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Emmanouil P. Antonakakis
R.N.: 7340022102009

Religion-based Reservations to International Human Rights Treaties in Theory and Practice

Examination Board:

a) Professor Linos-Alexander Sicilianos (Supervisor)

b) Professor Photini Pazartzis

c) Assistant Professor Vassiliki Christou

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1. Introduction

Almost seventy-five years after the adoption of the first truly international human rights treaty[1], namely the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG), by the General Assembly (GA) of the United Nations (UN)[2], there can be no doubt that the development and dissemination of international human rights treaties have been the most effective multilateral effort of the post-war international community to palpably safeguard "*the inherent dignity and the equal and inalienable rights of all members of the human family*", as stated in the first sentence of the preamble of the Universal Declaration of Human Rights (UHDR). The latter Declaration was proclaimed by the GA on the day following the adoption of the CPPCG, on 10 December 1948[3], and –without any exaggeration– marked the history of human rights, as it is considered to be the foundation of international human rights law (IHRL)[4], whose development thereon transformed the whole physiognomy of international law once and for all.

The commitments made through the UDHR have been translated over the time into binding international law through the adoption of international treaties and the development of customary international law and general principles, on the one hand, and into national constitutional law, which by definition enjoys higher legal force, in a considerable number of domestic legal orders, on the other. Indeed, the UDHR, a non-legally binding document in principle[5], constitutes the source of inspiration of almost every subsequent treaty adopted under the auspices of the UN in the field of human rights, whose aim has been to further analyse and clarify the human rights and fundamental freedoms listed in the Declaration[6].

The drastic impact of the UDHR has also been visible at regional level, as it has, since its adoption, influenced the development of sophisticated regional human rights systems, including a "European", an "American" and an "African" one. In fact, the preambles of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the American Convention on Human Rights (ACHR) and the African Charter on Human and Peoples' Rights (the Banjul Charter) specifically refer to the Declaration with a view to reaffirming its importance in intensifying international cooperation to achieve a better life for every human being and, of course, to ascertaining dedication to its pledges.

Briefly, the adoption of the UDHR signalized the beginning of a fast-growing process of "humanization" of international law, to which the rapid development of multilateral treaties in

[1]United Nations. n.d. International Human Rights Law: A Short History. [online] Available at: <https://www.un.org/en/chronicle/article/international-human-rights-law-short-history>.
[2]United Nations. n.d. The Genocide Convention. [online] Available at: <https://www.un.org/en/genocideprevention/genocide-convention.shtml>.
[3]United Nations. n.d. Universal Declaration of Human Rights. [online] Available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.
[4]International Human Rights Law can be defined as the body of international law according to which States assume obligations and duties to respect, to protect and to fulfil human rights. See Office of the United Nations High Commissioner for Human Rights. n.d. *International Human Rights Law*. [online] Available at: <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law>.
[5]It widely accepted that many of the UDHR's provisions have become binding as customary international law. See Hannum, H., 1996. The Status of the Universal Declaration of Human Rights in National and International Law. *Georgia Journal of International & Comparative Law*, 25(1), pp. 287-397.
[6]Sicilianos, L., 2010. The Human Dimension of International Law. Athens, Greece: Nomiki Bibliothiki Group, pp. 308-313.

the human rights field has been playing a leading role. The question that inevitably follows is whether the existence of a considerable number of human rights treaties is capable of making a difference and actually knocking the rough edges off State's absolute domination over the fate of its nationals. Indeed, while the majority of States has signed and ratified a considerable number of human rights treaties, human rights violations remain a common phenomenon up to the present day. It has even been suggested that the ratification of human rights treaties is associated with worse human rights practices[7]. Of course, such criticism has been strongly disapproved[8].

It should not be overlooked that the voluntarily ratification of human rights treaties binds States, the primary subjects of international law, into a comprehensive framework of legal obligations and places them under the supervision of other international actors (including not only other States, but also international organizations and their organs) that evaluate their conduct and put external pressure on them to exhibit greater commitment to human rights norms. In this way, States are expected to eventually bring their domestic practices and legislation into line with the listed "universal" norms.

Of course, the incentives of a State when ratifying a human rights treaty are not always clear and may vary. There are States that do ratify based on an honest commitment to the norms embodied in a specific instrument, but, at the same time, there are States that look forward to other collateral benefits, which can be either tangible, such as foreign aid, trade and investment, or even intangible, such as legitimacy or acceptance[9], that depend upon ratification[10]. It has also been observed that in practice there might be a direct analogy between a State's decision to commit to a treaty and that specific treaty's enforcement mechanisms (such as, for example, complaint or reporting procedures) and, hence, there are States with poor human rights records that choose to ratify instruments with weaker compliance mechanisms in order to demonstrate a certain level of sensitization without any actual intention to ameliorate their practices[11].

In any case, it should not be neglected that only the emergence of a human rights treaty, regardless of the level of genuine commitment of States to its provisions, empowers the human rights movement and, especially, civil society, and may also lead to indirect effects and a long-term impact by creating stigma for violators, providing a common human rights language and, after all, reinforcing the very idea of the universality of human rights[12].

Obviously, strictly legally speaking, an international human rights treaty is a treaty under international law. According to Robert Kolb, under general international law, a treaty is a written agreement, whereas an agreement is defined as "*a consensual bond, express or tacit, between two or more subjects of international law, designed to produce legal effect and governed by*

[7]Hathaway, O., 2002. Do Human Rights Treaties Make a Difference?. The Yale Law Journal, 111(8), pp. 2020-2025.
[8]Jinks, D. and Goodman, R., 2003. Measuring the Effects of Human Rights Treaties. European Journal of International Law, 14(1), pp. 171-183.
[9]Nielsen, R. and Simmons, B., 2014. Rewards for Ratification: Payoffs for Participating in the International Human Rights Regime?. International Studies Quarterly, 59(2), pp. 197-208.
[10]Hathaway, pp. 2020-2025.
[11]Dutton, Y., 2012. Commitment to International Human Rights Treaties: The Role of Enforcement Mechanisms. University of Pennsylvania Journal of International Law, [online] 34(1), pp. 55-57. Available at: <https://scholarship.law.upenn.edu/jil/vol34/iss1/1>.
[12]Neumayer, E., 2005. Do International Human Rights Treaties Improve Respect for Human Rights?. *Journal of Conflict Resolution*, 49(6), pp. 925-953.

international law"[13]. The Vienna Convention on the Law of Treaties (VCLT) of 1969 offers a narrower definition of a treaty[14] with a view to determining its scope of application: a treaty is "*an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation*"[15]. It derives from both the aforementioned definitions that the law of treaties reflects, perhaps better than any other substantive field of international law, the consensual nature of international law.

The whole of international law rests on the fundamental principle of State sovereignty. State sovereignty is reflected in the law of treaties through the need for a State willing to become party to a treaty to express its "consent to be bound" by the said treaty. According to Article 11 of the VCLT of 1969, a State may express its consent to be bound in different ways: by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval, accession, or by any other means if so agreed. When establishing on the international plane their consent to be bound by a treaty, States are offered by the law of the treaties a further possibility, unknown to traditional national contract laws: the right to formulate reservations.

Reservations constitute indeed a unique and complex feature of treaties in international law. The "treaty on treaties" itself, as the VCLT of 1969 is also known as, defines a reservation as "*a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State*"[16]. The ratio for the existence of reservations can easily be found in the contemporary system of regulation-making in the international legal order itself[17]. Multilateral treaty-making is nowadays open to almost all States, while the participation of other actors, including international organizations and even non-governmental organizations (NGOs), tends to become the norm. As the UN, the leading organization of international cooperation, has nowadays a hundred and ninety-three member States[18], it goes without saying that the existing legal, political and cultural diversity renders the achievement of a common denominator when negotiating a treaty not an easy undertaking. Therefore, reservations have permitted the development of a "grey zone" which offers a third alternative to the absolute dipole between consenting or not.

In parallel, in the context of multilateral human rights treaties, reservations have been serving as a device for achieving a balance between a State's intention to assume obligations and duties under international treaty law to respect, to protect and to fulfil human rights, on the one hand, and to minimize a possible "intrusion" to aspects of its sovereignty, on the other[19]. It has been

[13]Kolb, R., 2017. The Law of Treaties: An Introduction. Cheltenham, UK: Edward Elgar Publishing, pp. 16-21.
[14]Article 2(1)(a) of the VCLT of 1969.
[15]Likewise, the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 1986 defines a treaty in its Article 2(1)(a) as "*an international agreement governed by international law and concluded in written form: (i) between one or more States and one or more international organizations; or (ii) between international organizations, whether that agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation*".
[16]Article 2, paragraph 1(d) of the VCLT of 1969.
[17]Kolb, p. 63.
[18]Member states (no date) United Nations. Available at: <https://www.un.org/en/about-us/member-states>.
[19]Goodman, R. (2002) "Human Rights Treaties, Invalid Reservations, and State Consent," The American Journal of International Law, 96(3), p. 536. Available at: <https://doi.org/https://doi.org/10.2307/3062161>.

observed that, among the invoked domestic interests that constitute a State's basis for reservations, the most –by far– frequent one is the incompatibility of a treaty or some of its provisions with the predominant domestic religious belief, doctrine or dogma[20].

It is estimated that religion-based reservations to human rights treaties account for over forty percent of all reservations to the core international human rights treaties[21]. Such a percentage raises important questions not only concerning the intractable issue of reservations to human rights treaties in general, but also concerning the interaction of the concept of human rights with those of religion and culture. Recent history has proven that quite often religious communities and the human rights movement find themselves on opposing sides when it comes to major social and human rights issues, such as reproductive rights, gender equality, euthanasia or same-sex marriage. Quite recently, the globe was shocked by the death of a twenty-two-year-old Kurdish Iranian woman, Mahsa Amini, who was detained by Iran's morality police for wearing "improper" hijab and, in so doing, violating the Islamic dress codes[22]. Such conflicts, whose roots are truly deep and multidimensional, have given rise to the assumption that religion is an enemy of human rights and vice versa.

Protests in Iran over Mahsa Amini's death during September 2022.
Source: Time [online].

The scope of this study is to examine the issue of religion-based reservations to international human rights treaties not only in theory, but also in practice. The starting point of this attempt could not be but the examination of the complex relationship of mutual influence, but also, quite often, contention of religion with human rights and, specifically, IHRL (under Part II). Having regard to the substance of the said interaction, as well as to other highly relevant conflicts, including, for example, the one between cultural relativism and universalism, a thorough examination of the most turbulent issues that the debate over reservations to human rights treaties have raised, will follow (under Part III). The paradigm of religion-based reservations is indeed able to point out the most crucial aspects of the discussion, which may also justify their prevalence and the importance of their reconsideration. Having in mind the ultimate vision of a world where all human beings are born free and equal in dignity and rights[23], the aforementioned analysis is expected to lead us to some interesting conclusions (under Part IV) on the impact of religion, as well as of the phenomenon of reservations, seen both individually and in combination, on the on-the-ground enjoyment of human rights.

[20]Çalı, B. and Montoya, M., 2017. The march of universality? Religion-based reservations to the core UN human rights treaties. Religion-based reservations to the human rights conventions. [online] Universal Rights Group, pp. 6-7. Available at: <https://www.universal-rights.org/urg-policy-reports/march-universality-religion-based-reservations-core-un-human-rights-treaties-tell-us-human-rights-religion-universality-21st-century/>.
[21]Ibid.
[22]Moaveni, A., 2022. 'It's Like a War Out There.' Iran's Women Haven't Been This Angry in a Generation.. [online] The New York Times. Available at: <https://www.nytimes.com/2022/10/07/opinion/iran-women-protests.html>.
[23]As stated in Article 1 of the UDHR.

2. Religion and International Human Rights Law: A Complex, Yet Dialectical Relationship

Émile Durkheim, one of the founding fathers of modern sociology, defines the notion of religion as "*a unified system of beliefs and practices relative to sacred things, that is to say, things set apart and forbidden, beliefs and practices which unite in one single community called a Church, all those who adhere to them*"[24]. It is, nevertheless, accepted that adopting a single definition of religion is methodologically challenging, if not impossible, as religion is an extremely complex phenomenon that has been approached from many different disciplines and perspectives. For example, Sigmund Freud understands religion as "*the universal obsessional neurosis of humanity"* and further explains that, *"like the obsessional neurosis of children, it arose out of the Oedipus complex, out of the relation to the father*"[25], while Karl Marx has described it –in his own descriptive way–, as the "*opium of the masses*" and "*the sigh of the oppressed creature, the heart of a heartless world, and the soul of soulless conditions*"[26]. For the purpose of this study, it is sufficient to confine ourselves to the notion of religion as a socio-cultural phenomenon, as the definition of Durkheim implies, namely as an institution with the ability, as an organized set of beliefs, behaviours and norms, to satisfy, beneath any irrationalism, real social and human needs[27].

The scope of this Part is to examine the interaction of religion and human rights, focusing on the development of IHRL, and further attempt to define the nature and character of such interplay. The first question to be addressed is if and how these two concepts have historically supported each other. How has religion contributed to the evolution of the rights discourse, and how the latter safeguards today, inter alia, the enjoyment by every person of the right to have and practice their own religion or belief, or no religion or belief at all? At the same time, it would be ill-advised to neglect that there is always another side of the coin. Is it possible for religious creeds to form an obstruction to the further development of human rights? Could the vision of universal human rights discomfit and give rise to concerns for their appropriateness for all societies?

All the aforementioned questions will be addressed below. For this purpose, emphasis will be given to the world's principal religions, the so-called "big five", which –in alphabetical order– are: Buddhism, Christianity, Hinduism, Islam and Judaism[28]. Christianity, Islam and Judaism are the three largest Abrahamic religions, those which descend from the teachings of the prophet Abraham[29], while Buddhism and Hinduism, the principal Eastern religions, both have their origins in the culture of Ancient India and embrace the illusory nature of the world and the concepts of karma and the cycle of births and deaths for each soul[30].

[24]Platvoet, J. and Molendijk, A., 1999. The Pragmatics of Defining Religion: Contexts, Concepts, and Contests. BRILL, pp. 3-5.
[25]Kistner, U., 2021. Religion as "universal obsessional neurosis of humanity"? Re-reading Freud on religion', HTS Teologiese Studies/Theological Studies 77(2), a6723. Available at: <https://doi.org/10.4102/hts.v77i2.6723>.
[26]Blau, R., 2013. What is the opium of the people?. [online] The Economist. Available at: <https://www.1843magazine.com/intelligence/the_big_question/what_is_the_opium_of_the_people_>.
[27]Little, W., Vyrain, S., Scaramuzzo, G., Cody-Rydzewski, S., Griffiths, H., Strayer, E., Keirns, N. and McGivern, R., 2016. Introduction to Sociology - BCcampus. 2nd ed. BCcampus, pp. 624-651.
[28]Dickinson, R., 2020. The Little Book of World Religions. Chichester: Summersdale Publishers Ltd.
[29]Abulafia, A., 2019. British Library. [online] British Library. Available at: <https://www.bl.uk/sacred-texts/articles/the-abrahamic-religions>.
[30]Nandan, G. and Jangubhai, N., 2022. The Comparative study between Hinduism and Buddhism. International Journal of Humanities and Social Science Invention, 2(5), pp. 27-31.

2.1. The Complementary Relationship

2.1.1. The Religious Foundations of Human Rights

The human rights doctrine is relatively modern. The emergence of the key document, the UDHR, that, as it has already been mentioned, facilitated its further development and establishment in the international, as well as in the individual national legal orders dates back to the end of the Second World War, the war that pitted the Allied and the Axis powers in the deadliest armed conflict in history[31]. That means that IHRL, as we grasp it today, began to evolve and take shape less than a century ago.

Nevertheless, the realization that there are rights inherent to every human being, regardless of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, did not emerge overnight. Actually, human rights and fundamental freedoms have age-long roots in legal systems shaped by a series of philosophical, cultural and religious doctrines. According to Susan C. Breau, there are "*three interrelated strands that influenced the development of human rights: philosophy, religion and culture*"[32]. Amongst these strands, it has been argued that religion, religion beliefs and traditions have been the greatest catalyst for the emergence of human rights law[33]. The vast majority of religions, spiritual traditions and beliefs attempt to provide their practitioners with answers to the most fundamental questions of life and, indeed, they seem to have done so in an impressively similar way. "*All of the great religious traditions*", Paul Gordon Lauren observes, "*share a universal dissatisfaction with the world as it is and a determination to make it as it ought to be*"[34]. Although all such traditions not only differ, but also contradict or even conflict with each other, they share a common aspiration for a better world and their teachings place as general rules the value of human life and the notion of individual responsibility[35]. Such a reading evidences that, whereas all major religions embrace ideas that seem to be perfectly consistent with the modern philosophy of human rights, religion is not and should not be perceived as a threat to human rights.

