects. The article explains that the fate of the reservation depends on the reaction of the other parties, who can either accept the reservation, leading to the treaty being applied in a modified form between the two parties, or object to it; the objection may either prevent the treaty from coming into effect entirely between the two parties or be limited to excluding only the reserved provision. In conclusion, the article emphasizes that reservations, despite their importance in encouraging more countries to join, may lead to the fragmentation of the treaty's legal system and weaken its unity. The article also recommends the need to achieve a delicate balance between the flexibility of reservations and the integrity of the international legal system, while stressing the importance of transparency and imposing stricter limitations on reservations related to human rights treaties.

Keywords: Reservations to international treaties; Vienna Convention on the Law of Treaties; legal effects of reservations; acceptance of reservations; objection to reservations; integrity of treaties.

Introduction

International treaties are one of the most important sources of public international law; they represent the explicit expression of the will of states to build a common legal system governing their mutual relations. However, the international community's efforts to achieve the universality of treaties,

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especially multilateral ones, have encountered the reality of differing interests and legal systems of states. From here, the mechanism of reservations to treaties emerged as a compromise, aiming to reconcile the necessity of adhering to public international law on one hand, and respecting the sovereign considerations of states on the other.

And the reservation, which is defined by jurisprudence and international law as a unilateral declaration to modify or exclude a specific legal effect from the treaty, continues to provoke widespread debate regarding its impact on the unity and integrity of the treaty texts.

The Vienna Conventions on the Law of Treaties have precisely regulated this mechanism, providing it with a clear legal framework through its articles (19-23). Considering this, the subject of this article raises a question centered around the ability of reservations to international treaties to balance the necessity of encouraging states to join multilateral treaties and maintaining the unity and integrity of the treaty's legal system. To address this issue, we divided this article into two main sections: the first section discusses the legal meaning of reservations and their limits, while the second section analyzes the parties' stance on reservations and the legal effects resulting from their relationships; according to the following division:

Section One: Reservations for Treaties: Meaning and Limits

Section One: The Meaning of Reservations to Treaties

The second requirement: The legitimacy of reservations and the exceptions to them Section Two: Reservations for Treaties: The Stance of the Parties and Its Legal Effects Section One: The Position of the States Parties to the Treaty on Reservations

The second requirement: The legal effects of reservations on international treaties

Chapter One: Reservations for Treaties: Meaning and Limits

International treaties are a pivotal tool in regulating relations between states, but a state's commitment to all the treaty's provisions may sometimes conflict with its sovereign interests or internal laws. From here, the mechanism of reservations to treaties emerged as a legal solution that allows states to adopt a specific stance on certain provisions of the treaty without rejecting it entirely. Since this section is theoretical in nature, we will address the legal meaning of reservations by reviewing the most prominent doctrinal and legal definitions, highlighting how this concept evolved through the work of scholars and then became established in the Vienna Conventions. We will also discuss the controls and conditions that govern the legality of reservations, from formal and substantive conditions to the exceptions where reservations are not permissible, paving the way to understand the implications of this procedure in the second section.

Accordingly, in this section, we will clarify the meaning of reservations to treaties (first requirement) and examine the legality of reservations and the exceptions to them (second requirement), as follows:

Section One: The Concept of Reservations for Treaties

The topic of reservations to international treaties is one of the subjects that has attracted and continues to attract the interest of international law scholars, which has led to a multitude and variety of definitions proposed regarding it, apart from the legal definition detailed in the Vienna Conventions on the Law of Treaties of 1969 and 1986. Below is an explanation of both the doctrinal definition (Section One) and the legal definition (Section Two) of reservations for treaties.

Section One: The Doctrinal Definition of Reservations to Treaties

The definitions provided by scholars for reservations on treaties are numerous; for instance, "Charles Rousseau" defines a reservation on treaties as: "A statement issued by one of the states participating in a treaty, expressing its desire not to be bound by one of its provisions, to modify its scope, or to clarify any ambiguity it contains, and it is considered a condition of the general rule stated in the treaty."¹

As for the jurist "Alain Pellet,"² he defines it as: "a unilateral declaration, regardless of its form or name, issued by a state or international organization at the time of signing or ratifying the international treaty, or the act of formal confirmation, acceptance, approval of the treaty, or accession to it, or when a state notifies the succession to a treaty, thru which the state or organization aims to exclude or alter the legal effect of certain provisions of the treaty when applied to that state or organization."³

While Professor "Pierre-Marie Dupuy"⁴ defined it as: "A unilateral declaration made by a state in order to modify in its favor the legal effects of certain provisions of the treaty it claims to definitively join—by signature, ratification, approval, or accession—thus making the treaty's entry into force conditional for the state that issues it."⁵

As for the jurist "Francis Orlando Wilcox," he sees that the reservation to international treaties is "a declaration issued by the state upon its general acceptance of the treaty, with the aim of excluding certain provisions from its acceptance or modifying them, as it does not wish to be bound by them."

Whereas the jurist "Charles Cheney Hyde" sees that the reservation to international treaties is "a declaration issued by the state that will be a party to the treaty, with the aim of creating a different relationship between that state and the other states that are parties to the treaty or that will be parties to it."

¹ Charles Rousseau, *Public International Law*, (Translated by Shukrallah Khalifa and Abdul Mohsen Saad), Al Ahliyya for Publishing and Distribution, Beirut, 1987, p. 57.