More specifically, Hinduism, the world's oldest religion that emerged out of the cultures of the civilizations of the Indus Valley prior to 2.000 BCE and is the world's oldest living religious tradition, put strong emphasis on individual spiritual development[36]. Ancient Hindu texts, such as the Vedas and Upanishads, address, in the context of personal development, the virtues of tolerance and compassion, the importance of justice, good conduct and, above all, of the duty toward others[37]. The teachings of Hinduism have been developed based on a pattern of idealistic

[31]National Geographic. n.d. World War II in Europe. [online] Available at: <https://education.nationalgeographic.org/resource/world-war-ii-europe>.
[32]Breau, S., 2007. Human Rights and Cultural Relativism: The False Dichotomy. In: J. Rehman and S. Breau, ed., Religion, Human Rights and International Law. Martinus Nijhoff Publishers, p. 139.
[33]Green, C. and Witte, J., 2013. Religion. In: D. Shelton, ed., The Oxford Handbook of International Human Rights Law. Oxford University Press, pp. 9–31.
[34]Lauren, P., 2013. The Evolution of International Human Rights. Philadelphia: University of Pennsylvania Press, Inc., pp. 6-11.
[35]Ibid.
[36]Green, C. and Witte, J., 2013. Religion. In: D. Shelton, ed., The Oxford Handbook of International Human Rights Law. Oxford University Press, pp. 9-31.
[37]Ibid.

and altruistic interconnectedness, which is remarkably close to the modern concept of human rights[38].

Buddhism, an alternative offshoot from Hinduism which was developed between the mid-sixth and mid-fourth century BCE[39], invites its practitioners to realize through enlightenment (nirvana) their "Buddha nature". Such an innate potential exists within all beings, but remains concealed throughout life by desire, anger, and ignorance. Likewise, the Four Noble Truths, central principles of Buddhism, provide that 1) life is suffering (the truth of suffering or "Dukkha"), 2) suffering is caused by craving and attachment (the truth of the origin of suffering or "Samudāya"), 3) craving and attachment can be overcome (the truth of the cessation of suffering or "Nirodha), and 4) that the road to this overcoming is the Eightfold Path (the truth of the path to the cessation of suffering or "Magga")[40]. The Path concretely claims for: 1) right understanding, 2) right purpose, 3) right speech, 4) right conduct, 5) right livelihood, 6) right effort, 7) right alertness, and 8) right concentration[41]. It becomes apparent that there are strong correlations between the Path's eight "rights" and the rights that are guaranteed by IHRL.

Concerning Abrahamic religions, Judaism, the world's oldest monotheistic religion, is based on the idea that only one God exists, who has established a Covenant with Jews, its chosen people[42]. The Hebrew word "mitzvah" refers exactly to a God's commandment, which constitutes the Jewish understanding of duty, and duties in Jewish tradition do not exist without prior rights. In other words, "*a right engenders a duty instead of a duty engendering a right*"[43]. Such a right-duty correlation operates, according to the teachings of Judaism, not only in the relations of God with humans, but also in the relations between humans and their community and between humans themselves. Humans, after all, have been created in the image of God and, thus, they enjoy dignity, they share with their God the virtues of intellect and will, as well as certain rights.

Another Abrahamic religion, Islam, was developed in the seventh century CE. There are a series of principles within Islam that clearly justify its compliance with the idea of human rights, as we perceive it today. For example, the Qur'an, the central religious text of Islam, provides that "*God created humanity from a single soul and created therefrom its mate*" (Chapter 4, paragraph 2). Basic human rights guaranteed by IHRL are described in other paragraphs of the Qur'an. For example, paragraph 31 of chapter 5 provides that "*whosoever kills a human being […] it is as though he had killed all mankind*" and evokes the right to life, paragraph 13 of Chapter 49 holds that human beings have been set up as nations and tribes so that they may be able to recognize each other, namely without any superiority of one nation or tribe over others, while paragraph 19 of Chapter 51 approximates, when referring to "*right for the needy and destitute*", the concept of

[38]Menski, W., 2013. Hinduism and Human Rights. In: J. Witte and C. Green, ed., Religion and Human Rights: An Introduction. Oxford University Press, Inc., pp. 71-86.
[39]Encyclopedia Britannica. 2022. Buddhism | Definition, Beliefs, Origin, Systems, & Practice. [online] Available at: <https://www.britannica.com/topic/Buddhism>.
[40]BBC. 2019. Buddhism: The Four Noble Truths. [online] Available at: <https://www.bbc.co.uk/religion/religions/buddhism/beliefs/fournobletruths_1.shtml>.
[41]Encyclopedia Britannica. 2022. Eightfold Path | Summary & Eight Elements of the Path. [online] Available at: <https://www.britannica.com/topic/Eightfold-Path>.
[42]History. 2018. Judaism. [online] Available at: <https://www.history.com/topics/religion/judaism>.
[43]Novak, D., 2012. A Jewish Theory of Human Rights. In: J. Witte and C. Green, ed., Religion and Human Rights: An Introduction. Oxford University Press, pp. 27-41.

social and economic rights[44]. For sure, human rights may also be legitimated in the context of Islam, although there has been strong opposition towards that understanding in recent years.

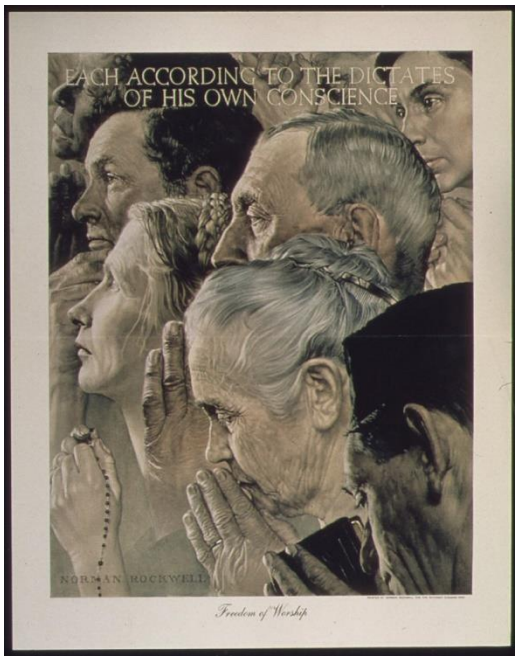
Last but not least, it has been argued that there are deep roots of human rights in the biblical tradition[45]. Nevertheless, Christianity had for centuries promoted religious intolerance, including persecution of dissidents, and for quite some time it was considered that the idea of human rights, as the fruit of secular Enlightenment thought, which questioned the authority of the Church, has little in common with Christian ideals. In his book "Christian Human Rights", Samuel Moyn argues that there is a strong connection between Christianity and human rights, which has become evident through a series of mid-twentieth-century interpretations of the teachings of Jesus. The most influential examples of such interpretations can be found, according to Moyn, to the Irish Constitution of 1937, which integrated the idea of human dignity in constitutional theory, to the teachings of French Catholic social theorists, such as Jacques Maritain, whose book "Natural Law and Human Rights" reconciled Christianity's sociopolitical doctrine with the idea of human rights, to the historiography of the Protestant Gerhard Ritter, the world's "first historian of human rights", and, last but not least, to the works of Catholic and Protestant movements that integrated the idea of human rights to their agenda[46]. In Christianity, just like in the other two aforementioned Abrahamic religions, there is only one God, who endowed human beings with reason and conscience and has invited them to respect life in its Creation[47]. Without its faith-based parameter, one may identify in such a narrative the sense of Article 1 of the UDHR, which recognizes dignity as the foundation of all human rights[48].

To conclude, it appears necessary to mention that in 1993 more than two hundred leaders from over forty different faith traditions and spiritual communities, all member of the Parliament of the World's Religions, signed a well-known document called "Towards a Global Ethic: An Initial Declaration"[49]. The Declaration, which reflects common ethical commitments of its signatories, recalls the UDHR and deepens what is thereto proclaimed from the perspective of ethics by confirming "*the full realization of the intrinsic dignity of the human person, the inalienable freedom and equality in principle of all humans, and the necessary solidarity and interdependence of all humans with each other*"[50]. It is not unfounded, therefore, to claim that human rights do have strong foundations to the teachings of all biggest world religions and beliefs reflecting a peaceful commensal relationship.

[44]Mawdudi, A., 1986. Human Rights in Islam. Al-Tawhid Islamic Journal, [online] 4(3). Available at: <https://www.iium.edu.my/deed/articles/hr/hr.html>.
[45]Villa-Vicencio, C., 1999. Christianity and Human Rights. Journal of Law and Religion, 14(2), pp. 579-600.
[46]Moyn, S., 2018. Christian human rights. Contemporary Political Theory, 17(4), pp. 228-231.
[47]Fortman, B., 2011. Religion and Human Rights: A Dialectical Relationship. [online] E-International Relations. Available at: <https://www.e-ir.info/2011/12/05/religion-and-human-rights-a-dialectical-relationship/>.
[48]The Office of the UN High Commissioner for Human Rights. 2018. Universal Declaration of Human Rights at 70: 30 Articles on 30 Articles - Article 1. [online] Available at: <https://www.ohchr.org/en/press-releases/2018/11/30-articles-30-articles-universal-declaration-human-rights>.
[49]Towards a global ethic: An initial declaration (no date) Parliament of the Worlds Religions. Available at: <https://parliamentofreligions.org/global-ethic/towards-a-global-ethic-an-initial-declaration/>.
[50]Ibid.

2.1.2. Freedom of Religion or Belief in International Human Rights Law

In his famous "Four Freedoms speech", delivered in 1941, almost one year before the United States (U.S.) declared war on Japan, Fraklin D. Roosevelt, then President of the U.S., listed four freedoms that everyone everywhere in the world ought to enjoy. The second of these freedoms is the freedom of worship, namely the freedom of every person to worship God in their own way[51]. Four freedoms were perceived as symbols of hope during the years of war, strengthened the vision of lasting international peace and served as one of the main influences behind the drafting of the UDHR[52].



"Freedom of Worship", Norman Rockwell (1894-1978). Illustration for the Saturday Evening Post, February 27, 1943. Source: Norman Rockwell Museum [online].

Human beings have for centuries relied on religion with a view to giving greater meaning to their existence in the world. At the same time, since its emergence as a social-cultural system, religion has been either the cause or the occasion for some of the deadliest conflicts in human history. The Five Sacred Wars around the Panhellenic sanctuary in Greek antiquity (595-280 BCE), the Saxon Wars (772-804 CE), the Crusades in the medieval period, the Thirty Years' War (1618-1648), the Taiping Rebellion (1850-1864) and the Israeli-Palestinian conflict are only some of the over a hundred reported religious wars[53]. Since "*disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind*", as the Preamble of the UDHR declares, and religion has historically constituted one of the root sources of such acts, it is not surprising that freedom of religion or belief (a more expansive term compared to Roosevelt's freedom of worship) has been characterized as "*the one with the longest lineage*"[54] and is guaranteed today by all major international human rights instruments, including the International Bill of Human Rights.

The primary instruments that have set international standards on freedom of religion or belief are Article 18 of the UDHR, Article 18 of the International Covenant on Civil and Political Rights (ICCPR) and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. Relevant Articles can also be found in the International Covenant on Economic, Social and Cultural Rights (ICESCR)[55], the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)[56], the

[51]Four freedoms (no date) Encyclopaedia Britannica. Available at: <https://www.britannica.com/event/Four-Freedoms>.
[52]The Four Freedoms Speech (no date) Four Freedoms Park Conservancy. Available at: <https://www.fdrfourfreedomspark.org/learn/the-four-freedoms-speech/>.
[53]Holt, A. (2019) Counting "Religious Wars" in the Encyclopaedia of Wars, History, Religion and Academia. Available at: <https://apholt.com/2018/12/26/counting-religious-wars-in-the-encyclopedia-of-wars/>.
[54]Cumper, P., 2010. Religion, belief and international human rights in the twenty-first century. In: S. Joseph and A. McBeth, ed., Research Handbook on International Human Rights Law. Edward Elgar Publishing Limited, p. 467.
[55]Article 2(2) of the ICESCR.
[56]Article 5(d)(vii) of the ICERD.

Convention on the Rights of the Child (CRC)[57], the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)[58], the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)[59], the CPPCG[60] and the Convention relating to the Status of Refugees (the 1951 Refugee Convention)[61]. According to Article 18 of the Universal Declaration of Human Rights, "*everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance*".

Freedom of religion or belief has many dimensions, the main being:

1) Freedom to adopt, change or renounce a religion or belief (Article 18 of the UDHR, Article 18(1) of the ICCPR, Article 1(1) of the UN Declaration),

2) Freedom from coercion (Article 18 of the UDHR, Article 18(2) of the ICCPR, Article 1(2) of the UN Declaration),

3) The right to manifest one's religion or belief (Article 18(1) and (3) of the ICCPR, Article 1(1) and 1(3) of the UN Declaration), which further includes, inter alia: a) freedom to worship, b) the right to establish and maintain places of worship, c) freedom to observe the days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief, d) the freedom to train, appoint, elect or designate by succession appropriate leader, and e) the right of the parents to ensure the religious and moral education of their children[62].

It is not surprising that none of the aforementioned instruments has offered a definition of religion or belief. However, the Human Rights Committee (HRCttee) in its General Comment No. 22 concerning Article 18 of the ICCPR, adopted in 1993, has offered important guidance in that respect[63]. According to the Committee, religion and belief shall be perceived broadly for the purpose of expanding the application of Article 18 of the ICCPR beyond traditional religions and beliefs[64]. Thus, the Article protects not only theistic, but also non-theistic, atheistic beliefs and the right not to profess any religion or belief at all[65].

The HRCttee further insisted in the distinction between the freedom to have or adopt a religion or belief of one's choice and the freedom to manifest religion and belief. While the former is protected unconditionally and no limitation is permitted, Article 18(3) of the ICCPR permits

[57]Articles 2(1), 14 and 30 of the CRC.
[58]Article 16 of the CEDAW.
[59]Articles 1(1), 7 and 12 of the ICMW.
[60]Article 2 of the CPPCG.
[61]Articles 1(A)(2), 3, 4 and 33(1) of the 1951 Refugee Convention.
[62]Special Rapporteur on Freedom of Religion or Belief: International standards (no date) Office of the United Nations High Commissioner for Human Rights. Available at: <https://www.ohchr.org/en/special-procedures/sr-religion-or-belief/international-standards>.
[63]UN Human Rights Committee (HRC), CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.4, available at: <https://www.refworld.org/docid/453883fb22.html>.
[64]Paragraph 2 of General Comment No. 22.
[65]Ibid.

restrictions on the latter in case such limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others[66].

Furthermore, on November 25th, 1981, almost a decade before the adoption of General Comment No. 22, the GA of the UN adopted the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which has been the first international soft law instrument focusing on religious intolerance[67]. The Declaration guarantees freedoms of thought, conscience and religion[68] and prohibits intolerance and discrimination on the grounds of religion or belief[69]. It further calls States to take effective measures to eliminate discrimination on grounds of religion on belief[70] and introduces a non-exhaustive list of manifestations of the right to freedom of religion or belief, including, inter alia, freedoms to maintain places for worship or assembly, to establish charitable or humanitarian institutions, to write, issue and disseminate publications, to teach a religion or belief in suitable places, and to solicit and receive voluntary financial and other contributions[71].

The Declaration is considered an important document, a diplomatic victory, especially "*taking into account the surrounding gloomy political circumstances and the delicacy of the subject-matter*"[72]. Its flaws, however, are not negligible. The efforts of its drafters to take into account a wide range of contradictory religious, but also different ideological perspectives, resulted to a document which is quite generic in its wording. Moreover, the Declaration is not but a Resolution of the GA that lack, unlike other human rights instruments, binding legal force, as well as a body to monitor States' compliance with its provisions. Such characteristics reveal, once again, the peculiarity and sensitivity of the interaction of religion with human rights.