² One of the most prominent experts in public international law in France and the world, he is particularly known for his work in the field of treaty law, specifically on the subject of reservations to treaties. He is an honorary professor of public international law at the University of Paris Nanterre (Université Paris Nanterre), born on January 2, 1947. He served as the President of the Institute of International Law (Institute of international Law) from 2021 to 2023.

³ Mohamed Saadi, *The Law of Treaties*, New University Press, Alexandria, 2014, p. 133.

⁴ One of the most prominent contemporary professors and experts in public international law in France and the world, born on 5/10/1946.

⁵ Ibrahim Mashourab, *Public International Law*, 1st ed.; Dar Al-Manhal Al-Lubnani, Beirut, 2013, p. 298.

Some jurists believe that a reservation is “an expression of the government's will during the drafting of the treaty, indicating its desire to amend the content of one or more provisions of the agreement. Thus, the reservation is an individual act whose legal nature changes if the other states agree to it.”⁶

Moreover, some have defined the reservation as: "an expression of the state's will during the drafting of the treaty, whereby the state declares its non-commitment to one or more provisions of the treaty or its desire to amend one or more provisions of the treaty, so that other states accept the principle of amendment or interpretation."⁷

In summary, some jurists such as Professor "Mohamed Bashir Al-Shafie," Professor "Pierre Marie Dupuy," jurist "Francis Wilcox," and jurist "Heid" have addressed reservations as a unilateral action emanating from the individual will of states, aimed at excluding or modifying the legal effect of certain provisions of the treaty that the state wishes to be a party to, without reference to international organizations despite being subjects of public international law and having the capacity to conclude treaties.

And despite the importance of these doctrinal definitions, the need for a unified definition led to the intervention of international law, which was embodied in the Vienna Convention on the Law of Treaties, as we will explain in the following section.

Section Two: The Legal Definition of Reservations for Treaties

The text of paragraph "d" of Article (2/1) of the Vienna Convention on the Law of Treaties of 1969 states: "A 'reservation' means a unilateral declaration, however phrased or named, made by a state when signing, ratifying, accepting, approving, or acceding to a treaty, with the intention of excluding or altering the legal effect of certain provisions of the treaty in their application to that state."⁸

Considering the deficiency in Article (2/1/d) of the 1969 Vienna Convention on the Law of Treaties due to the omission of international organizations as subjects of public international law, which have the capacity to conclude treaties. The matter was rectified in the 1986 Vienna Convention on the Law of Treaties relating to International Organizations, which gave the same meaning to the reservation as indicated in the 1969 Convention⁹. Prior to that, the 1978 Vienna Convention on Succession of States in Respect of Treaties had stipulated that a state could make a reservation when notifying succession to a treaty.¹⁰

⁶ Mohamed Bachir Al Shafi, *Public International Law in Peace and War*, 7th ed., Knowledge Establishment, Alexandria, 2000, p.510.

⁷ Ghazi Hassan Sabbarini, "The Concise Principles of Public International Law," 4th ed.; Dar Al Thaqafa for Publishing and Distribution, Amman, Jordan, 2014, p.53.

⁸ Ahmed Abu Al Wafa, *International Law International Relations*, Dar Al Arabiya, Cairo, 2006, p.68.

⁹ Article (2/1/d) of the Vienna Convention on the Law of Treaties of 1986 concerning international organizations, which states that "a reservation is a unilateral declaration, whatever its form or designation, made by a state when signing, ratifying, accepting, approving, or acceding to the treaty, or when it gives notice of succession to a treaty, with the aim of excluding or modifying the legal effect of certain provisions of the treaty in their application to that state."

¹⁰ Article (2/1/d) of the second Vienna Convention of 1978 concerning the succession of states.

From the text of the two paragraphs mentioned above and in the footnote, we understand that a reservation is a unilateral official declaration, regardless of its form or name, made by a state or international organization at the time of signing, ratifying, or acceding to the treaty, or at the time of announcing its acceptance of the obligation, by which it excludes some provisions or articles of the treaty from the scope of its obligation, or gives them a specific interpretation that suits it; thus, it does not annul the provisions or articles subject to the reservation from being applied to it, but rather its action is limited to interpreting them according to its own understanding, contrary to the interpretation given to them by the parties, while keeping them as they are in the text of the treaty. Accordingly, there are two types of reservations: exclusionary reservations and interpretative reservations.¹¹

According to the reservation, the party—whether a state or an international organization—agrees to the treaty except for a few of its provisions for certain reasons. This method encourages states and international organizations to accept treaties due to the difficulty of reaching a consensus among parties in a multicultural and multi-faith global society. Without this method, a state, for example, would reject the treaty entirely. This method has significant benefits, especially in multilateral treaties, as it convinces as many states as possible to accept the proposed treaty. Therefore, it can be said that it serves as a means to encourage coordination and agreement among countries that differ greatly in their social, economic, and political systems, helping them focus on the essential agreed-upon issues and keeping the disagreement on other contentious matters away from what is intended to be agreed upon in the treaty to be concluded.¹²

In this context, many examples can be mentioned, such as Algeria's reservations on several articles of the Convention on the Elimination of All Forms of Discrimination Against Women of 1979, known as the "CEDAW" Convention¹³, such as Article (15/4), which grants parties the same rights regarding the law related to the movement of persons and the freedom to choose their place of residence and settlement, which Algeria has recently lifted, as we will see later.