At regional level, freedom of religion or belief is guaranteed by Article 9 of the ECHR, Article 13 of the ACHR, Article 8 of the Banjul Charter and Articles 25 and 30 of the Arab Charter on Human Rights. The case-law of the European Court of Human Rights (ECtHR) has been extremely enlightening concerning the legal dimensions of the freedom of religion or belief, especially after its 1993 landmark judgment in Kokkinakis v. Greece, its most widely cited judgment[73]. The Court recognized –for the first time– thereto that freedom of thought, conscience and religion is one of the foundations of a democratic society. What is more, its religious dimension (freedom of religion) is "*one of the most vital elements that go to make up*

[66]Paragraph 3 of General Comment No. 22.
[67]Declaration on the elimination of all forms of intolerance and of discrimination based on religion or belief (no date) Office of the United Nations High Commissioner for Human Rights. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-all-forms-intolerance-and-discrimination#:~:text=relations%20between%20nations.-,Article%204,political%2C%20social%20and%20cultural%20life>.
[68]Article 1(1) of the Declaration.
[69]Articles 2(1) and 3 of the Declaration.
[70]Article 4(1) of the Declaration.
[71]Article 6 of the Declaration.
[72]Bielefeldt, H. and Wiener, M., n.d. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief General Assembly resolution 36/55. [online] UN Audiovisual Library of International Law. Available at: <https://legal.un.org/avl/ha/ga_36-55/ga_36-55.html>.
[73]Evans, M. (2017) "The Freedom of Religion or Belief in the ECHR since Kokkinakis. Or 'Quoting Kokkinakis'" Religion and Human Rights, 12(2-3), pp. 83–98. Available at: <https://doi.org/10.1163/18710328-12231166>.

the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned"[74].

All the aforementioned instruments address issues that frequently concern national and international courts and tribunals, such as how to balance the rights of parents to bring up their children in the faith of their choice and the duty of a State to protect the best interest of the child, or how to define the limits of religious exercises that cause offence to others. Its relevance up to the present day reaffirms the substantial contribution of IHRL to guaranteeing freedom or religion or belief in modern and religiously pluralistic societies.

2.2. The Contradictory Relationship

2.2.1. The Incompatibility of Human Rights with Religious Doctrines

It has been argued that the level of religiosity in a certain society impinges upon the effective protection of human rights in it[75]. David L. Cingranelli and Carl Kalmick have in this spirit observed that "*exposure to the teachings of organized religion often reduces citizen demands for human rights protection, because most religious institutions undermine the crucially important human rights belief that all humans are equa*l"[76]. Moreover, apart from the occasions when religion is employed as a justification for non-compliance or even for non-commitment in the first place to human rights norms, with a characteristic example being religion-based reservations to human rights treaties, religious teachings and practices quite frequently shape specific social circumstances or lead to specific social phenomena that can hardly be found compatible with the precepts of IHRL.

For example, there are many customs and practices originating in Hinduism that, according to human rights activists, reflect the incompatibility of its proposed "a way of life"[77] with the demands of human rights. Such customs include, inter alia, the practice of sati, according to which widows are burned on their husband's funeral pyre[78], forced and arranged marriages and, above all, the deeply-rooted form of discrimination based on caste. The caste system divides Hindus into four main classes, Brahmins, Kshatriyas, Vaishyas and the Shudras, while those who fall outside of the four-fold case system are called Dalits (the "broken" people) and are considered to be "lesser" human beings[79]. Although nowadays the Indian Constitution prohibits discrimination on the basis of caste[80], it is constantly reported that the system is ever present not only in rural areas, but also in cities, and continues determining the lives of Indians apropos of important aspects of their lives, including family life and employment[81].

[74]Paragraph 31 of the Judgement.
[75]Cingranelli, D. and Kalmick, C. (2019) "Is religion the enemy of human rights?," Human Rights Quarterly, 41(3), pp. 725–752.
[76]Ibid.
[77]Hinduism is often described as a way of life, not a religion.
[78]Mishra, G. (2020) Roop Kanwar: Last known case of Sati in India & its relevance today, Feminism in India. Available at: <https://feminisminindia.com/2020/08/07/roop-kanwar-last-known-case-sati-india-relevance-today/>.
[79]Caste discrimination (2015) International Dalit Solidarity Network. Available at: <https://idsn.org/caste-discrimination/>.
[80]Article 15 of the Constitution of India.
[81]Sur, P. (2020) Under India's caste system, dalits are considered untouchable. the coronavirus is intensifying that slur, CNN. Available at: <https://edition.cnn.com/2020/04/15/asia/india-coronavirus-lower-castes-hnk-intl/index.html>.

Certain Buddhist values may also be opposite to human rights concepts. During the past decades, there has been a long debate concerning the incompatibility of the values embodied in human rights doctrine, such as individualism and adversariality, with the so-called "Asian values", including collective well-being, duties and loyalty towards figures of authority[82]. Moreover, Buddhist monks, although they serve a fundamentally peaceful religion, have historically been involved in gross human rights violations, with the most recent example being the rise of "Buddhist nationalism" in Myanmar[83].

Furthermore, the foundations of human rights in Jewish teachings are indeed indisputable. Nevertheless, Zionism, namely the "*the Jewish nationalist movement that has had as its goal the creation and support of a Jewish national state in Palestine*"[84], has led to an on-going situation that associates Jewish Israelis with the oppression of Palestinians, while major NGOs, including Amnesty International[85] and the Human Rights Watch[86], accuse Israeli authorities for the crimes against humanity of apartheid and persecution. There are also teachings from Torah and the Talmud that suggest that Jewish life is of greater value and that Jews have a "divine right" to deny non-Jews basic human rights[87].

The dominant general impression is that Muslim and Islamic countries are less protective of human rights, although, as analysed above, Islam is considered to recognize their very substance. Certain practices founded in Islam, including honour killings and violence against women and girls, have created the sentiment that Islam cannot by any means be compatible with the essence of human rights. Moreover, in the international sphere, the frequent invocation of Sharia with a view to avoiding commitment to human rights obligations (religion-based reservations are often –mistakenly– identified with Sharia-based reservations) on behalf of Islamic and Muslim countries has been extremely alarming taking into consideration that Sharia is both a system of religious law, but also a moral code that covers a wide range of issues concerning family, marriage, punishment and others[88]. While human rights discourse is considered to be a secular one, it seems that the Islamic and Muslim idea that religion is relevant with all spheres of activity is deeply contradictory in that respect.

Last but not least, the relationship of Christianity with human rights has also been characterized as a troubled one and Christians, especially Protestants, had for decades opposed to the idea of natural human rights[89]. Christianity has also been accused for historical indifference towards

[82]Di Fabio, A. (2016) Buddhism and Human Rights, Università di Padova. Available at: <https://unipd-centrodirittiumani.it/en/schede/Buddhism-and-Human-Rights/399>.
[83]Foxeus, N. (2019) "The Buddha was a devoted nationalist: Buddhist nationalism, ressentiment, and defending Buddhism in Myanmar," Religion, 49(4), pp. 661–690. Available at: <https://doi.org/10.1080/0048721x.2019.1610810>.
[84]Zionism (no date) Encyclopædia Britannica. Available at: <https://www.britannica.com/topic/Zionism>.
[85]Israel's apartheid against Palestinians (no date) Amnesty International. Available at: <https://www.amnesty.org/en/latest/campaigns/2022/02/israels-system-of-apartheid/>.
[86]A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution (2021) Human Rights Watch. Available at: <https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>.
[87]Traer, R. (no date) Jews and Human Rights, Religion and Human Rights. Available at: <https://religionhumanrights.com/Religion/Jewish/jews.fhr.htm#fj >.
[88]An-Na'im, A.A. (2011) "Islam and Human Rights," in J. Witte and C. Green (eds) Religion and Human Rights: An Introduction. Oxford Academic, pp. 56–70.
[89]Wolterstorff, N. (2011) "Christianity and Human Rights," in J. Witte and C. Green (eds) Religion and Human Rights: An Introduction. Oxford Academic, p. 42.

major violations of human rights, with the most characteristic examples being the silence of Christian Churches in Nazi Germany, during the war in Yugoslavia and during the Rwandan genocide[90]. Even today, many Christian leaders and politicians star in opposition to major human rights campaigns, such as for marriage equality[91] or for women's safe access to abortion[92].

2.2.2. Universalism Vis-À-Vis Cultural Relativism

Another argument for the contradictory relationship of religion and human rights originates from the development in the previous century of the idea of cultural relativism, which, albeit an axiom of anthropological research, has been the basis of strong criticism of the universality of human rights.

According to Rainer Arnold, defining universality of human rights is not an easy task, as a series of political, historical, cultural and geographical parameters need to be taken into account in this regard. Universality of human rights, the "*propensity towards global acceptance of human rights*", is multidimensional[93]. Its first dimension, the outer or territorial one, requires both a vertical and a horizontal acceptance of human rights. While horizontal acceptance means that human rights are embraced in every geographical part of the world, such acceptance should be extended and externalized not only at national, but also at regional and international level. In other words, in a multi-layered reference field, vertical acceptance remains essential. On the other hand, universality is also defined by its quality, its inner dimension which verifies that, inter alia, human rights are inherent to all human beings, that they are protected against any violation and that, in case of limitations, minimum safeguards (such as the existence of a legitimate reason for such limitation and their necessity for the needs of the democratic society) are guaranteed. The idea of the universal character of human rights was associated, especially after the end of the Cold War, with liberalism, which describes human rights as universal, ahistorical and free from the subjectivity of political passions[94].

According to cultural relativists, on the other hand, the idea of human rights "*is at best misguided in its core claim that it embodies universal values – and at worst a blend of moral hubris and cultural imperialism*" [95]. Therefore, human rights are considered an expression of Western values developed since the Enlightenment. In its more dispassionate approach, cultural relativism advocates that the world contains "*an impressive array of cultures and a diversity of view about right and wrong*" and, thus, it is challenging to identify human rights that serve the

[90]Goi, S. (2022) Christianity and human rights: Christians and the struggle for Global Justice, Christian Scholar's Review. Available at: <https://christianscholars.com/christianity-and-human-rights-christians-and-the-struggle-for-global-justice/>.
[91]Chappell, B. (2021) Vatican says Catholic Church cannot bless same-sex marriages, NPR. Available at: <https://www.npr.org/2021/03/15/977415222/illicit-for-catholic-church-to-bless-same-sex-marriages-vatican-says>.
[92]Respect for unborn human life: The Church's constant teaching (no date) USCCB. Available at: <https://www.usccb.org/issues-and-action/human-life-and-dignity/abortion/respect-for-unborn-human-life>.
[93]Arnold, R., 2013. The Universalism of Human Rights. Dordrecht: Springer Netherlands, pp. 1-2.
[94]Pergantis, V., 2007. Reservations to Human Rights Treaties, Issues of Cultural Relativism and the Universal Protection of Human Rights. In: K. Koufa, ed., *Multiculturalism and International Law*. Thessaloniki, Greece: Sakkoulas Publications, pp. 427-464.
[95]Orentlicher, D., 2001. Relativism and Religion. In: M. Ignatieff, ed., *Human Rights as Politics and Idolatry*. Princeton University Press, pp. 141-160.

interests of all peoples in all contexts[96]. It seems that cultural relativism insists that human rights reflect certain values and, as each State has its own culture, human rights cannot be uniform.
While the "universalists" insist that "relativists" invoke culture as their primary defence in order to cover human rights violations and the latter continue to accuse the former of cultural imperialism –and even cultural cannibalism–, the long-standing debate seems to threaten the edifice of all collective efforts to promote and protect human rights. The case of religion-based reservations to human rights treaties is a characteristic example, as reservations, which actually represent a compromise between universality and respect towards a State's domestic particularities, threaten the effective protection of human rights.

[96]Mullender, R., 2003. Human Rights: Universalism and Cultural Relativism. *Critical Review of International Social and Political Philosophy*, 6(3), pp. 70-72.

3. The Prevalence of Reservations Based on Religion or Belief to Human Rights Treaties

3.1. Understanding Religion-based Reservations to Human Rights Treaties

3.1.1. Defining Religion-based Reservations

It is prudent to admit –from the very beginning– that neither the task of defining nor even sometimes of detecting reservations based on religion or belief to a specific human rights instrument is an easy undertaking[97]. The classification of a normative reservation as a "religion-based" one explicitly depends on the intention of each researcher to examine the basis of a reservation and the (either apparent or not) religious character of such a basis either in a broader or a narrower sense. Thus, with a view to detecting a religion-based reservation, an essential preliminary work includes a realistic understanding of the obstacles, including legal diversity, political considerations and conceptual traps and fallacies that may arise during the searching process, as well as the delineation of the scope of the research, which will further determine the requisite level of the religious incentive behind a reservation, as such an incentive is not always unconcealed. In other words, a series of factors must be taken into consideration while hunting for and examining religion-based reservations.

First of all, one cannot neglect that religion interacts with other concepts, such as those of culture and ethics, in such a way that their conceptual borders can be vague. Such an influence must be deeply understood, as it is not rare for a State to introduce a reservation and proclaim as a basis, for example, ethics, while religion remains its ultimate ratio. Defining the exact relationship between religion, ethics and culture can be a strenuous process. Nevertheless, religion does not exist in isolation. If seen in a specific sociocultural context, its ability to co-define customs, traditions and, of course, a cultural environment as a whole becomes apparent. For example, Malawi's general reservation to the CEDAW, which was later withdrawn, reads: "*owing to the deep-rooted nature of some traditional customs and practices of Malawians, the Government of the Republic of Malawi shall not, for the time being, consider itself bound by such of the provisions of the Convention as require immediate eradication of such traditional customs and practices*". Could such a reservation be perceived as a religion-based one, although the State only refers to traditional customs and practices of its nationals?

Secondly, a State's constitutional framework or even, more generally, its legal tradition may assist or hamper the detection of religion-based reservations. While the constitutional instruments of certain States may recognize an official State religion, others remain secular. It is a fact that modernity and post-modernity have influenced social thought in such a way that there has been a shift towards secularization, namely the decrease in the extent of religious observance in society[98]. Of course, a State's secular identity may only be an empty slogan. Studies have shown that a considerable number of countries favour to the present day a single religion, either as an official or as a government-endorsed one, or they at least afford one religion or belief preferential treatment over others[99]. When, for example, a sovereign State's constitution

[97]Çalı and Montoya, pp. 14-15.
[98]Graham, G., 1992. Religion, Secularization and Modernity. Philosophy, 67(260), pp. 183-197.
[99]Pew Research Center, 2017. Many Countries Favor Specific Religions, Officially or Unofficially. [online] Available at: <https://www.pewresearch.org/religion/2017/10/03/many-countries-favor-specific-religions-officially-or-unofficially/?utm_source=Pew+Research+Center&utm_campaign=3e9f743f3c-Religion_Weekly_Update_2017_10_04&utm_medium=email&utm_term=0_3e953b9b70-3e9f743f3c-399930681>.

recognizes a specific religion as an official one, then any reservation referencing to that State's constitutional instrument is likely to conceal a religious incentive. The same applies to States in which religious law still holds a prominent place in their domestic legal orders. Some of the most characteristic examples of such cases are Sharia, the religious law of Islam, and the system of Jewish law known as Halakha. It is, therefore, essential to bethink, when reading a reservation under suspicion of religious motive, to what extent religion have permeated into the domestic legal system of the State concerned.

Thirdly, the process of understanding a State's domestic legal order requires a certain level of familiarization of the legal researcher with the theory and tools of comparative law, which studies the similarities and differences between the laws of different countries[100]. Of course, comparative research and study are accompanied by a series of considerable obstacles, including limited access to all the relevant sources of law and the language barrier[101]. Access to a State's sources of law requires masterly knowledge of that State's language and, thus, it is impossible for a researcher to guarantee such an access without the aid of translators with all that this entails for precision, cost and time. At the same time, it is impossible to neglect that there are cases of an existing chasm between legal regulations and their application. In this way, it is not unlikely that a researcher may end up with misleading findings if they limit their sources to written legislation. To conclude, it is important to keep in mind that understanding a State's legal system is important when examining, inter alia, its reservations to a treaty. Such an ambition, taking into consideration the complexities of comparative legal research, is not always reached easily.

Last but not least, it is impossible to disregard the challenge to detect and understand reservations in general, as in practice neither all reservations are called reservations nor their content is absolutely clear. According to the definition of the term in the VCLT, the phrasing or the name of a reservation are not decisive factors for their characterization as such. In this way, a reservation may be introduced, inter alia, as a "statement" or as a "declaration", giving rise to confusion, especially when it comes to the distinction between reservations and interpretative declarations. The decisive factor for the characterization of a unilateral statement either as a reservation or as an interpretative declaration should always be the legal effect it purports to produce and not its label[102]. With the former a State purports to exclude or modify the legal effect of certain provisions of the treaty in their application to that State[103], while with the latter only to specify or clarify the meaning or scope attributed by it to a treaty or to certain of its provisions[104].

For the aforementioned reasons and the purpose of this study, which is the examination of the phenomenon of religion-based reservations to international human rights treaties, the notion of reservations based on religion, belief or religious tradition will be framed according to the practice of States formulating such reservations to human rights treaties. The scope of such a descriptive approach is to ultimately understand the incentives of reserving States, as well as to cover the majority of cases when assessing the permissibility of such reservations.

[100]Moustaira, E., 2012. Comparative Law (in Greek). 1st ed. Athens, Greece: Nomiki Bibliothiki Group, pp. 11-12.
[101]Ibid, pp. 2-3.
[102]See also Guideline 1.3 of the Guide to Practice on Reservations to Treaties.
[103]See Article 2(1)(d) of the VCLT of 1969 and Guideline 1.1 of the Guide to Practice on Reservations to Treaties.
[104]See Guideline 1.2 of the Guide to Practice on Reservations to Treaties.

The most classical scenario is when a reservation explicitly refers to a specific religion or belief. To give an example, the State of Kuwait had introduced a reservation to Article 16, paragraph 1(f) of the CEDAW, which refers to equal rights of women and men with regard to guardianship, wardship, trusteeship and adoption of children, according to which the State does not consider itself bound by the said provision "*inasmuch as it conflicts with the provisions of the Islamic sharia, Islam being the official religion of the State*".

Another possibility is to have an explicit reference either to constitutional or, more generally, to domestic law, which, however, refers to certain religion or belief. For example, according to the wording of Pakistan's reservation to the CEDAW, which is titled as a "declaration", the accession of the State to the Convention "*is subject to the provisions of the Constitution of the Islamic Republic of Pakistan*". Since Islam is the main source of Pakistan's Constitution, there is a high possibility that such a reservation is indeed religion-influenced. The issue that arises in the case of an indirect reference to a certain religion or belief through domestic law is that such a referral can be "climactic" in the sense that a State may refer to national legislation whose explicit main source is religion, so its reservations can more easily be identified as a religion-based one, while it is also possible that religion is implicitly the source of national legislation, so that there is only a presumption that the State has formulated a religion-based reservation.

A State may also introduce a religion-based reservation without invoking any religion or religion-influenced national legislation, by leaning upon other concepts, such as tradition and customs. Such is the case of Malawi's general reservation to the CEDAW, which was mentioned above.

Last but not least, a State may introduce a reservation without invoking a religion or any other legal or non-legal justification, if, of course, formulating such a reservation is allowed by the relevant instrument[105]. This is the case, for example, of Maldives's reservation to the CEDAW which has the simplest wording possible: "*Maldives made reservations to sub-paragraphs (a), (c), (d) and (f) of paragraph 1 of Article 16*". Although a religious incentive cannot be easily extrapolated in case of such a wording, such a possibility cannot be excluded.

3.1.2. Religion-based Reservations in Practice

The Universal Rights Group (URG), a small and independent Geneva-based think tank focused exclusively on human rights[106], launched in 2014 a three-year (2014-2016) research project in order to raise awareness of the extent and impact of reservations to core human rights treaties to the universality of human rights, mainly[107] through the mapping of all reservations to such treaties[108]. In this context, the URG, particularly interested in reservations based on certain

[105]For example, see Article 57(2) of the ECHR, which requires that any reservation made under Article 57 shall contain a brief statement of the law concerned.
[106]Universal Rights Group. n.d. Who we are. [online] Available at: <https://www.universal-rights.org/who-we-are/>.
[107]As part of the project, the URG also organized two consultation meetings with reserving States, representatives of the Office of the High Commissioner for Human Rights (OHCHR), NGOs and academics (2015), hosted two informal policy dialogues with reserving States (2015-2016) and a side event during the March 2015 session of the Human Rights Council (2015), and interviewed an important number of States that have either entered or entered and withdrawn religion-based reservations to human rights treaties.
[108]Universal Rights Group. n.d. Religion-based reservations to the human rights conventions. [online] Available at: <https://www.universal-rights.org/programmes/in-focus-human-rights-and-religion/religion-based-reservations-to-main-human-rights-conventions/>.

religious or belief systems, published two Policy Reports ("The march of universality? Religion-based reservations to the core UN human rights treaties" in 2017 and "Lifting religion-based reservations to the core international human rights conventions as a means of strengthening women's rights at the national level: A guide for women's rights groups" in 2019), which contain analytical statistical information concerning the excessive number of religion-based reservations to the core international human rights treaties.

The URG in its two Reports argues that, on the one hand, the presence of reservations vindicate the arguments of cultural relativists, as reservations indicate a gap between the rights protected by a human rights instrument and the cultural, including religious, norms of a State, while, on the other, the decision of a State to ratify or accede to a treaty without reservations (or to subsequent withdraw its reservations) is an indicator in favor of universality. For this reason, mapping reservations, as well as their possible withdrawal is an important process with a view to testing the inalienable and universal nature of human rights and States' actual intention to respect, protect and fulfill human rights. Based on the findings of the URG, an attempt to outline the extent of the phenomenon of religion-based reservations to core human rights treaties will follow.

3.1.2.1. Religion-based Reservations to the Core International Human Rights Treaties

There are nine core international human rights instruments:

1) the ICERD, adopted in 1965 and entered into force in 1969,

2) the ICCPR, signed in 1966 and entered into force in 1976,

3) the ICESCR, signed in 1966 and entered into force in 1976,

4) the CEDAW, signed in 1979 and entered into force in 1981,

5) the CAT, signed in 1985 and entered into force in 1987,

6) the CRC, signed in 1989 and entered into force in 1990,

7) the ICMW, signed in 1990 and entered into force in 2003,

8) the Convention on the Rights of Persons with Disabilities (CRPD), signed in 2007 and entered into force in 2008, and

9) the International Convention for the Protection of All Persons from Enforced Disappearance (CPED), signed in 2007 and entered into force in 2010[109].

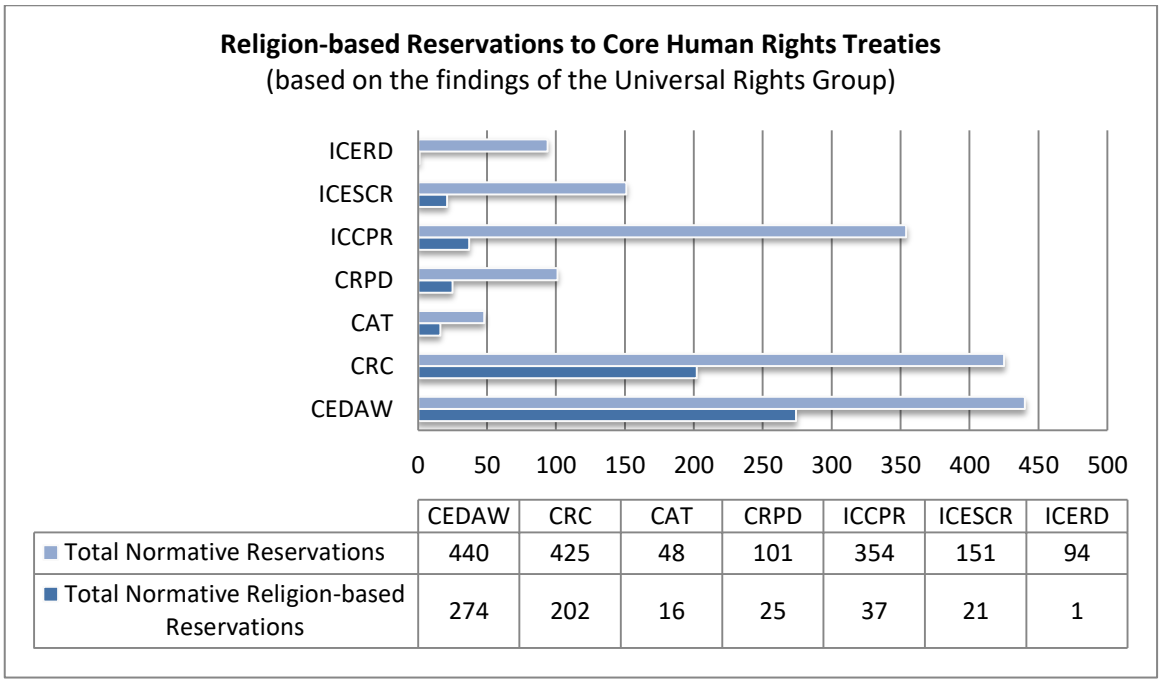
The high number of States parties to all of the aforementioned instruments is noteworthy, yet a precarious indication of the universality of human rights. As of today, one hundred eighty-two States are Parties to the ICERD, one hundred seventy-three to the ICCPR, one hundred seventy-one to the ICESCR, one hundred eighty-nine to the CEDAW, one hundred seventy-three to the

[109]The core international human rights instruments and their monitoring bodies (no date) Office of the United Nations High Commissioner for Human Rights. Available at: <https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies>.

CAT, one hundred ninety-six to the CRC, fifty-eight to the ICMW, sixty-eight to the CPED, and one hundred eighty-five to the CRPD.

According to the mapping conducted by the URG[110], the instrument with the largest number of reservations is the CEDAW with four hundred forty reservations, both general and specific, in total. The CRC has the second largest number of reservations, namely four hundred twenty-five reservations, while the ICCPR the third, namely three hundred fifty-four. The CEDAW has also the largest percentage of religion-based reservations (62% of total reservations), followed by the CRC (48%), the CAT (33%) and the CRPD (25%). Only 10% of the reservations to the ICCPR are religion-influenced, while the ICERD has the smallest percentage (1%)[111]. Among the nine instruments, only two, the ICMW and the CPED (both relatively recent), have not been affected by any religion-based reservation at all.

Analytically:



	CEDAW	CRC	CAT	CRPD	ICCPR	ICESCR	ICERD
Total Normative Reservations	440	425	48	101	354	151	94
Total Normative Religion-based Reservations	274	202	16	25	37	21	1

The numbers provided by the URG may lead us to interesting conclusions concerning the relationship between a human rights instrument and the prevalence of religion-based reservations to it. First of all, it seems that a determining factor that renders a human rights instrument susceptible to religion-based reservations is its object, its specific subject matter. With the exception of the ICCPR and the ICESCR, which generally deal with civil and political and economic, social and cultural rights respectively, the remaining instruments either focus on the protection of specific groups (such as women, children and persons with disabilities) or focus on the elimination of certain phenomena that constitute gross violations of human rights (such as racial discrimination, torture and enforced disappearance). The three instruments with the largest number of religion-based reservations are those which attempt to "penetrate" more deeply into

[110]Çalı, B. and Montoya, M., pp. 18-28.
[111]The only religion-based reservation to the ICERD was introduced by Saudi Arabia. It reads: "*[The Government of Saudi Arabia declares that it will] implement the provisions [of the above Convention], providing these do not conflict with the precepts of the Islamic Sharia*".

issues that are –historically– regulated or at least highly influenced by religion, such as marriage, family and punishment.

Sociologists and anthropologists have documented that religious organizations have over time developed certain religious codes about marriage and family, and have promoted a certain model of family, the one of the patriarchal nuclear family[112]. Such promoted family patterns are protected through the condemnation and punishment on behalf of religious institutions of any deviant attitudes. Characteristic examples of such attitudes include pre-marital sex, divorce, abortion, interfaith marriage, same-sex marriage, etc. Hence, the predominance of religion-based reservations to the CEDAW and the CAT is not surprising.

Likewise, in most pre-modern societies, religion played a determining role in guaranteeing a certain moral order[113]. Although in the modern era positive (criminal) law mainly regulates punishments for offences of legally protected rights, remnants of primitive "religious" punishments still exist. The most characteristic example is perhaps the one of classical Islamic criminal jurisprudence, which provides for three main types of punishments: a) hudud, which includes punishments that are mandated by God, b) qisas, which reflects the "an eye for an eye" principle, and c) tazir, which refers to punishments for offenses at the discretion of the judge when neither the Qu'ran or Sunna provides for a specific punishment[114]. When religion in a certain legal system is that determining for the nature and sources of punishments, the increasing number of religion-based reservations to a relevant human rights treaty, such as the CAT, is self-explanatory. But also in Western societies there are certain practices promoted by religion, including, for example, exorcism or corporal punishment, that are suggestive of primitive religious punishments. There have been arguments that corporal punishment is suggested by multiple verses of the Bible, while Islam not only permits, but orders violence against children for purposes of discipline. Meanwhile, it is noteworthy that General Comment No. 13 of 2011 the Committee on the Rights of the Child includes in its list of harmful practices against children those linked with accusations of witchcraft, such as exorcism, an often torturous religious practice associated with the majority of the world religions[115].

Another correlation has been observed between the prevalence of religion-based reservations and "the style" of a treaty[116]. More specifically, unlike the ICCPR or the ICESCR, which contain provisions of a more general character, other treaties, such as the CEDAW, the CRC and the CAT, include more detailed provisions on a specific subject matter. One may say, in plain words, that such treaties further elaborate on the general provisions of the so-called "International Bill of Human Rights"[117]. To give an example, both the ICCPR and the ICESCR (in their almost

[112]D'Antonio, W.V., Newman, W.M. and Wright, S.A. (1982) "Religion and family life: How social scientists view the relationship," Journal for the Scientific Study of Religion, 21(3), pp. 218–225. Available at: <https://doi.org/10.2307/1385887>.
[113]Yelle, R.A. (2005) Law and Religion: Law, Religion, and Punishment, Encyclopedia.com. Available at: <https://www.encyclopedia.com/environment/encyclopedias-almanacs-transcripts-and-maps/law-and-religion-law-religion-and-punishment>.
[114]Warren, C.S. (no date) Islamic Criminal Law, Oxford Bibliographies. Available at: <https://www.oxfordbibliographies.com/view/document/obo-9780195390155/obo-9780195390155-0035.xml>.
[115]UN Committee on the Rights of the Child (CRC), General comment No. 13 (2011): The right of the child to freedom from all forms of violence, 18 April 2011, CRC/C/GC/13. Available at: <https://www.refworld.org/docid/4e6da4922.html>.
[116]Çalı and Montoya, p. 19.
[117]The UDHR, the ICCPR and the ICESCR.

identical Articles 3) contain provisions on the equal rights of men and women. Nevertheless, those provisions have barely received any religion-based reservation in contrast to the CEDAW, whose detailed provisions aim for the effective achievement of gender equality on the ground.

3.1.2.2. Case Study: Sharia-based Reservations to the CEDAW

The issue of Sharia-based reservations to the CEDAW has been specifically chosen for further study not only because the CEDAW has received both the highest number of religion-based and reservations in general, but also because its subject matter perfectly showcases the possibility of a clash between religious precepts and human rights, as well as the invocation of cultural relativism with a view to avoiding full compliance with international human rights obligations and commitments.

Sharia-based or Islamic reservations are terms used to describe the series of reservations to human rights treaties made by Islamic States. They constitute the most characteristic example of religion-based reservations. Their excessive number may indeed give the impression that religion-based reservations concern only member States of the Organization of Islamic Cooperation (OIC)[118]. Nevertheless, such an assumption is incorrect. In reality, religion-based reservations are formulated by States which represent a wide variety of religions and beliefs. The CEDAW, for instance, has received religion-based reservations from a series of non-Islamic States, including Canada, the Holy See, India, Israel, Kiribati, Malawi, Malta and Singapore.

The CEDAW has received both general and specific reservations. "General reservations" purport to exclude or to modify the legal effects of a treaty as a whole, while "specific reservations" refer to certain provisions of a treaty. Islamic general reservations have a very similar wording. Saudi Arabia's general reservation, to give an example, provides that "*in case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention*". The vague character of general reservations raises particular concerns on the ability to evaluate their compatibility with the object and purpose of the treaty, as it will be analyzed below.