Algeria's reservation on Article 66(2) of the United Nations Convention against Corruption of 2003, which states: "The Government of the People's Democratic Republic of Algeria declares that it does not consider itself bound by the provisions of Article 66, paragraph 2 of this Convention, which stipulates that any dispute between two or more States Parties regarding the interpretation or application of the Convention that cannot be settled by negotiation shall, at the request of one of the States Parties, be submitted to arbitration or to the International Court of Justice. The Government of the People's

¹¹ Mohamed Bousultan, *Principles of Public International Law*, University Publications House, Algeria, 2008, pp. 292-294.

¹² Jamel Abdel Nasser, *Public International Law*, Dar Al-Ilm for Publishing and Distribution, Annaba, Algeria, 2005, p. 87

¹³ Algeria joined the "CEDAW" Convention on May 22, 1996, by virtue of Presidential Decree No. 51/96 dated January 22, 1996, with reservations that align with the nature of Algerian society, its traditions, customs, and ideology.

Democratic Republic of Algeria considers that no dispute of this kind may be submitted to arbitration or the International Court of Justice without the consent of all parties to the dispute”.¹⁴

However, on the other hand, this procedure is criticized from the perspective that it could fragment the legal system stipulated in the treaty and cause it to lose its unity among the contracting parties; in other words, it could disrupt its structure.¹⁵ Therefore, the International Law Commission prepared in 2011 a "Practical Guide to Reservations to Treaties" to complement and clarify the provisions of the Vienna Convention on the Law of Treaties in light of several principles, such as the principle of good faith, to guide the practice of states and international organizations regarding reservations.

From the above, it can be observed that the legal definition of a reservation to international treaties does not differ from the related doctrinal definitions, whether it is a unilateral declaration, a unilateral announcement, or an expression of the will of a government or state; for all these expressions converge in one meaning.

It is important to note that the differences regarding the vocabulary related to reservations in the three Vienna Conventions required the existence of a composite text that includes the additions brought by the 1978 and 1986 Conventions. This prompted the International Law Commission to formulate a definition that serves this purpose without introducing any amendments to the texts of the three previously mentioned conventions, as it merely compiled the additions. The composite text is as follows:

"Reservation" refers to a unilateral declaration, regardless of its form or designation, issued by a state or an international organization upon signing a treaty, ratifying it, formally confirming it, accepting it, approving it, or joining it, or when a state submits a notice of succession to a treaty. The purpose of this declaration by the state or organization is to exclude or modify the legal effect of certain provisions of the treaty in terms of their applicability to that state or international organization.”¹⁶

And although the aforementioned definition is merely a summary of the various legal opinions presented at the level of the International Law Commission, it holds significance considering the institution from which it was issued; an institution that plays a major role in the development and codification of international law, and is currently examining the issue of reservations and seeking to draft a convention on the subject, perhaps the composite definition will be adopted within its texts.

The second requirement: The legitimacy of reservations to treaties and the exceptions to the general principle governing reservations to treaties

We address in this section the legitimacy of reservations (first branch) and the exceptions to the general principle governing reservations to treaties (second branch); as follows:

¹⁴https://treaties.un.org/pages/ViewDetails.aspx?chapter=18&mtdsg_no=XVIII-14

¹⁵ Mahmoud Abdelghani, previous reference, p. 24.

¹⁶ UNITED NATIONS, Yearbook of international Law commission, Report of the Commission to the General Assembly on the work, 51 Session, New York and Geneva, (03-23) July 1999, p.120

Section One: Conditions for the Legitimacy of Reservations to Treaties

As for bilateral treaties, reservations regarding them do not raise any legal dilemma or issue; this is because reservations concerning the provisions of this type of treaty are permissible, whether the treaty allows them or not. This is because a reservation acts as a new offer that depends on the acceptance of the other party.¹⁷ In this case, a new treaty comes into existence, considering the reservation itself as an amendment to the draft treaty that both parties intended to activate its provisions to produce effects between them, or it opens the door for negotiations anew regarding the treaty to be concluded. Therefore, the fate of the reservation regarding bilateral agreements remains dependent on the position of the other party toward it: by accepting it and thus committing it to the treaty, or by rejecting it, which makes the treaty as if it never existed.

As for collective treaties: reservations regarding them have special importance and distinctive rules, as they contribute to the development of the treaty system by providing flexibility that allows parties to freely determine their positions on certain provisions included in the treaty. At the same time, it poses a real challenge in this type of treaty because it threatens its unity.

It is important in this context to refer to the advisory opinion of the International Court of Justice issued on November 6, 1950, regarding the possibility of reservations to the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, where the reservation was deemed permissible provided it does not conflict with the subject matter or purpose of the treaty.¹⁸

And the question that may come to mind is: What is the general principle governing reservations to treaties?

The answer to this question leads us to say that the general principle governing reservations to treaties is the principle of permissibility. This means that, as a general rule, any state or international organization can express its reservation at the time of signing, ratifying, or acceding to the treaty, or at the time of announcing its acceptance of the obligation, by excluding some provisions or terms of the treaty from the scope of its commitment, or by giving them a specific interpretation that suits it.

This principle is applied under the condition of meeting formal and substantive requirements, which we summarize as follows:

First: Formal conditions:

The formal conditions are essential to ensure the validity and effectiveness of reservations on treaties. These conditions require that the reservation be written to document it, and that the concerned state informs the contracting states of it in an official manner to ensure awareness of it. Most importantly, it is necessary to express the reservation within the specified time frame for the right to do so, which is

¹⁷ Abdelaziz Mohamed Sarhan, previous reference, p. 208.

¹⁸ Adnan Taha Al-Douri, *Public International Law*, Vol. 2, Regulations Governing International Relations in Times of Peace and War, 2nd ed.; Open University Publications, Tripoli, 1996, p. 244.

often at the time of signing, ratification, acceptance, or approval of the treaty. These are the conditions that we will explain as follows:

1- The reservation must be written and explicit:

Treaties concluded either between states or between states and international organizations or between international organizations themselves require that all stages of the reservation regarding their provisions be in writing. The nature of the reservation itself necessitates the requirement of writing, as the reservation on treaties must be revealing, clear, explicit, and definitive. Therefore, according to the Vienna Convention, it is inconceivable for the reservation to be implicit.¹⁹

The requirement for written reservations on treaties makes them explicitly and unequivocally indicative of a state's desire to exclude or modify the application of a specific legal effect on them.²⁰ Writing has become a general rule that is adhered to in international practice.²¹

This condition extends to the acceptance of the reservation or objection, as well as to the withdrawal of the reservation or the withdrawal of the objection to the reservation.²²

II- The reserving state must notify the contracting states in an official manner:

It may be included in the signing document of the treaty or in an attached protocol, or it may be included in the instrument of ratification or accession or in exchange of notes between the parties to the treaty.²³

III- Reservations must be made within the temporal scope of the right to make them:

The Vienna Convention on the Law of Treaties of 1969 defined the temporal scope of the right to make reservations, which is the period during which states and international organizations can exercise their right to reserve certain provisions of the treaty subject to ratification or accession. This scope is defined at the time of signing the treaty, or when depositing the instrument of ratification, acceptance, approval, or accession. The Vienna Convention of 1978 added a fourth time, which is the time of giving notice of succession of states.²⁴

This; and expressing reservations at the time of signing the treaty is considered an appropriate and natural time, as if the reservation is made at the time of signing with the condition of ratification, acceptance, or approval, then according to Article (23/2) of the Vienna Convention; such a reservation requires formal written confirmation when the state expresses its acceptance of the final commitment to the treaty, and at that point, the reservation is considered to have been made from the date of its confirmation.²⁵

¹⁹ Salah El-Din Amer, Introduction to the Study of Public International Law, Dar Al-Nahda Al-Arabiya, Cairo, 2007, p. 234.

²⁰ Alaa Shakib Bashi, Reservations on Multilateral International Treaties, Master's in Public Law, Amman, Jordan, 2008, p. 47.

²¹ Salah al-Din Amer, the aforementioned reference, p. 272.

²² Article (23/1)

²³ Salah al-Din Amer, the previous reference, p. 234.

²⁴ Article (12/1/d) of the Vienna Convention 1978.

²⁵ Charles Rousseau, Public International Law, (Translated by: Shukrallah Khalifah) Al-Ahlyiah for Publishing and Distribution, 1987, p. 58.

In summary, the reservation is considered within the timeframe for exercising the right to make it in the following cases:

- 1-The reservation at the time of signing the treaty by the representative of the state
- 2- The reservation upon ratification of the treaty; that is, when depositing the ratification documents.
- 3-The reservation upon joining the treaty, which is the most serious type; as it occurs after the treaty has come into force.

Secondly: Substantive conditions:

In addition to the formal conditions for a reservation on international treaties to be legal, there are substantive conditions without which the reservation cannot be legally valid. These substantive conditions pertain to the essence and content, and they are necessary to ensure a balance between the state's right to make a reservation and the integrity of the treaty. These conditions require that the content of the declaration clearly describe the reservation to specify the required amendment. Most importantly, the subject of the reservation must not contradict the subject and main purpose of the treaty, in order to preserve the general spirit of the agreement and international commitment, which we will explain as follows:

1. The necessity for the content of the unilateral declaration to include a description of the reservation:

We have previously indicated that the Vienna Convention on the Law of Treaties has defined unilateral declarations issued by a state that can be described as reservations, regardless of their form or name, as those issued by a state upon signing, ratifying, accepting, approving, or acceding to a treaty, aiming to exclude or alter the legal effect of certain provisions of the treaty in terms of their application to that state.²⁶ Therefore, any declaration that does not aim at the purpose is not considered a reservation.

II- The subject of the reservation must not be contrary to the subject and purpose of the treaty:

This is the condition stipulated in the Vienna Convention on the Law of Treaties, where, after establishing the general principle allowing reservations to treaties, it excluded reservations that are incompatible with the subject and purpose of the treaty.²⁷

This condition contributes to the protection of agreements codifying customary international law, as well as excluding reservations on peremptory norms in public international law.²⁸

Section Two: Exceptions to the General Principle Governing Reservations to Treaties

The freedom of states to make reservations to treaties is not absolute; rather, its exercise is framed by the provisions of public international law. Referring to Article 19 of the Vienna Convention on the Law of Treaties, we find the exceptions or cases that deviate from the general principle allowing reservations, which we outline as follows:

²⁶ Article (2/1/d) of the Vienna Convention on the Law of Treaties.

²⁷ Refer to: Article (19/c) of the Vienna Convention on the Law of Treaties.