In respect of specific reservations, the most affected provisions are –by far– Articles 2 and 16, the "usual suspects", as they have been called[119]. Apart from the distribution of specific reservations between core conventions, their distribution within a specific instrument may also reveal specific patterns and assist policy-making processes. Out of the twenty-one Islamic States that have entered reservations to the Convention, sixteen have submitted reservations to Article 16 and nine to Article 2[120]. Only six of those States explicitly refer to Sharia[121]. The rest either refer both to Sharia and to their domestic legislation, such as Kuwait and Tunisia, or refer exclusively to their domestic legislation, such as Pakistan, which refers to its Constitution. The reservation of Algeria referring exclusively to its Algerian Family Code is a characteristic

[118]Çalı and Montoya, p. 6.
[119]Keller, L.M. (2014) "The Impact of States Parties' Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women," Michigan State Law Review , 2014, pp. 312–315. Available at: <https://ssrn.com/abstract=2505454>.
[120]Sawad, A.A. (2008) Reservations to Human Rights Treaties and the Diversity Paradigm: Examining Islamic Reservations. dissertation. University of Otago.
[121]These States are: Bahrain, Bangladesh, Egypt, Iraq, Libya and Saudi Arabia. The Constitutions of all these States recognize Islam as their State religion.

example of an "indirect" reference to religion through the invocation of domestic law, as Article 222 of the Code provides that "*in the absence of a provision in this Code, reference shall be made to the provisions of Sharia*" and Article 2 of the Algerian Constitution recognizes Islam as the official religion of the Sate[122]. Last but not least, there are Islamic States that have entered reservations without providing any reason or basis, including Jordan and Yemen. Nevertheless, both States recognize Islam as their State religion and Sharia as a source of law[123].

The most affected Articles of the CEDAW by Islamic reservations, as mentioned above, concern provisions relating to rights associated with equality between men and women in general (Article 2) and marriage and family (Article 16). The CEDAW Committee has explicitly expressed its concerns for the excessive number of reservations to those Articles in its General Recommendations No. 28[124] and 29[125].

Under Article 2 of the CEDAW, "*States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women*". The sub-paragraphs of Article 2 list specific measures to be undertaken with a view to achieving the greater scope of the Article. Among them, sub-paragraph (f), under which States Parties undertake "*to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women*" is the most reserved. This observation is an indicator of the lack of real intention of certain States parties to human rights treaties to introduce the necessary measures that will indeed transpose the essence of the treaty into their domestic legal orders.

According to Niger's reservations, the Government of the Republic declares that "*the provisions of article 2, paragraphs (d) and (f) […] cannot be applied immediately, as they are contrary to existing customs and practices which, by their nature, can be modified only with the passage of time and the evolution of society and cannot, therefore, be abolished by an act of authority*". Thus, reservations to Article 2 and its subparagraphs seem to reflect a deeply-rooted chasm in respect to the conceptualization of "gender equality" between the Convention and Islamic law. Readings of gender equality from an Islamic perspective can be found in Islamic States' Periodic Reports: according to Libya, the Islamic faith "*defines relationships, establishes rights, duties and the methods of interaction between […] male and female in ever sphere of life*"[126], while for Morocco Islam distinguishes between men and women "*when it is dictated by considerations relating to the nature of each of the sexes, their responsibilities in life and what is most suited to*

[122]Sawad, p. 219.
[123]Article 2 of the Constitution of The Hashemite Kingdom of Jordan provides that "*Islam is the religion of the State and Arabic is its official language*" and Article 106 that "*the Sharia Courts shall in the exercise of their jurisdiction apply the provisions of the Sharia law*". Article 2 of the Constitution of Yemen reads that "*Islam is the religion of the State, and Arabic is its official language*" while Article 3 that "*Islamic Sharia is the source of all legislation*".
[124]General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GC/28, 16 December 2010. Available at: <https://digitallibrary.un.org/record/711350>.
[125]General Recommendation No. 29 on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women, Economic consequences of marriage, family relations and their dissolution, CEDAW/C/GC/29, 26 February 2013. Available at: <https://digitallibrary.un.org/record/764504>.
[126]Second Periodic Report of States Parties – Libyan Arab Jamahiriya, 15 March 1999, United Nations Document CEDAW/C/LBY/2, para.2.

them, as well as concern for the general interest and the good of the family and women"[127]. Do not, nevertheless, such readings approach the notion of discrimination against women, as defined in Article 1 of the Convention[128]?

Article 16 provides that "*State Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations*" and further lists particular areas on which equality between men and women needs to be ensured, including the right to enter into marriage, the rights during marriage and its dissolution, the rights and responsibilities as parents, etc. The majority of Islamic States that have expressed reservations to Article 16 have not specified neither the aspects of the Article 16 or the specific interpretation of Sharia that contradict with each other. Egypt's reservation is an exception:

"Reservation to the text of article 16 concerning the equality of men and women in all matters relating to marriage and family relations during the marriage and upon its dissolution, without prejudice to the Islamic Sharia's provisions whereby women are accorded rights equivalent to those of their spouses so as to ensure a just balance between them. This is out of respect for the sacrosanct nature of the firm religious beliefs which govern marital relations in Egypt and which may not be called in question and in view of the fact that one of the most important bases of these relations is an equivalency of rights and duties so as to ensure complementary which guarantees true equality between the spouses. The provisions of the Sharia lay down that the husband shall pay bridal money to the wife and maintain her fully and shall also make a payment to her upon divorce, whereas the wife retains full rights over her property and is not obliged to spend anything on her keep. The Sharia therefore restricts the wife's rights to divorce by making it contingent on a judge's ruling, whereas no such restriction is laid down in the case of the husband".

All in more, Egypt, in its 2008 Periodic Report highlighted that it does not wish to consider withdrawing its reservation to Article 16 "*as doing so would diminish the rights of women under Islamic law and Egyptian law, which provide rights for women and relieve women of responsibilities which men alone are required to bear*"[129], verifying that indeed the notion of women's rights under Islamic law are non-identical with the one under the Convention.

Having all the aforementioned in mind, it is easier to espy the dead-end that the debate between universalism and cultural relativism may lead to. While IHRL, including the CEDAW, invites States parties to eliminate all those practices that violate women's rights, including polygamy, marital rape, genital mutilation, etc., cultural relativists insist that such calls for change represent exclusively Western concerns in a way that dismissing the prevailing cultural and religious norms of another cultures is, at least, slighting. And, in fact, it is. Respecting the culture and religion of societies far from ours should always be the case when aiming at the implementation

[127]Initial Report of States Parties – Morocco, 3 November 1994, United Nations Document CEDAW/C/MOR/1, Part.I, paragraph 5.

[128]According to Article 1 of the CEDAW, term "discrimination against women" shall mean "*any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field*".

[129]UN Committee on the Elimination of Discrimination Against Women (CEDAW), Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Combined 6th and 7th periodic reports of States parties: Egypt, 5 September 2008, CEDAW/C/EGY/7. Available at: <https://www.refworld.org/docid/4a1fce532.html>.

of IHRL in a diverse global community. Farida Shaheed, former UN Special in the Field of Cultural Rights, has observed:

"*Cultural diversity does not mean cultural relativism, however. While every cultural tradition contributes to building human rights concepts, every cultural community also contains within it a number of manifestations and practices that not in accord with human dignity and human rights norms and standards. I should also say that it is impossible to separate traditional values from traditional practices, since the former are often used to justify and always underlie the latter. Harmful practices and customs that contravene or undermine human rights and dignity, regardless of provenance and sources of justification, must be vigorously challenged and overturned. Processes of negotiation are required to institute change within communities in which every community member must be a full and equal participant*"[130].

3.2. The Permissibility of Religion-based Reservations to Human Rights Treaties

The following sub-part firstly addresses the issue of reservations to human rights treaties in general, a controversial issue insofar as it had left many unanswered questions for over fifty years, until 2011. In the course of these years, States, international human rights courts, treaty monitoring bodies and the academic community was divided over the alleged incompatibility of the traditional teachings of the law of treaties to respond to the rapid emergence of multilateral treaties in the human rights field, whose influence towards the entire process of humanization of international law had unveiled a special character. Shedding light to the progression from the Advisory Opinion of 28 May 1951 on Reservations to the CPPCG of the International Court of Justice (ICJ) to the adoption of the VCLT on 23 May 1969, and from the wobbly case-law of regional human rights courts to the contentious General Comment No. 24(52) of the HRCttee, an effort to give prominence to the main points of the discussion is attempted.

On 11 August 2011, the International Law Commission (ILC) adopted –finally– its "Guide to Practice on Reservations to Treaties", almost twenty years after its decision to include the topic of the law and practice in relation to reservations to treaties to its Agenda and the appointment of its Special Rapporteur on the topic, Professor Alain Pellet[131]. The Guide is a 630-page non-binding instrument, a mixture of pre-existing legally binding rules ("hard law") and recommendations ("soft law")[132], whose mission is to preserve all the substantial achievements of international law with respect to reservations[133], but also to bring them in line with the subsequent case law and practice. In this way, the Guide fills the gaps of the existing regime and eliminates the ambiguities that have been emerged throughout the years[134]. The Introduction to

[130]Shaheed, F. (2011) "Cultures, Traditions and Violence Against Women: Human Rights Challenges." Geneva.
[131]Pellet, A. (2014) The ILC Guide to practice on reservations to treaties: Some general remarks, Blog of the European Journal of International Law. Available at: <https://www.ejiltalk.org/the-ilc-guide-to-practice-on-reservations-to-treaties-some-general-remarks/>.
[132]According to A. Pellet, "*the guidelines have very different legal values, from pure recommendations to fully binding rules –not because they appear in the Guide, but because they have acquired (independently of the Conventions and, a fortiori, of the Guide)the status of the customary rules*". (Pellet, A. (2013) "The ILC Guide to practice on reservations to treaties: A general presentation by the Special Rapporteur," The European Journal of International Law, 24(4), pp. 1073. Available at: <https://doi.org/10.1093/ejil/cht067>.
[133]Including the Vienna Convention on the Law of Treaties (VCLT), the Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations (VCLTIO), and the Vienna Convention on Succession of States in Respect of Treaties.
[134]Pellet, A. (2013) "The ILC Guide to practice on reservations to treaties: A general presentation by the Special Rapporteur," The European Journal of International Law, 24(4), pp. 1066, 1072. Available at: <https://doi.org/10.1093/ejil/cht067>.

the Guide clarifies that the Guide itself is not but "a toolbox" containing guidelines accompanied by commentaries, in which interested practitioners may find answers to the practical questions raised by reservations.

Having said that, emphasis will be given to the application of the configured regime to religion-based reservations and, more specifically, to the way that States and the competent bodies have attempted to deal with the issue on the table.

3.2.1. The Issues Arising From Reservations to Human Rights Treaties

3.2.1.1. The Special Character of Human Rights Treaties

It has been argued that, back in the 1960s, the VCLT gave little substantive acknowledgment to the phenomenon of the rapid development of multilateral treaties in the human rights field[135]. The fundamental question that emerged from this point on was whether human rights treaties are sufficiently dissimilar from traditional treaties, a question not easily addressed, especially if seen in the light of the general controversy between supporters of the interests of the international community, including the protection of human rights and fundamental freedoms, and those of State sovereignty. Indeed, the complexity of the issue of reservations to human rights treaties stems exactly from its own nature as a matter that reflects fundamentally antithetical tendencies and, most notably the one between State sovereignty vis-à-vis the vision of a world public order. The debate, apart from the persistence to detect the peculiarities of human rights treaties, was mainly centred on the necessity vel non of a special regime –beyond the VCLT– to govern reservations to such treaties. But are human rights treaties indeed distinctive?

Human rights treaties have admittedly some distinctive features. It is noteworthy, first and foremost, that all fundamental human rights treaties have been negotiated in the framework of international organizations, either universal, such as the UN, or regional, such as the Council of Europe (CoE), the Organization of African Unity (OAU) and the Organization of American States (OAS). The origin of such multilateral treaties, which aspired to recognition by each and every State, reflects their ambition ab initio to foster certain universal values. In order to do so, most of them also establish a treaty supervisory body responsible for monitoring their implementation and ensure that everyone under States parties' jurisdiction can enjoy the rights set out in each instrument.

Certainly, the most characteristic –and mayhap revolutionary– features of human rights treaties is their non-reciprocal and objective nature[136], early pointed out, inter alia, by the ICJ[137] and the Inter-American Court of Human Rights (IACtHR)[138]. In its famous 1951 Advisory Opinion, the ICJ held:

"*In such a convention the contracting States do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the raison*

[135]Meron, T., 2006. The Humanization of International Law. Martinus Nijhoff Publishers, pp. 187-189.
[136]Korkelia, K., 2002. New Challenges to the Regime of Reservations under the International Covenant on Civil and Political Rights. European Journal of International Law, 13(2), pp. 439-442.
[137]*See* International Court of Justice. Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide. [online] Available at: <https://www.icj-cij.org/en/case/12>.
[138]*See* The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Arts. 74 and 75), Advisory Opinion No. OC-2/82 [1982] (Inter-American Court of Human Rights).

d'être of the convention. Consequently, in a convention of this type one cannot speak of individual advantages or disadvantages to States, or of the maintenance of a perfect contractual balance between rights and duties. The high ideals which inspired the Convention provide, by virtue of the common will of the parties, the foundation and measure of all its provisions"[139].

Ultimately, human rights treaties, unlike traditional multilateral treaties, are not concluded to accomplish the reciprocal exchange of rights for the mutual benefit of States parties, as their object and purpose is the promotion and protection of basic rights of individual human beings. They establish, in other words, an objective regime of human rights protection and the direct beneficiaries of such treaties are not States, but individuals. The HRCttee in its famous General Comment No. 24(52) ascertained that human rights treaties are not "*a web of inter-State exchanges of mutual obligations*", but they concern the "*endowment of individuals with rights*"[140].

Meanwhile, the HRCttee also pointed out that, since the principle of inter-State reciprocity has no place in that respect, States lack any legal interest to object to reservations[141]. The legal consequences of objections remain, therefore, unclear, as, apart from their utility as indication of the incompatibility of a reservation with the object and purpose of the treaty, it is inconceivable to admit that an objecting State is exempt from its obligations vis-à-vis individuals under its jurisdiction. The relevant provisions of the VCLT reflect, in other words, the operation of multilateral treaties between States in issues where States act in their own interest in respect of other States. Since the Convention is based on the principle of reciprocity, meaning that when a State restricts its obligations by entering a reservation, the other States parties are free to either accept or reject that reservation, and human rights treaties do not reflect such a contractual perspective, States cannot find value-neutral arguments to object to reservations. It is as simple as that: partial commitment of a State equals –as a general rule– partial enjoyment of human rights by its citizens.

Furthermore, the debate on the appropriateness of the general regime in respect of reservations embodied in the VCLT in the case of human rights treaties reflects the great deal of division on the balance between ensuring the universality and the integrity of such treaties. The very notion of reservations permits a treaty to become universal, namely to be ratified by the largest number of States possible. At the same time, the integrity of a treaty may be injured by reservations, since not all of its articles will be fully implemented after all.

Although a number of human rights treaties expressly deal with the issue of reservations, others remain silent. There are treaties that:

a) expressly prohibit reservations[142], such as the Optional Protocol to the CEDAW[143] and the Optional Protocol to the CAT[144],

[139]Reservations to the Genocide Convention, Advisory Opinion of 28 May 1951, I.C.J. Reports 1951, p. 23.
[140]UN Human Rights Committee (HRC), CCPR General Comment No. 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant, 4 November 1994, CCPR/C/21/Rev.1/Add.6, paragraph 17.
[141]Ibid.
[142]An absolute prohibition of reservations to a human rights treaty is usually justified by its object and purpose. A treaty explicitly aiming at, for example, to the abolition of death penalty, would become devoid of purpose if any State had formulated a reservations to it.
[143]Article 17 of the Optional Protocol.

b) contain relevant provisions, including the CEDAW[145] and the ICERD[146], or

c) remain silent on the matter, such as the ICCPR and the ICESCR.