²⁸ Teboul G, "Remarks on Reservations to Codification Treaties" in R.G.D.I.P, 1982, p.679.

First: If the reservation is prohibited by the treaty itself

There are international treaties that prohibit reservations entirely or partially, and these treaties are often uniform in nature or stipulate essential obligations that cannot be divided.

1- Treaties that prohibit reservations absolutely (Total Prohibition)

This case can be found in the texts of many treaties;

A- Article 120 of the Rome Statute of the International Criminal Court²⁹, and the reason for the prohibition is that the statute aims to establish a unified international criminal judicial system. Therefore, the prohibition of reservations ensures that all member states accept the jurisdiction and fundamental obligations of the court without fragmentation, thus preserving the integrity and strength of the court's legal system.

B- B- The founding treaties of some regional organizations, such as the founding treaties that establish the European Union, do not allow any reservations; because the commitment must be complete and unconditional to ensure the uniform application of the law in all member states. C- The Geneva Convention on International Arbitration of 1923, and the reason for the prohibition is that arbitration agreements usually prohibit reservations to ensure their immediate and uniform applicability among the parties, which is essential for the effectiveness of dispute resolution mechanisms.

2- Treaties that partially restrict or prohibit reservations (Partial Prohibition)

This case can be found in the texts of many treaties;

A- The United Nations Convention on the Law of the Sea (UNCLOS) of 1982, where the convention generally prohibits reservations (Article 309). But it allows states to make declarations or statements (Article 310) provided that they do not aim to exclude or modify the legal effect of the provisions of the Convention in their application to that state.

The purpose of this prohibition is to ensure that the law of the sea system remains integrated and unified to guarantee security and stability in the oceans.

B- The Vienna Convention on the Law of Treaties (1969), which states that a state may not make a reservation if "the reservation is prohibited by the treaty." This article is the basis on which the treaties rely for explicit prohibition.³⁰

C- Article (28/2) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

But the question that may come to mind in this regard is:

What if a treaty does not permit reservations, nor prohibit them, and does not even address the issue of reservations at all; is a reservation regarding it permissible?

²⁹ Article 120 of the Rome Statute states: "No reservations may be made to this Statute."

³⁰ Article (19/1) of it

Those interested find the answer to the question that comes to their minds in the advisory opinion of the International Court of Justice issued on 28/5/1951; concerning the reservations made by the United States and the socialist countries at that time on Articles (09) and (12) of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, despite the fact that the latter did not include a provision indicating whether states are allowed to make reservations or not.

Since the United Nations General Assembly requested an advisory opinion regarding the possibility of making reservations to the treaty, the advisory opinion stated that "the general rule is the permissibility of making reservations to the treaty, provided that it does not contain a specific provision prohibiting reservations, and that the acceptance of the reservation by the other contracting states is not a condition for its validity, as long as the reservations made are consistent and harmonious with the subject and purpose of the treaty."³¹ This is the approach adopted by the Vienna Convention on the Law of Treaties in Article 19.

To sum up the advisory opinion is as follows:³²

- 1- The legitimacy of expressing reservations on the treaty unless it explicitly states whether such reservations are permissible or not.
- 2- 2- The validity of the reservation to the treaty is contingent upon its conformity and consistency with the purpose and aim of the treaty.

It is important to note here that there is a doctrinal perspective that views treaties which do not explicitly state the permissibility of reservations as being divided, according to the Vienna Convention, into two types³³:

The first type: Treaties from which it is inferred from the nature of their subject, their objectives, and the limited number of parties that collaborated in the negotiations to conclude them; that the application of all their provisions is a fundamental condition for the acceptance of commitment by each of these parties, and the validity of the reservation, and thus the state making the reservation acquiring the status of a party, is that its reservation is accepted by all the contracting states in the treaty.

The second type: Treaties from which it cannot be inferred from the nature of their subject, the objectives they seek, and the limited number of parties that collaborated in the negotiations to conclude them; that the application of all their provisions is a fundamental condition for the acceptance of commitment by each of these parties, a reservation on them is permissible when two conditions are met:

- 1- The reservation must align with the purpose and objective of the treaty in accordance with Article (19/c) of the Vienna Convention.
- 2- At least one of the contracting states must agree to that reservation; in accordance with

³¹ Saleh Muhammad Badr al-Din, p. 14. Jamil Muhammad Hussein, p. 58.

³² Abdulaziz Mohamed Sarhan, Public International Law, previous reference, p. 209.

³³ Mohamed Sami Abdel Hamid, Principles of Public International Law, Vol. 2, Alexandria, University House for Printing, Publishing, and Distribution, 1998, p. 219.

Article (19/4/c).

And once the two conditions are met, the state becomes a party in relation to all parties; those who accepted the reservation and those who objected to it, unless the state objects to the reservation unequivocally.

Secondly: If the treaty permits the expression of certain reservations, and the reservation made by the state is not among them.

There are treaties that allow states wishing to join them to make reservations within certain provisions and no others. If the reservations made by the states are not among the accepted reservations according to the treaty, their reservations are not permissible. This is exemplified by Article 42 of the United Nations Convention on Refugees.

Thirdly: If the reservation contradicts the subject and purpose of the treaty

We illustrate this case by referring, for example, to the Rome Statute of the International Criminal Court³⁴, which was primarily established to ensure the prosecution and accountability of individuals involved in serious crimes that are of concern and interest to the international community. Therefore, it is completely unacceptable for a state wishing to join the statute to issue a reservation on some of its provisions if such reservation contradicts the purpose of this statute and renders it devoid of its content, such as reserving on Article 27(2), which states that no immunity can be invoked before the court.

Section Two: Reservations to Treaties: The parties' stance on it and its legal implications

After the legal foundations of reservations were established in the first section, this section comes to answer a crucial question: What are the practical and legal effects that reservations entail? The reservation is not merely a unilateral declaration; it is a legal act that the treaty parties interact with, either by acceptance or objection. In this section, we will elucidate the dynamics of these interactions, analyzing how the parties determine their stance on the fate of the reservation, and how this can lead to the establishment of varying contractual relationships between states within the same treaty. We will also highlight the mechanisms for withdrawing the reservation or objecting to it, with the aim of understanding the final impact of the reservation on the legal relations between the parties.

Accordingly, in this section, we analyze the position of the contracting states on the reservation (first requirement), and conclude by observing the legal effects of the reservation on international treaties (second requirement), as follows:

First requirement: The position of the contracting states on the reservation

One of the practical practices related to reservations on international treaties is the acceptance of reservations, especially when it comes to multilateral treaties. One of the positive outcomes of this is the expansion of the number of countries participating in international treaties.

³⁴ Article (120) of the Rome Statute of the International Criminal Court, which states, "No reservations may be made to this Statute."

But the states parties to the treaty differ in their legal reactions regarding the reservation to the treaty they participate in; from a state that accepts this reservation to another that rejects it, and sometimes the reserving state withdraws its reservation.

As has been international practice in some cases, the objecting state party withdraws its objection to the reservation.

The overall points mentioned are detailed in the four sections of this request.

Section One: Acceptance of Reservations

The provisions of the Vienna Convention on the Law of Treaties related to the acceptance of reservations are characterized by a suitable flexibility to encourage states to participate in international treaties.

According to Article 20(1) of the Vienna Conventions on the Law of Treaties of 1969 and 1986, a reservation expressly permitted by the treaty does not require acceptance by the contracting state, unless the treaty provides otherwise. The treaty may also require acceptance of the reservation by the other contracting states after it has been made.³⁵

1- Referring to paragraph (2) of Article (20), we find that it stipulates two cases thru which it is understood that the validity of the treaty as a whole among all parties is a fundamental condition for each party's consent to be bound by the treaty's provisions. In this case, the reservation requires the acceptance of all parties, and these two cases are: The limited number of negotiating states or organizations.

2- The parties' intention to implement it in its entirety due to its subject matter or purpose.

It is worth noting that if the treaty establishes an international organization, the reservation requires the approval of the competent body of the established organization, unless the establishing treaty provides otherwise.

In cases not mentioned above, the acceptance of the reservation by another contracting state makes the reserving state a party to the treaty in relation to that state (which accepted the reservation) when the treaty comes into force between the two states, unless the treaty provides otherwise.³⁶

Section Two: The System of Objecting to Reservations

In addition to the right of any party to a treaty—whether a state or an international organization—to express its reservation on certain provisions of this treaty, and the right of the other contracting parties to accept this reservation, there is a corresponding right represented by the right of the remaining parties to object to this reservation.³⁷

³⁵ Mohamed Youssef Alwan, *Public International Law - Introduction and Sources*, Houma Publishing and Distribution House, Algeria, 2009, p. 197.

³⁶ Mohamed Youssef Alwan, *Public International Law - Introduction and Sources*, Houma Publishing and Distribution House, Algeria, 2009, p. 197.

³⁷ Ahmed Iskanderi and Mohamed Bougazala, *Lectures in Public International Law: Introduction and International Treaties*, 1st ed.; Al-Fajr Publishing and Distribution, Cairo, 1998, p. 148.

The objection to the reservation means a declaration or written statement issued by a state or international organization, expressing its rejection of the reservation made by one of the other parties on one or more provisions of the treaty.³⁸

The ability of any party to the treaty to express certain reservations on some provisions of the treaty is met by the ability of the other contracting parties to object to these reservations or some of them.³⁹

This; and the Vienna Convention of 1969 addressed the provisions regarding objections to reservations in Article (20/4/b) by stating: "The objection of another contracting state to a reservation does not prevent the entry into force of the treaty between the objecting state and the reserving state unless the objecting state has clearly expressed the contrary intention."⁴⁰

Section Three: Withdrawal of the Reservation

Since the reservation is a unilateral action issued by the sole will of a state or an international organization party to a treaty, it is obvious that the ability to withdraw this reservation lies with the party that recorded it, unless the treaty states otherwise. Additionally, the withdrawal of the reservation cannot take effect until the other parties have received an official notification of this withdrawal, unless the treaty states otherwise.

An example of this is what the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) stipulates; it allows reservations at any time by sending a notification to that effect to the Secretary-General of the United Nations, who then informs all countries, and that notification becomes effective from the date of its receipt.⁴¹

The full applicability of the original provisions of the treaty between the party that withdrew its reservation and the other contracting parties is the logical legal consequence of the reserving state's withdrawal of its reservation, regardless of its previous legal reactions regarding the reservation on the treaty it participated in before the withdrawal. The withdrawal of the reservation does not apply to the other parties to the treaty until they are officially notified of the withdrawal.⁴²

In this context, it is worth mentioning Algeria's withdrawal of its reservations on some articles of the "CEDAW" agreement, the latest of which was related to Article (15/4) of the agreement.⁴³

Algeria had lifted its first reservation on Article 9(2) of the CEDAW Convention in 2005 after amending the previous nationality law, which restricted the transfer of Algerian nationality from the

³⁸ Reda Hamisi, *The Authority of the International Organization in Concluding Treaties*, 1st ed.; Al-Hamed Publishing and Distribution, Amman, Jordan, 2013, p. 217.