The absence of a relevant provision within the body of the text of a treaty does not mean that reservations are prohibited or that any reservation is permitted. The VCLT provides that, even when a reservation is not prohibited by the treaty or when the treaty provides that only specified reservations may be made and the reservation in question is not excluded, States still cannot formulate a reservation that is incompatible with the object and purpose of the treaty[147].

The ILC, nevertheless, confirmed in its Guide to Practice the "unity" of the reservations regime. Although it had adopted in its 59th session a separate guideline entitled "Reservations to general human rights treaties", it included, in its final approach, human rights treaties in the category of "treaties containing numerous interdependent rights and obligations"[148]. Guideline 3.1.5.6 provides:

"*To assess the compatibility of a reservation with the object and purpose of a treaty containing numerous interdependent rights and obligations, account shall be taken of that interdependence as well as the importance that the provision to which the reservation relates has within the general tenour of the treaty, and the extent of the impact that the reservations has on the treaty*".

The adoption of such a general approach was driven by the conviction of the Special Rapporteur that the peculiarities of human rights treaties are not related to their object, but to their global character. According to Pellet, human rights treaties may indeed be non-reciprocal, but so are other treaties, such as environmental and peace agreements, and, after all, the ICJ, in 1951, was based on their special characteristics with a view to opposing to the rule of unanimity[149]. Such an a approach shall be seen as the golden mean and the compromise succeeded within the ILC in order to settle the heated atmosphere between those in a favour of a special regime for human rights and those insisting in preserving international law as a unified system of law[150]. The approach is indeed successful: the range of the treaties with elements of ordre public is widened, the concerns of those favouring human rights are on a great scale addressed on individual issues, as seen below, and, most importantly, opposed perspectives that once seemed uncompromising were reconciled at last.

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[144]Article 30 of the Optional Protocol.
[145]Article 28 of the Convention.
[146]Article 20 of the Convention.
[147]Article 19(3) of the VCLT.
[148]Ziemele, I. and Liede, L., 2013. Reservations to Human Rights Treaties: From Draft Guideline 3.1.12 to Guideline 3.1.5.6. European Journal of International Law, 24(4), p. 1147.
[149]Pellet, A. (2013) "The ILC Guide to practice on reservations to treaties: A general presentation by the Special Rapporteur," The European Journal of International Law, 24(4), pp. 1079. Available at: <https://doi.org/10.1093/ejil/cht067>.
[150]Milanovic, M. and Sicilianos, L.-A. (2013) "Reservations to Treaties: An Introduction," The European Journal of International Law, 24(4), p. 1057. Available at: <https://doi.org/https://doi.org/10.1093/ejil/cht074>.

3.2.1.2.The Object and Purpose Test as an Assessment Criterion for Reservations

The CPPCG did not contain any provision on reservations. The Convention had, though, gathered a notable number of reservations[151], mainly to its Article IX[152]. Therefore, in 1950, the Secretary-General of the UN, the depositary of the Convention, was confronted with some practical difficulties and addressed the GA for assistance[153]. The latter, by its Resolution 478(V) of November 16th, 1950 requested the ICJ to give an Advisory Opinion on the issue of reservations and, more specifically, as to the position of a State which attached reservations to its signature, when other States signatories of the same Convention objected to these reservations[154].

In its Opinion, the Court reaffirmed the paramountcy of State consent in treaty relations, which dictates that a State cannot be bound without its consent, but noted that, when it comes to the Genocide Convention, a variety of circumstances requires a more flexible application of the principle. After examining a series of factors, including international practice, as well as the character, purpose, provisions, mode of preparation and adoption of the Convention, the Court concluded and reservations to the Convention are permitted, but only in principle. That is because, according to the Court:

> "*[…] it is the compatibility of a reservation with the object and purpose of the Convention that must furnish the criterion for the attitude of a State in making the reservation on accession as well as for the appraisal by a State in objecting to the reservation. Such is the rule of conduct which must guide every State in the appraisal which it must make, individually and from its own standpoint, of the admissibility of any reservation*".

The Court introduced the "object and purpose" test as the decisive criterion for States not only when they formulate reservations, but also when they object to them. The permission of reservations, even when a treaty is silent on the matter, opens up the way for wider participation, as the very notion of reservations permits a treaty to become universal, namely to be ratified by the largest number of States possible. At the same time, through its newly-introduced test, the Court proclaimed a way to safeguard the integrity of a treaty by only permitting minor reservations that are compatible with the object and purpose of the treaty. In other words, the ICJ "*moved the law forward from a rigid system requiring unanimous acceptance of reservations by all treaty parties, to a more flexible one that would accommodate differences between states and facilitate as broad a membership of multilateral treaties as possible without sacrificing their object and purpose*"[155].

[151]Prevent Genocide International. n.d. Reservations and Declarations to the Genocide Convention. [online] Available at: <http://www.preventgenocide.org/law/convention/reservations/>.
[152]Article IX of the CPPCG provides that "*disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute*". The majority of the reserving States entered a reservation to Article IX, stating that no dispute relating to the interpretation, application or fulfilment of the Convention can be brought before the ICJ, without the prior agreement of the parties to the dispute.
[153]International Law Commission. n.d. Summaries of the Work of the International Law Commission: Reservations to Multilateral Conventions. [online] Available at: <https://legal.un.org/ilc/summaries/1_6.shtml#a2>.
[154]International Court of Justice. n.d. *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*. [online] Available at: <https://www.icj-cij.org/en/case/12>.
[155]Milanovic and Sicilianos, p. 1056.

The Advisory Opinion of the ICJ of May 28th, 1951 managed to finally strike the right balance between two antithetical views on the application of multilateral treaties, namely the traditional approach of its integral application and the modern approach of its universal application[156]. While the first view gives way to the application of a treaty in its entirety, even by a more limited number of States parties, the second prioritizes wider participation with the acceptance of reservations. However, the "object and purpose" test was criticized not only because its foundation either in law or in the intent of States parties seemed inadequate, but also because of its subjective character. The ILC itself initially insisted in the unanimity rule for over a decade, until the appointment of Sir Humphrey Waldock as its Special Rapporteur on the Law of the Treaties in 1962. The work of the latter eventually led to the incorporation of the "object and purpose" test to the Articles of the VCLT of 1969[157].

According to the regime established by the VCLT of 1969, although States do have a right to formulate reservations, a reservation, according to the wording of Article 19 of the VCLT ("*a State may […] formulate a reservation unless…*"), does not produce its legal effects from the moment of its formulation. In other words, States do not have an absolute right to make reservations. Apart from a series of procedural conditions[158], Article 19 provides in its three subparagraphs three substantive conditions in order for a reservation to produce its effects. To sum up, in order for a reservation to be valid two kinds of conditions need to be met:

a) formal conditions, namely conditions of form and timeliness, and

b) conditions of substantive validity, namely of the permissibility of reservations[159].

According to Articles 19 of the 1969 and the 1986 Vienna Conventions, a State or an international organization may, when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, formulate a reservation unless:

a) the reservation is prohibited by the treaty,

b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made, or

c) in cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

The notion of the "object and purpose of the treaty" occupies a particular place in the text of the Vienna Convention as it is explicitly mentioned in eight of its provisions[160], two of which refers

[156]Crnić-Grotić, V., 1997. Object and Purpose of Treaties in the Vienna Convention on the Law of Treaties. Asian Yearbook of International Law, 7, pp. 144-147.
[157]Pellet, A. (2013) "The ILC Guide to practice on reservations to treaties: A general presentation by the Special Rapporteur," The European Journal of International Law, 24(4), pp. 1064–1065. Available at: <https://doi.org/10.1093/ejil/cht067>.
[158]See Article 20, paragraphs 3–5, Article 21, paragraph 1, and Article 23 of the Vienna Conventions and Guidelines 2.1–2.2.4.
[159]Commentary of Guideline 3.1 (Permissible reservations), Guide to Practice on Reservations to Treaties with commentaries, pp. 199-201. Available at: <https://legal.un.org/ilc/texts/1_8.shtml>.
[160]More specifically, 1) Article 18, 2) Article 19, subparagraph (c), 3) Article 20, paragraph 2, 4) Article 31, paragraph 1, 5) Article 33, paragraph 4, 6) Article 41, paragraph 1(b)(ii), 7) Article 58, paragraph 1(b)(ii), and 8) Article 60, paragraph 3 (b).

to reservations (Article 19, subparagraph (c)[161], and Article 20, paragraph 2[162]). Nevertheless, the content of the notion has not been further clarified neither in the text of the Convention, nor in the Conference that resulted in its adoption.

Therefore, one cannot help wondering what exactly is the content of the "object and purpose" test and, especially, with respect to human rights treaties. The HRCttee, in its General Comment No. 24(52) analyzed at length the application of the test in its effort to impose very strict limits to the power of States when making reservations[163]. Such an animus becomes evident in the analysis of the application of the compatibility with the test to different categories of reservations to the ICCPR or to its first Optional Protocol. In paragraphs 8-15 of the General Comment, the Committee lists a series of categories of reservations that cannot (see a, c, d. e below) or can hardly and only with a persuasive justification (see b below) be considered compatible with the object and purpose of the treaty. These categories are:

a) reservations that offend peremptory norms,

b) reservations to non-derogable provisions of the ICCPR[164],

c) reservations designed to remove important supportive guarantees of the Covenant[165],

d) reservations that render ineffective all Covenant rights which would require any change in national law to ensure compliance with Covenant obligations[166], and

e) reservations relating to the required procedures under the first Optional Protocol[167].

A number of States, including France, the United Kingdom (U.K.) and the U.S. criticized the non-rebuttable presumptions of incompatibility introduced by the HRCttee in the observations submitted by their governments following the adoption of the General Comment[168]. The government of the U.K. strongly opposed to the idea that Articles of the Covenant that represent customary international law may not be subject to reservations, since States neither seem to generally object to reservations on this ground nor they have expressed any endorsement to such a proposition. Since there is a clear distinction between States' will not to undertake a treaty

[161]According to which "*[a State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:…] (c) in cases not failing under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty*".
[162]According to which "*when it appears from the limited number of the negotiating States and the object and purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties*".
[163]UN Human Rights Committee (HRC), CCPR General Comment No. 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant, 4 November 1994, CCPR/C/21/Rev.1/Add.6, available at: <https://www.refworld.org/docid/453883fc11.html>.
[164]Paragraphs 8-9 of General Comment No. 24(52).
[165]Paragraph 10 of General Comment No. 24(52).
[166]Paragraph 11 of General Comment No. 24(52).
[167]Paragraph 11 of General Comment No. 24(52).
[168]*Observations by the Governments of the United States and the United Kingdom on Human Rights Committee General Comment No. 24 (52) relating to reservations*. Available at: <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiwgMyk9YT1AhWJRPEDHYlTCr4QFnoECAMQAQ&url=http%3A%2F%2Fwww.iilj.org%2Fwp-content%2Fuploads%2F2016%2F08%2FUS-and-UK-Responses-to-the-General-Comment.pdf&usg=AOvVaw1q_1_cedGCs1Vc_54Vj4mO>.

obligation and a possible effort on their behalf to eschew customary international law, reservations to Articles that guarantee customary international law may be permitted to the extent that the basic purpose of a relevant right is not overridden. In the same spirit, the government of the U.S.A. recognized that States cannot exempt themselves from norms of international law, but that does not mean that a sovereign State cannot also determine its obligations under the law of the treaties. Especially when it comes to customary international law, the HRCttee seems to arbitrarily claim that a number of propositions are part of customary international overriding its authority. The French government pointed out the notion of international custom and criticized the omission of the HRCttee to identify practices in the human rights area that fit the very definition of international customary law[169]. At the same time, the U.K. opposed to the presumption concerning reservations that exclude the acceptance of obligations that require changes in national law to ensure compliance with them, since, even while entering such reservations, the HRCttee itself can supervise the protection and promotion of those Covenant rights guaranteed by national provisions. The government of the U.S. highlighted that in some countries existing domestic (even constitutional) law already guarantees substantive rights reflected in the ICCPR as well as appropriate enforcement mechanisms and, according to Article 40 of the Covenant, the appropriate means of implementation of the undertaken obligations is left to the internal law and processes of each State party.

The ILC in its Guide to Practice on Reservations to Treaties dedicates eight guidelines to the issue of the compatibility of a reservation with the object and purpose of the treaty. The contribution of the Commission offered answers to questions raised by the silence of the VLCT, but also by the bold practice of human rights treaty bodies, especially of the HRCttee. More specifically, guideline 3.1.5 attempts to clarify the meaning of the object and purpose of the treaty[170], while guideline 3.1.5.1 suggests the method for its determination[171]. Guidelines 3.1.5.2 to 3.1.5.7 lists a series of examples of reservations that their compatibility with the test may could be fraught with difficulty. Such reservations are vague or general reservations (Guideline 3.1.5.2), reservations to a provision reflecting a customary rule (Guideline 3.1.5.3), reservations to provisions concerning rights from which no derogation is permissible under any circumstances (Guideline 3.1.5.4), reservations relating to internal law (Guideline 3.1.5.5), reservations to treaties containing numerous interdependent rights and obligations (Guideline 3.1.5.6), and reservations to treaty provisions concerning dispute settlement or the monitoring of the implementation of the treaty (Guideline 3.1.5.2). The influence of General Comment No. 24(52) to the discussions that led to the Guide to Practice is evident.

[169]Bayefsky.com. 2021. *General Comments - Government Responses - CCPR - France*. [online] Available at: <http://www.bayefsky.com/html/france_ccpr_gencom_resp.php>.

[170]According to Guideline 3.1.5 (Incompatibility of a reservation with the object and purpose of the treaty), "*a reservation is incompatible with the object and purpose of the treaty if it affects an essential element of the treaty that is necessary to its general tenour, in such a way that the reservation impairs the raison d'être of the treaty*".

[171]Guideline 3.1.5.1 (Determination of the object and purpose of the treaty) provides: "*The object and purpose of the treaty is to be determined in good faith, taking account of the terms of the treaty in their context, in particular the title and the preamble of the treaty. Recourse may also be had to the preparatory work of the treaty and the circumstances of its conclusion and, where appropriate, the subsequent practice of the parties*".

Guidelines 3.1.5.2 and 3.1.5.5 are quite relevant to the issue of religion-based reservations. They provide:

"***3.1.5.2 Vague or general reservations***

A reservation shall be worded in such a way as to allow its meaning to be understood, in order to assess in particular its compatibility with the object and purpose of the treaty.

3.1.5.5 Reservations relating to internal law

A reservation by which a State or an international organization purports to exclude or to modify the legal effect of certain provisions of a treaty or of the treaty as a whole in order to preserve the integrity of specific rules of the internal law of that State or of specific rules of that organization in force at the time of the formulation of the reservation may be formulated only insofar as it does not affect an essential element of the treaty nor its general tenour".

The Commentary of Guideline 2.1.5.2 specifically addresses religion-based reservations and, more specifically, Sharia-based reservations. According to the ILC, the problem with such reservations lies not in the fact that a State invokes a law of religious origin which it applies, but in their unlimited scope and undefined character. A reference either to religion or to religion-influenced domestic law without any specification of its content is unable to "*clearly define for the other States Parties to the Convention the extent to which the reserving State has accepted the obligations of the Convention*". Likewise, it is highlighted in the Commentary of Guideline 2.1.5.5 that "*a reservation is not invalid solely because it aims to preserve the integrity of specific rules of internal law",* but because the reserving State *"has not identified the provisions in question or specified whether they are to be found in its constitution or its civil or criminal code*". It becomes apparent that the main issue with religion-based reservations is not its religious character per se, but their vagueness that makes the assessment of their compatibility with the "object and purpose" test impossible.

3.2.1.3.The Competence to Assess the Permissibility of Reservations to Human Rights Treaties: An Exclusive Right of States Parties?

One may assume that, since consent is considered to be the governing principle of the applied regime on reservations, States parties to treaties, including human rights ones, have the exclusive and discretionary power to assess a reservation. Such a traditional approach, ostensibly provided by the VCLT, had been followed for a long period of time. On the face of it, such a suggestion neglects the special characteristics of human rights treaties and, most notably, the sophisticated monitoring systems that –as a general rule– such treaties establish themselves in order to oversee the implementation of their provisions. Such treaty bodies may be:

a) **judicial bodies**, such as the ECtHR (established by the ECHR), the IACtHR (established by the ACHR) and the African Court on Human and Peoples′ Rights (established by a Protocol to the African Charter on Human and Peoples' Rights),

b) **quasi-judicial bodies**, such as the ten UN human rights treaty bodies[172],

c) **supervisory bodies**, such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (established by European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment), or

d) **political bodies**, such as the ASEAN Intergovernmental Human Rights Commission[173].