³⁹ The previous reference, p. 148.

⁴⁰ Abdel Karim Awad Khalifa, *Public International Law: A Comparative Study*, Dar Al-Jami'a Al-Jadida, Alexandria, 2011, p. 48.

⁴¹ Article (28/3) of the CEDAW Convention.

⁴² Mohamed Sami Abdel Hamid, Mohamed Saeed Al-Daqaq, and Mostafa Salama Hussein, *Public International Law*, Knowledge Establishment, Alexandria, 1999, p. 114.

⁴³ Article (1) of Presidential Decree No. 25-218 dated 10 Safar 1447 corresponding to August 4, 2025, which includes the lifting of Algeria's reservation on Article 15, paragraph 4 of the Convention on the Elimination of All Forms of Discrimination Against Women of 1979, known as the "CEDAW" Convention.

mother to her children. Under the new amendment, Algerian mothers have the right to pass on their nationality to their children under the same conditions as men, whether the children are born inside Algeria or outside it. The lifting of this reservation was officially announced by Presidential Decree No. 08-426 issued on January 21, 2009.⁴⁴

Section Four: Withdrawal of the Objection to the Reservation

The withdrawal of objections to reservations is a practice present in international law, and its essence is that the party that has expressed an objection to a reservation recorded by one of the parties in the treaty can withdraw its objection at any time it deems appropriate, unless the treaty stipulates otherwise. The withdrawal takes effect legally from the date the reserving party is notified, unless the treaty provisions indicate otherwise. Additionally, the withdrawal does not have legal effect for another contracting state unless that state receives notification, unless the treaty stipulates otherwise or an agreement is reached to the contrary.⁴⁵

The development of diplomatic relations often reflects the reviewing of the legal position by the objecting state or its acceptance of the reservation after a period of time. Although documented and detailed examples of withdrawing objections are less common in public records compared to the submission of objections themselves, this practice is recognized and legitimate under the Vienna Convention on the Law of Treaties. In this regard, the Vienna Convention on the Law of Treaties states: "An objection to a reservation may be withdrawn at any time unless the treaty provides otherwise."⁴⁶

Requirement Two: The Legal Effects of Reservations to International Treaties

The reservation regarding bilateral treaties does not raise any legal dilemma; as we have previously clarified, a reservation concerning the provisions of this type of treaty is considered an amendment to the agreement⁴⁷, or a new offer⁴⁸, or a reopening of negotiations regarding the treaty to be concluded. Therefore, the fate of the reservation regarding this type of treaty remains dependent on the position of the other party; by accepting it, the treaty is concluded, or by rejecting it, the draft treaty is rendered as if it never existed. This; the text on the effects resulting from reservations to treaties is included in Article (21) of the Vienna Conventions on the Law of Treaties of 1969 and 1986, which we clarify as follows:

Section One: The legal effects of reservations for the party that made them

If the treaty contains a provision that does not allow reservations and one of the contracting states issues a reservation regarding a clause of this treaty, that reservation will have no legal effect. However, if the treaty permits reservations, the state that made the reservation is not bound by the provisions to

⁴⁴ Article (1) of Presidential Decree 08-426 dated 30 Dhu al-Hijjah 1429 corresponding to December 28, 2008, which includes lifting Algeria's reservation on Article 9, paragraph 2 of the Convention on the Elimination of All Forms of Discrimination Against Women of 1979, known as the "CEDAW" Convention.

⁴⁵ Refer to: The text of paragraphs (2) and (3) of Article (22) of the Vienna Convention on the Law of Treaties of 1969.

⁴⁶ Article (22/2/a, b) of the Vienna Convention on the Law of Treaties of 1969.

⁴⁷ Mohamed Sami Abdel Hamid, *Fundamentals of Public International Law*, Vol. 2, Alexandria, University House for Printing, Publishing, and Distribution, 1998, p. 219.

⁴⁸ Abdulaziz Mohamed Sarhan, *Public International Law*, the aforementioned reference, p. 208.

which the reservation applies. The latter provisions remain binding on the other parties in relation to each other, excluding the reserve party.