The question that arises is whether a human rights treaty body, whose purpose is exactly the interpretation of a treaty and the monitoring of the compliance with its provisions by States parties, has the competence to assess a reservation to the treaty in question. Although it has been argued that such an alleged competence is incompatible with the regime of the VCLT, a strong counterargument has been that "*it is difficult to see a contradiction per se with the VCLT in anything that States may have agreed upon within the framework of another treaty, including a human rights treaty where they decide to create a special supervisory body*"[174]. After all, the extrapolation of such a competence of a treaty body depends on the provisions and the interpretation of the relevant treaty, namely on what the States parties have agreed, and not solely on an interpretation of the VCLT.

The issue came to the fore in 1994, when the HRCttee, in one of the most controversial parts of its General Comment No. 24(52), declared its own competence to determine "*whether a specific reservation is compatible with the object and purpose of the Covenant*"[175]. The proposition of the Committee received sharp criticism, although the examination of a more active role of a treaty monitoring body with respect to reservations was not something unprecedented. Almost twenty years earlier, in 1976, the Committee on the Elimination of Racial Discrimination referred to the Office of Legal Affairs of the UN seeking for expert advice on whether the Committee had an authority to decide on the compatibility of reservations entered to the ICERD[176]. The Office of Legal Affairs stated that the Committee was not a representative organ of States parties and even a unanimous decision by the Committee that a reservation is incompatible could not produce any legal effect. Only State parties had general competence with regard to reservations to the Convention. In another Legal Opinion, the Office denied likewise the competence of the CEDAW Committee to determine the compatibility of reservations with the object and purpose of the CEDAW, since the functions of the Committee do not appear to include a determination of

[172]These are: the Committee on the Elimination of Racial Discrimination, the Committee on Economic, Social and Cultural Rights, the Human Rights Committee, the Committee on the Elimination of Discrimination Against Women, the Committee against Torture, the Committee of the Rights of the Child, the Committee on Migrant Workers, the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee on the Rights of Persons with Disabilities and the Committee on Enforced Disappearances.
[173]International Justice Resource Center. 2022. Courts & Monitoring Bodies. [online] Available at: <https://ijrcenter.org/courts-monitoring-bodies/>.
[174]Ziemele, I. and Liede, L., 2013. Reservations to Human Rights Treaties: From Draft Guideline 3.1.12 to Guideline 3.1.5.6. European Journal of International Law, 24(4), pp.1138-1139, 1148-1149.
[175]Paragraph 18 of the General Comment.
[176]Korkelia, pp. 447-448.

the incompatibility of reservations, although reservations undoubtedly affect the application of the Convention[177].

In contrast to the categorical opinion of the Office of Legal Affairs, which was based on Article 20 of the VCLT, according to which only states seem to be competent to assess reservations, the HRCttee declared that it has the legal authority to determine which reservations are compatible with the object and purpose of the ICCPR. The Committee argued in this respect that the applicable provisions of the VCLT are inappropriate to address the problem of reservations to human rights treaties[178]. It invoked the effect of the non-reciprocal nature of the Covenant as a human rights treaty, as mentioned above, and subsequently stated that due to the inadequacy of the traditional rules on reservations, States themselves have rarely any legal interest in objecting to a reservation. More specifically, if a State does not comply with its treaty obligations, another State cannot invoke their non-compliance with a view to avoid its obligations.

On the other hand, determining the compatibility of a reservation with the object and purpose of the Covenant is a task that the Committee cannot avoid in the performance of its functions, especially during the examination of a State's compliance under article 40 of the Covenant or under its first Optional Protocol. Such an examination can only be held objectively by a treaty monitoring body taking into consideration the inappropriateness of such a task for States. Indeed, the HRCttee consists of experts who act in their personal capacity and are impartial in carrying out their functions[179]. Moreover, the dynamic nature of human rights may strengthen such a need for the emergence of an objective and constant "guardian" of the object and purpose of the treaty when States parties formulate reservations. It is evident that the content of human rights may change over time. The question that arises from such an expectation is what will happen if the interpretation of the Covenant over time may render an initially compatible reservation in conflict with the object and purpose of the treaty. It is clear that according to the regime of the VCLT, if a reserving state does not withdraw its reservation, other states cannot object to the reservation they previously contested.

One may notice that the HRCttee states in its General Comment No. 24 that it falls to its competence to "determine" the compatibility of reservations, not to "consider" or to "decide upon". Although the Committee did not explicitly refer to an exclusive competence, its position overturned what was then considered to be engraved in stone. Nevertheless, it should not be neglected that such bodies, including the Committee, lack the power to make binding decisions. Indeed, both the intention of the drafters of the Covenant and the provisions of the Covenant and its Optional Protocols do not mean to suggest that the Committee has the power to make legally binding decisions.

As the HRCttee failed to claim competence on a legal basis, its emphasis was given on featuring a functional necessity deriving from its role as a treaty monitoring body. A possible legal basis for its authority to assess reservations may be Article 20(3) of the VCLT[180], according to which

[177]Ibid.
[178]See 11, paragraph 17.
[179]Ohchr.org. n.d. Human Rights Committee. [online] Available at: <https://www.ohchr.org/en/hrbodies/ccpr/pages/ccprindex.aspx>.
[180]Baylis, E., 1999. General Comment 24: Confronting the Problem of Reservations to Human Rights Treaties. *Berkeley Journal of International Law*, 17(2), pp. 298-299.

"*when a treaty is a constituent instrument of an international organization and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organization*". However, since neither the HRCttee is an independent international organization nor the ICCPR can be considered "the charter" of such an entity, only an extremely broad reading of Article 20(3) would grant the Committee the relevant authority. Another, certainly more convincing proposal suggests that the functional necessity for a human rights treaty body to assess reservations, if seen under Article 31, paragraph 3(b) of the VLCT, according to which any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation must be taken into account when interpreting the treaty, may legitimize the broader interpretation of the Committee[181]. Nevertheless, the question remains whether such a broad interpretation can attribute an additional power to the Committee, since the express consent of States parties is missing. The government of the United Kingdom, in its observations, pointed up that any new competence could only be created by amending the Covenant[182]. Furthermore, the Committee, according to the French government, owes its existence exclusively to the Covenant and has no powers other than those conferred on it by its States parties, which remain the only ones competent to decide whether a reservation is compatible or not with the object and purpose of the treaty[183].

It would be impossible for the ILC not to address the issue given the commotion that the HRCttee had fired. In Guideline 3.2 ("Assessment of permissibility"), the Commission provides that the permissibility of reservations to a treaty formulated by a State or an international organization may be assessed, within their respective competences, not only by the contracting States or organizations, but also by dispute settlement and treaty monitoring bodies. The following three Guidelines (Guidelines 3.2.1 to 3.2.3) are dedicated to the competence of the treaty monitoring bodies and follow as they stand:

"***3.2.1 Competence of the treaty monitoring bodies to assess the permissibility of reservations***

1. A treaty monitoring body may, for the purpose of discharging the functions entrusted to it, assess the permissibility of reservations formulated by a State or an international organization.

2. The assessment made by such a body in the exercise of this competence has no greater legal effect than that of the act which contains it.

3.2.2 Specifcation of the competence of treaty monitoring bodies to assess the permissibility of reservations

When providing bodies with the competence to monitor the application of treaties, States or international organizations should specify, where appropriate, the nature and the limits of the competence of such bodies to assess the permissibility of reservations.

[181]Ibid.
[182]Observations by the Governments of the United States and the United Kingdom on Human Rights Committee General Comment No. 24 (52) relating to reservations. Available at: <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiwgMyk9YT1AhWJRPEDHYlTCr4QFnoECAMQAQ&url=http%3A%2F%2Fwww.iilj.org%2Fwp-content%2Fuploads%2F2016%2F08%2FUS-and-UK-Responses-to-the-General-Comment.pdf&usg=AOvVaw1q_1_cedGCs1Vc_54Vj4mO>.
[183]Bayefsky.com. 2021. General Comments - Government Responses - CCPR - France. [online] Available at: <http://www.bayefsky.com/html/france_ccpr_gencom_resp.php>.

3.2.3 Consideration of the assessments of treaty monitoring bodies

States and international organizations that have formulated reservations to a treaty establishing a treaty monitoring body shall give consideration to that body's assessment of the permissibility of the reservations."

It is important to highlight that the ILC insists in the exercise by a treaty body of the competence to assess the permissibility of a reservation "*within its respective competences"*. According to the commentary that the Commission adopted in relation to draft guideline 3.2, when making such an assessment, human rights treaty monitoring bodies do not "*have neither more nor less authority than in any other area: the Human Rights Committee and the other international human rights treaty bodies which do not have decision-making power do not acquire it in the area of reservation; the regional courts which have the authority to issue binding decisions do have that power, but within certain limits*".

To conclude, it seems that the HRCttee awarded to itself what is known in the theory of international adjudication as an "inherent power", namely the power to determine an incidental legal issue which arise as a direct consequence of the procedures of which the body is seized by reason of the matter falling under its primary competences[184]. It goes without saying that States do expect a certain level of legal certainty when they have to comply with their obligations under international law. Nevertheless, inherent powers do have some convincing functional justification: the source of the inherent powers of international bodies is the need to ensure the fulfilment of their functions. It seems that the ILC has managed to find a golden mean based on the functional necessity of treaty bodies to pronounce on the permissibility or impermissibility of a reservation. Such a competence of a treaty body should be seen as part of the exercise of its functions, nothing more and nothing less[185].

3.2.1.4.The Consequences of Impermissible Reservations

One of the most complex issues in the theory of reservations to human rights treaties concerns the consequences of impermissible reservations. The VCLT has established the rules both on the acceptance and objections to reservations[186] and on the legal effects of reservations and of objections to reservations[187]. Nevertheless, there has been confusion over the relationship of Articles 20 et seq. and Article 19 of the Convention[188]. What is the difference between impermissible and invalid reservations? Is a reservation incompatible with the object and purpose of the treaty, according to Article 19(c) of the Convention, void ab initio or the absence of any objection by other ratifying States may cure its impermissibility? Since the 1951 Advisory Opinion of the ICJ, which overturned the unanimity rule, according to which a reserving State cannot be regarded as being a party to a treaty if any other ratifying State has objected to its reservation, three doctrines have been developed with a view to correct the existing misunderstandings: a) the permissibility, b) the opposability, and c) the severability approach[189].

[184]Decision on Appeal of Pre-Trial Chamber Judge's Order Regarding Jurisdiction and Standing, CH/AC/2010/02, Special Tribunal for Lebanon, 10 November 2010, paragraph 45.
[185]Ziemele and Liede, pp.1138-1139, 1148-1149.
[186]Article 20 of the VCLT.
[187]Article 21 of the VCLT.
[188]Korkelia, pp. 452-453.
[189]McCall-Smith, K.L. (2014) "Severing Reservations," International and Comparative Law Quarterly, 63(3), pp. 599–634. Available at: <https://doi.org/10.1017/s0020589314000281>.

According to the permissibility doctrine, reservations that are incompatible with the object and purpose of the treaty cannot be accepted by other States. Thus, the acceptance or objection of a reservation by other ratifying States is indifferent. Permissibility should be considered as a preliminary issue and other States are able to accept or object to a reservation only if that reservation passes the test of Article 19 of the VCLT. One the other hand, the opposability doctrine provides that the validity of a reservation depends on whether a reservation is or is not accepted by another State. For this reason, Article 19(c) of the VCLT cannot be considered but only a guiding tool for the other States. If a reservation is objected, the reserving State cannot be considered a party to the treaty[190]. Of course, taken into consideration the peculiarities of human rights treaties and especially the fact that it has been observed that States rarely have any legal interest in objecting to reservations, it becomes clear that the opposability doctrine is incapable of responding to the need for a more flexible approach for such treaties. Indeed, as long as States parties are unable to invoke the principle of reciprocity, which does not correspond to human rights treaties, objecting to a reservation can only be seen as a non-friendly gesture and, therefore, is considered to be superfluous. Those States who formulate objections are usually the ones that are immensely sensitive to the promotion of human rights. Thus, it is unlikely to expect that such States intend, when formulating objections or even when they accept a reservation, to be discharged from their own conventional human rights obligations.

An expansion of the permissibility approach, namely the severability approach has been remarkably popular in the practice of human rights courts and treaty bodies. What was actually controversial back in 1994, when the HRCttee adopted its General Comment No. 24(52), was not only the recognition of its competence to assess the impermissibility of reservations, but actually the recognition of its competence to sever a reservation that is incompatible with the object and purpose of the ICCPR. The Committee clearly stated that fate of such a reservation is that it will be "*severable, in the sense that the Covenant will be operative for the reserving party without benefit of the reservation*"[191]. In plain words, if the HRCttee finds that a reservation has failed the object and purpose test, the reserving State still remains a party to the Covenant without benefiting from its formulated reservation.

The severability approach was also suggested by the case-law of the ECtHR, which did not hesitate to severe reservations that it found to be incompatible with the ECHR. Two characteristic examples are the Belilos v. Switzerland[192] and the Loizidou v. Turkey[193] cases. In the first one, the Court for the first time declared that a reservation to the Convention is invalid and held that "*it is beyond doubt that Switzerland is, and regards itself as, bound by the Convention irrespective*"[194]. The Loizidou case was different: Turkey had introduced declarations restricting ECtHR's jurisdiction to events taking place in the territory of northern Cyprus and it was clear by a series of statements that its reservation is fundamental for its consent to be bound by the Convention. Nevertheless, the ECtHR based itself in the "*the special character of the European Convention as an instrument of European public order for the protection of the individual human beings*"[195] (verifying a special character of human rights

[190]Ibid.
[191]Paragraph 18 of General Comment No. 24(52).
[192]Case of Belilos v. Switzerland [1988] (European Court of Human Rights).
[193]Case of Loizidou v. Turkey [1996] (European Court of Human Rights).
[194]See 195, paragraph 60.
[195]See 196, paragraph 93.

treaties) and, thus, ruled that Turkey should have expected, when formulating its declarations, that it ran the risk that they would be declared invalid by the institutions of the Convention[196]. The Court's reasoning seems to be in line with the approach of the HRCttee. However, the latter, unlike the ECtHR, is not a judicial body ruling in a legally binding way. Thus, in the case of the core international human rights treaties the situation is peculiar.

One of the most remarkable achievements of the ILC concerns the consequences of invalid reservations. First of all, the Commission clarified the difference between the validity and permissibility of reservations: invalid reservations include both those which do not meet the formal and procedural requirements and those deemed impermissible. Guideline 3.3.3 of the Guide to Practice on Reservations to Treaties clarifies that the assessment based on the permissibility criteria of Article 19 of the VCLT does not depend on the will expressed by other States parties through acceptance or objections, since their will can already be found in the treaty itself. Thus, Article 19 of the VCLT lays down objective criteria for the validity of reservations. Most importantly, it is clarified, in Guideline 4.5.1, that invalid reservations, including those incompatible with the object and purpose of the treaty, do not produce any legal effect, and, in Guideline 4.5.3, that there is a presumption according to which, if the author of an invalid reservation has not expressed a contrary intention, it will be considered a State party to the treaty without the benefit of the reservation. It becomes apparent that the conclusions of the ILC are a panegyric acknowledgement of the contribution of practice by human rights monitoring bodies, including the ECtHR and the HRCttee, and of IHRL in general to the progressive development of international law.

3.2.2. Reactions to Religion-Based Reservations

3.2.2.1. The United Nations Human Rights Mechanisms

The UN has developed a sophisticated system of human rights monitoring mechanisms consisted of treaty-based bodies, on the one hand, and charter-based bodies, on the other[197]. The treaty-based bodies are the existing human rights treaty bodies, whose mission is to monitor the implementation of the core international human rights treaties[198]. They are called "treaty-based" since their very existence is due to provisions of a specific legal instrument, a treaty, which also determines their competences[199]. The charter-based ones, whose establishment has been based on provisions of the Charter of the UN, include a) the Human Rights Council, b) Special Procedures, c) the Universal Periodic Review (UPR), and d) Independent Investigations[200].