Section Two: The Legal Effects of Reservations in the Relationship Between the Reserving State and the Other Parties to the Treaty

The legal effects of the reservation vary based on the reactions of the other parties. In the case of acceptance of the reservation (explicitly or implicitly), this reservation modifies the relationship between the reserving state and the accepting state within the limits of the reservation. In the case of an objection, the effect may be limited to the non-application of the reservations between the two parties, or it may extend to the non-enforcement of the treaty as

a whole between the reserving state and the strongly opposing state. In this section, we will outline the three cases we have observed, as follows:

First: The case of an accepted reservation without objection

The reserving state is bound by the provisions of the treaty with the other contracting parties that did not object to the reservation. Thus, the reserved state becomes a party to the treaty and is obligated to its provisions except for the reserved articles. The reservation it made modifies the treaty texts for it in its relations with the other parties that accepted the reservation and within the limits specified therein.⁴⁹

Conversely, the reservation modifies the provisions to which the reservation applies, and to the same extent, for the parties that accepted the reservation in relation to the reserving state.⁵⁰

Secondly: The case of a reservation with an effect of the objection

The effect made by the objection varies according to its extent, which depends on the will of the objecting party. If the extent of the objection is broad enough to reject the reservation and terminate the contractual relationship, the treaty becomes as if it never existed between the reserving party and the objecting party. On the other hand, if the extent of the objection is limited, the treaty remains in force between them, except for the provisions covered by the reservation.⁵¹

Accordingly, in such a case, we are faced with two scenarios, which we will explain as follows:

I- Case of objecting to the reservation without objecting to the treaty's validity

This case is stipulated in Article (20/4/b) of the Vienna Convention on the Law of Treaties, which states that the objection of a state party to the treaty against a reservation made by another state party to the same treaty does not necessarily lead to the non-implementation of the treaty between the two states, the objecting and the reserving, unless the objecting state explicitly expresses its desire for the treaty not to be implemented between them.⁵²

⁴⁹Refer to Article (21/1/a) of the Vienna Convention on the Law of Treaties of 1969.

⁵⁰ Refer to Article (21/1/b) of the Vienna Convention on the Law of Treaties of 1969.

⁵¹ Ahmed Iskanderi and Mohamed Bougazala, Lectures on Public International Law: Introduction and International Treaties, 1st ed.; Dar Al-Fajr for Publishing and Distribution, Cairo, 1998, p. 150.

⁵²Abdelaziz Kadri, The Instrument in Public International Law: Sources, Houma Publishing and Distribution House, Algeria 2009, p. 194.

The absence of the objecting state expressing the desire mentioned does not prevent the treaty from being in force between the two states concerned, except for the provisions to which the objection pertains.⁵³ This is what the International Court of Justice concluded in its opinion regarding the Genocide Convention of 1951.⁵⁴

II-Case of objection to the reservation with the expression of the desire for the treaty not to enter into force Referring to the same paragraph of the aforementioned article; Article (20/4/b), we find that it added another case to the previous one, by stipulating the prohibition of the treaty's entry into force if the objecting state has clearly expressed its unwillingness for it to enter into force between it and the reserving state.⁵⁵

Third: The effects of the reservation on the other parties to the treaty

The reservation does not create any effects on the relations of the other non-reserving parties with each other, as their relationship remains governed by the original texts of the treaty before the reservation. This is because the reservation does not modify the provisions of the treaty for the other parties in their mutual relations.⁵⁶

Conclusion

In conclusion, after analyzing the mechanism of reservations to international treaties, we can affirm that reservations represent a necessary compromise in contemporary international law. We have highlighted in the article that reservations, despite their importance in encouraging the accession of as many states as possible to multilateral treaties, are not without flaws. The most notable of these is the possibility of fragmenting the treaty and weakening the parties' commitment to its essential provisions. Additionally, the stance of other parties, whether acceptance or objection, determines the effectiveness of the reservation and creates complex and varied legal relationships between the contracting states.

And although the Vienna Convention on the Law of Treaties has established a solid legal framework for reservations, challenges still persist, as the need to achieve a delicate balance between the flexibility of reservations and the integrity of the treaty remains a critical issue.

Based on progress, some conclusions can be drawn and some suggestions can be made;

Results:

1-The reservation is a fundamental legal mechanism; it is not merely a formal procedure, but an important legal mechanism aimed at achieving flexibility in international law, especially concerning multilateral treaties, which encourages countries to join them despite their differing political, social, and legal systems.

⁵³ The same reference, the same page.

⁵⁴ Mohamed Saadi, the same reference, p. 155.

⁵⁵ Ahmed Iskanderi and Mohamed Bougazala, the previous reference, 151.

⁵⁶ Suhail Hussein Al-Fatlawi, "A Brief in Public International Law," 1st ed.; Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, 2009, p. 77.

2-The Vienna Convention on the Law of Treaties of 1969, along with the 1978 and 1986 Conventions, is the primary legal reference that regulates the provisions of reservations, from their formal and substantive conditions to their legal effects.

3- The reservation does not uniformly affect the treaty; rather, it creates varying legal relationships between the parties, as the fate of the reservation depends on the stance of other states toward it, whether by acceptance or objection.

4- Despite the importance of reservations in increasing the number of parties to the treaty, they are viewed as a procedure that undermines the unity of the treaty and the integrity of its legal system. This is what the International Law Commission attempted to address in 2011 by establishing the "Practical Guide to Treaty Reservations."

5- Reservations cannot be made on peremptory norms of international law or rules that contradict the subject and purpose of the treaty, which confirms the existence of clear limits to the flexibility of reservations.

Suggestions:

- 1- The necessity of enhancing the principles of good faith and transparency in the practice of treaty reservations.
- 2- The necessity of activating the role of international judicial institutions to resolve disputes related to treaty reservations.
- 3- The necessity of establishing stricter regulations for reservations related to core human rights treaties; this is to ensure that these instruments are not stripped of their humanitarian content.
- 4- The necessity of finding new mechanisms that ensure flexibility in accession without compromising the legal unity of the treaty; the future of reservations to treaties lies in the international community's ability to provide such mechanisms.

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