[196]Ibid, paragraph 95.
[197]Instruments & Mechanisms (no date) Office of the United Nations High Commissioner for Human Rights. Available at: <https://www.ohchr.org/en/instruments-and-mechanisms>.
[198]These ten bodies are: the Committee on the Elimination of Racial Discrimination, the Committee on Economic, Social and Cultural Rights, the Human Rights Committee, the Committee on the Elimination of Discrimination against Women, the Committee Against Torture, the Committee on the Rights of the Child, the Committee on Migrant Workers, the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee on the Rights of Persons with Disabilities, and the Committee on Enforced Disappearances.
[199]Treaty-based Bodies (no date) UN Human Rights Documentation. United Nations. Available at: <https://research.un.org/en/docs/humanrights/treaties>.
[200]Charter-based Bodies (no date) UN Human Rights Documentation. United Nations. Available at: <https://research.un.org/en/docs/humanrights/charter>.

Among those mechanisms, the Treaty Bodies and the UPR have made genuine efforts to deal with the issue of reservations.

The treaty bodies have made every possible effort within their competences to address the issue of reservations to the instruments that have set them up and afford them with their competences in the first place. Such bodies are composed of independent experts of recognized competence in the field of human rights and they perform a series of functions with a view to carrying out the duties conferred on them. With some exceptions, the Committees may:

a) receive and consider reports, submitted periodically by State parties,
b) issue guidelines to assist States with the preparation of their reports,
c) draft general comments/recommendations interpreting treaty provisions,
d) consider complaints or communications from individuals alleging that their rights have been violated by a State party, and
e) consider inter-State complaints[201].

The CEDAW Committee, the CRC Committee[202], the Human Rights Committee and the Committee against Torture[203] have issued General Comments and Recommendations on the topic of reservations. A General Comment or a General Recommendation is defined as "*a treaty body's interpretation of human rights treaty provisions, thematic issues or its methods of work*" that "*seek to clarify the reporting duties of State parties with respect to certain provisions and suggest approaches to implementing treaty provisions*"[204]. Most notably, the CEDAW Committee has addressed the issue of reservations in this way on several occasions. In 1987, for the first time, the Committee issued General Recommendation No. 4 (titled "Reservations") in which it officially expressed its concerns in relation to the significant number of reservations that "*appeared to be*" incompatible with the object and purpose of the CEDAW and called States parties to reconsider them with a view to ultimately withdrawing them[205]. In its General Consideration No. 20 (titled "Reservations to the Convention"), adopted in 1992, the Committee recommended that State parties should reconsider their reservations with the purpose of strengthening the implementation not only of CEDAW, but of all human rights treaties in general[206]. The issue was also raised in General Recommendations concerning specific Articles of the Convention. In its General Recommendation No. 28 "on the core obligations of States parties under article 2" of the Convention, adopted in 2010, the Committee declared that, as long as Article 2 is the very essence of the obligations of States under the CEDAW, any reservation to it is incompatible with the object and purpose of the treaty and, thus, impermissible. The Committee also addressed the fact that CEDAW, as an implementing treaty, contains specific

[201]What the Treaty Bodies Do (no date) Office of the United Nations High Commissioner for Human Rights. Available at: <https://www.ohchr.org/en/treaty-bodies/what-treaty-bodies-do>.
[202]Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/General Comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices and General Comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child of the CRC Committee.
[203]For example, General comment No. 3 (2012) on the implementation of Article 14 of the CAT by States parties.
[204]Ask.un.org. What are General Comments of the Human Rights Treaty Bodies?. Available at: <https://ask.un.org/faq/135547>.
[205]UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendations Nos. 2, 3 and 4, adopted at the Sixth Session, 1987 (contained in Document A/42/38).
[206]UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendations Nos. 19 and 20, adopted at the Eleventh Session, 1992 (contained in Document A/47/38).

obligations and, although a State may have entered reservations to some of its provisions, including Article 2, that does not mean that this party is not expected to comply with its other obligations under international law, including both its obligations under other human rights treaties and under customary international human rights law. In its General recommendation on article 16 of the Convention, the Committee noted that both Articles 2 and 16 are core provisions and, although some States have withdrawn their reservations to those Articles, their number and extent is alarming. It further stated that "*neither traditional, religious or cultural practice nor incompatible domestic laws and policies can justify violations of the Convention*" and reaffirms its position that "*reservations to article 16, whether lodged for national, traditional, religious or cultural reasons, are incompatible with the Convention and therefore impermissible and should be reviewed and modified or withdrawn*"[207]. Moreover, the Committee seized the opportunity to explicitly address the issue of religion-based reservations for the first time:

> "*With respect to reservations relating to religious laws and practices, the Committee recognizes that since 1998 a number of States parties have modified their laws to provide for equality in at least some aspects of family relations. It continues to recommend that States parties take into consideration the experiences of countries with similar religious backgrounds and legal systems that have successfully accommodated domestic legislation to commitments emanating from international legally binding instruments, with a view to withdrawing reservations"*[208].

Furthermore, the practice of treaty bodies to issue concluding observations at the end of a periodic review of a State Party's compliance with the treaty in question has given them the opportunity to comment on each State's religion-based reservations separately. Concluding reservations have been used by Treaty Bodies in order to:

a) invite States to clarify the scope of their reservations in case of vague reservations,

b) point out a wrong interpretation of a provision on behalf of the reserving State,

c) explain in substantive terms the non-necessity of a reservation,

d) recommend their reconsideration.

Likewise, the UPR is a State-driven mechanism of the HRC whose aim is the review of the human rights records of all member States of the UN[209]. Three review cycles of the UPR have been concluded until today. In each review cycle all member States are called to submit information in respect of the actions that they have taken with a view to fulfilling their obligations under IHRL. At the end of each cycle, States receive recommendations which cover a wide range of subject areas, including, as practice has shown, their reservations to human rights treaties. Most of these recommendations call the State under review to "withdraw" ("remove" or "lift") its reservations to a specific instruments. For example, Saudi Arabia received during the 3rd cycle the following recommendation by Estonia:

[207]UN Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (Economic consequences of marriage, family relations and their dissolution), 30 October 2013, CEDAW/C/GC/29.
[208]Ibid.
[209]Universal Periodic Review (no date) Office of the United Nations High Commissioner for Human Rights. Available at: <https://www.ohchr.org/en/hr-bodies/upr/upr-main>.

"*Repeal its reservations to the Convention on the Elimination of All Forms of Discrimination against Women and eliminate domestic provisions regulating legal capacity, divorce, guardianship systems and inheritance that currently discriminate against women, and advance women's and girls' sexual and reproductive health and rights (Estonia)*"[210].

Sometimes recommendations may even have simpler wordings, just like the one of Fiji to Niger in the same cycle:

"*Consider the withdrawal of reservations to the Convention on the Elimination of All Forms of Discrimination against Women*"[211].

The effectiveness of such simplistic and vague calls to a State to reconsider its reservations to a human rights instrument can easily be questioned. Indeed, the majority of recommendations submitted during the UPR refers neither to specific Articles of the treaty in which the State concerned has submitted reservations, nor to a sufficient justification for the consideration of their withdrawal. Such practice perhaps reflects the idea that reservations in general constitute a challenge to the effective implementation of a human rights treaty. Nevertheless, especially during such a political process, it is extremely doubtful that a State will follow the recommendations of other States, especially if the latter belong to a different region or has a different cultural or religious backround, when hardly any convincing argument or legal basis is invoked.

The practice of UN human rights mechanisms may seem mild, mainly because of the non-binding nature of the recommendations both of treaty bodies and the UPR; nevertheless it is of outmost importance. States engage with UN mechanisms, report their progress, receive recommendations for positive change, and a dialogue process begins not only between the reserving State and treaty bodies or between the States parties themselves, but also between the treaty body and domestic civil society (f.e. through shadow reports). Moreover, reservations are useful in the sense that they flag the specific societal issues that constitute challenges to universal human rights and, thus, subsequent dialogue and advocacy by relevant stakeholders is henceforth more targeted.

3.2.2.3. Withdrawal of Religion-Based Reservations

The questionable capability of the existing mechanisms to effectively deal with the issue of religion-based reservations to human rights treaties give prominence to the peculiarities of the issue in the first place: reservations to human rights treaties constitute not only a legally technical, but also a highly political issue. We should not neglect that reservations touch upon sensitive domestic issues and are exactly means to balance between individual cultures, religious beliefs and traditions, etc. and the idea of universal human rights. Reservations constitute, hence, a kind of compromise of competing interests and their handling should be attentive. Especially taken into consideration that, unlike the ECHR or the ACHR, the UN human rights treaties do not lean on a judicial body, the efforts to address impermissible reservations to the core international human rights instruments in a more determining (and legally binding) way meet more obstacles. Thus, the only available solution is one: withdrawal.

[210]Cycles of the universal periodic review (no date) Office of the United Nations High Commissioner for Human Rights. Available at: <https://www.ohchr.org/en/hr-bodies/upr/cycles-upr>.
[211]Ibid.

The Guide to Practice on Reservations contains several Guidelines on withdrawal and modification of reservations and interpretative declarations (in Chapter 2.5). Most notably, Guideline 2.5.3 refers to the (need for) periodic review of the usefulness of reservations:

"***2.5.3 Periodic review of the usefulness of reservations***

1. States or international organizations which have formulated one or more reservations to a treaty should undertake a periodic review of such reservations and consider withdrawing those which no longer serve their purpose.

2. In such a review, States and international organizations should devote special attention to the aim of preserving the integrity of multilateral treaties and, where relevant, consider the usefulness of retaining the reservations, in particular in relation to developments in their internal law since the reservations were formulated".

Guideline 2.5.3 addresses the importance of the practice of treaty monitoring bodies to frequently call States to reconsider their reservations. Although the ILC clarifies that such a Guideline would not have place in a draft convention, as it lacks normative value, it affirms that there are always reservations that are "forgotten", "obsolete" or "superfluous" and, hence, their periodical reconsideration is quite beneficial, if not necessary. It can be contested if it is indeed productive for the international community to force a State to withdraw its reservations from a human rights treaty. The process of withdrawal itself is important to be accompanied by deep domestic reform so that the State concerned is indeed in position to meet the demands of a human rights framework and go after its effective implementation. Therefore, the international community has a key role to play with a view to creating the essential conditions for a State to seriously consider withdrawal. Otherwise, human rights will remain what cultural relativists imply: instruments of Western cultural and political imperialism.

Since their entry into force, an important number of States parties to the core international human rights treaties have withdrawn their religion-based reservations: from 1991 to 2015, thirteen States (Algeria, Bangladesh, Egypt, Iran, Jordan, Kuwait, Malaysia, the Maldives, Mauritius, Morocco, Singapore and Tunisia) have withdrawn their specific religion-based reservations from the CEDAW, ten (Brunei, Egypt, Indonesia, Malaysia, Morocco, Oman, Pakistan, Singapore, Syria and Tunisia) from the CRC, and one from the CAT and the ICCPR (Pakistan), while nine States in total, most of them member States of the OIC, have withdrawn their general reservations[212]. Of course, as already stated, what is of importance is not the number of reservations withdrawn, but the quality of the domestic change that accompanies withdrawal and can in essence ameliorate the lives of individuals.

[212]Çalı, B. and Montoya, p. 26.

4. Conclusions

The examination of the phenomenon of religion-based reservations to human rights treaties may lead to engrossing conclusions in regard to the ability of reconciliation between human rights and religion, to the contribution of international human rights law to the development of the law of treaties, and, of course, to the compatibility vel non of reservations to human rights treaties with the vision of universal human rights for all.

Religion and human rights can perfectly co-exist: human rights can be founded in the teachings of all major world religions, which, indeed, seem to embrace the existential principles of IHRL, including human dignity. At the same time, IHRL aspires to effectively guarantee the enjoyment of the right to freedom of religion or belief by everyone and eliminate discrimination on the grounds of religion or belief. Therefore, religion can be seen both as a human rights actor and a beneficiary of human rights legislation[213]. Moreover, it should not be neglected that the full enjoyment of human rights by everyone is still an ambition, not a reality, and requires self-criticism and reform. There is not a single religion, culture, society or even State able to profess that it fully complies with the precepts of human rights, as their consolidation cannot take place overnight. Human rights remain are to this day political and legal standards. Faith is neither. Thus, it is misleading to claim that these two concepts may indeed compete. The Vienna Declaration and Programme of Action points in the right direction, and does so excellently:

> "*All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms"*[214].

The adoption of the UDHR and the high number of States parties to the core international human rights treaties can easily weaken the arguments of cultural relativists. It would be naive to claim that human rights had always been part of any cultural tradition, even of the Western world. The real challenge that human rights come up against with is their need to be implemented in an extremely pluralistic world. In such a world, howbeit, human beings share a series of fundamental values, such as the value of human life, the need for social order, the prohibition of torture, etc. Such values imply, according to Jack Donnelly, a certain core of human nature and, therefore, if human nature –in such a diverse world– is relatively universal, then "*human rights must at least be assumed to be similarly universal*"[215]. Under this perspective, the arguments of cultural relativists cannot but being considered as mere pretexts to justify and legitimize human rights violations for purposes other than cultural sensitivity, although cultural relativism had been, in the middle of the previous century, a useful methodological tool for anthropologists to

[213]Prpic, M. (2018) Religion and human rights. rep. European Parliamentary Research Service, pp. 2–3.
[214]Vienna Declaration and Programme of Action (no date) Office of the United Nations High Commissioner for Human Rights. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action>.
[215]Donnelly, J. (1984) "Cultural Relativism and Universal Human Rights," Human Rights Quarterly , 6(4), pp. 415–416. Available at: <https://www.jstor.org/stable/762182#metadata_info_tab_contents>.

research non-Western cultures without being prejudiced –if possible– by their own ethnocentrism.

Today, it is obvious that IHRL has influenced the law of the treaties in a wide range of matters, which concern the "whole life" of an international treaty, from its negotiation to its conclusion[216]. This is particularly visible in the field of reservations. The VCLT of 1969 adopted the flexible approach proposed by the ICJ, which examined the issue of reservations and led itself to the rejection of the traditional unanimity rule in light of the examination of a human rights treaty, the Genocide Convention. Afterwards, the ILC was inspired by, inter alia, the practice of regional human rights courts, including the ECtHR and the IACtHR, as well as of the UN human rights treaty bodies, and embraced –in its Guide to Practice on Reservations to Treaties– some of their most controversial approaches, such as the severability approach and the rejection of the exclusive competence of States to assess the permissibility of reservations.

Putting religion-based reservations to human rights treaties under the microscope showcased the aforementioned points, as well as some more. Over 40% of reservations to human rights treaties are based on religion or belief. Although particular attention has been paid to Sharia-based reservations, targeting Islam, a series of non-Islamic States have formulated religion-based reservations and, thus, the issue requires a more objective evaluation. The CEDAW and the CRC have been the most affected instruments among the core international human rights treaties endangering the enjoyment of fundamental human rights by millions of women and children in different regions of the world. The majority of such reservations, especially general reservations, either lack clarity or affect essential elements of the instruments and, therefore, cannot be considered compatible with their object and purpose. The sophisticated UN human rights mechanisms have made use of all their –indeed limited– competences with a view to persuading reserving States to consider withdrawing their reservations.

Reservations to human rights treaties undoubtedly impose limitations to the full enjoyment of human rights. Notwithstanding, they contribute in a way to the salience of the universality of human rights. Instead of choosing not to ratify, States do have under the law of treaties another alternative, namely to ratify a human rights instrument with reservations. Treaty ratification itself, even with reservations, is an important and promising step forward: it launches a constant dialogue until States are finally in place to fully commit to the provisions of the relevant instrument. In this way, it is expected that eventually the universality of human rights will become undisputed. And if religion seems to fire for the moment some of the existing doubts, it is mayhap useful to reflect on the following words of Mahatma Gandhi:

"*For me the different religions are beautiful flowers from the same garden, or they are branches of the same majestic tree. Therefore they are equally true, though being received and interpreted through human instruments equally imperfect*"[217].

[216]Sicilianos, L.-A. (2012) "The Human Face of International Law - Interactions Between General International Law and Human Rights: An Overview," Human Rights Law Journal , 32(1-6), pp. 6–7.
[217]The Essential Unity of All Religions (no date) Mahatma Gandhi. Available at: <https://www.mkgandhi.org/voiceoftruth/unityofallreligions.htm>.

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