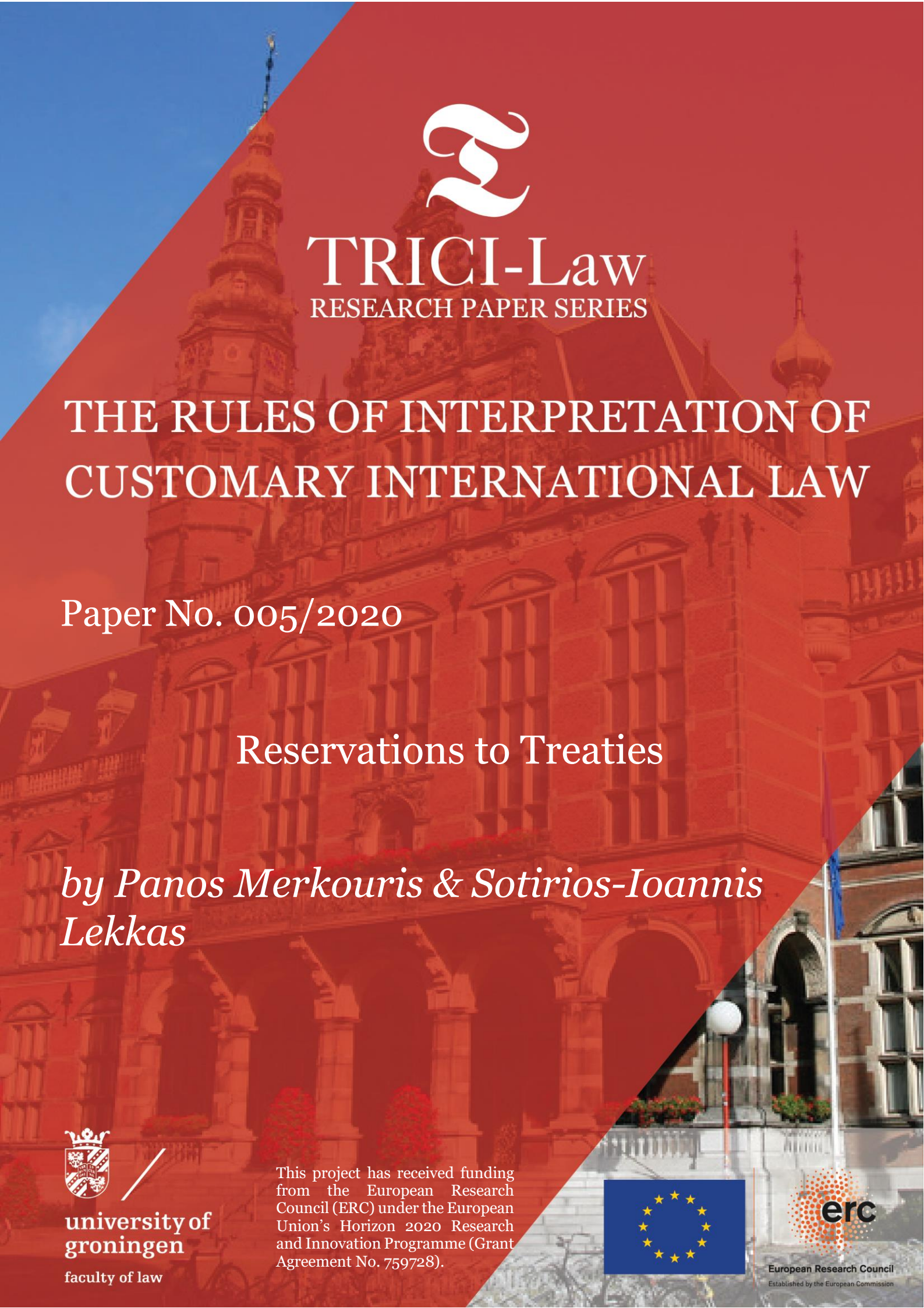

TRICI-Law
RESEARCH PAPER SERIES

THE RULES OF INTERPRETATION OF CUSTOMARY INTERNATIONAL LAW

Paper No. 005/2020

Reservations to Treaties

by Panos Merkouris & Sotirios-Ioannis Lekkas

university of groningen
faculty of law

This project has received funding from the European Research Council (ERC) under the European Union's Horizon 2020 Research and Innovation Programme (Grant Agreement No. 759728).

European Research Council
Established by the European Commission

Reservations to Treaties

by Panos Merkouris & Sotirios-Ioannis Lekkas

forthcoming in:

Chr Binder et al (eds), Elgar Encyclopedia of Human Rights (Edward Elgar 2021)

The TRICI-Law project has received funding from the European Research Council (ERC) under the European Union's Horizon 2020 Research and Innovation Programme (Grant Agreement No. 759728).

university of groningen
faculty of law

TRICI-Law

erc
European Research Council
Established by the European Commission

Reservations to Treaties

Sotirios-Ioannis Lekkas and Panos Merkouris

I. Introduction

A reservation to a treaty is a unilateral statement, however phrased or named, made by a State when entering a treaty, whereby it purports to exclude or modify the legal effect of certain provisions of the treaty in their application with respect to that State. Reservations are an important yet controversial tool in multilateral treaty-making. Admitting reservations can facilitate widespread endorsement of a multilateral treaty by enabling States to join, despite their concerns about specific issues. Yet, reservations can create tensions between parties of a multilateral treaty, as they can lead potentially to its fragmented, even unequal, application. In practice, reservations have proved particularly contentious in the context of human rights treaties. States entering human rights treaties have resorted to reservations presumably because these treaties are 'inward-targeted' and have potentially far-reaching implications in the States' domestic sphere (Simma, 1998: 660; Higgins, 1989: 11). In turn, human rights courts and treaty bodies have approached reservations with trepidation often prioritising the treaty's integrity over States' concerns. Section II provides a brief overview of the evolution of the general international law regarding reservations to treaties. Section III then tackles the relevance of reservations in the context of human rights treaties.

II. The Permissibility and Legal Effects of Reservations

1. Rules on Reservations and their Discontents

Reservations to multilateral treaties have presented problems of 'unusual–in fact, baffling–complexity' (Lauterpacht, 1953: 124) eliciting the continuing reassessment and elaboration of the law pertaining to them. Early theory and practice suggested that a State making a reservation could only become a party to a multilateral treaty with the unanimous acceptance of the reservation by all other treaty parties, unless the treaty provided otherwise (Brierly, 1950: 224; McNair, 1986: 159-60). However, since the 1950s, a clear trend away from strict unanimity towards a presumption of acceptance emerged that solidified with the adoption of the → Vienna Convention of the Law of Treaties (VCLT) (Arts 19-23 VCLT). According to the VCLT, the default rule is that States are allowed to formulate reservations when entering a multilateral treaty, unless the treaty provides otherwise or the reservation is incompatible with the object and purpose of the treaty (Art 19 VCLT). In order for a reservation to be effective, at least one party needs to accept it (Art 20(4)(c) VCLT), unless the treaty provides otherwise or it is evident from the 'limited number of the negotiating States and the object and purpose of a treaty' that unanimous acceptance is required (Art 20(2) VCLT).

In the main, the parties do not need to explicitly accept the reservation for the reserving State to become a party with the benefit of its reservation, but they can react to it by formulating objections within a reasonable time, ie twelve months after the State is notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later (Art 20(5) VCLT). In this case, the provisions to which the reservation relates do not apply in the relations between the objecting and the reserving State to the extent of the reservation (Art 21(3) VCLT), unless the objecting State opposes the entry into force of the treaty in its relations with the reserving State, also known as 'objection with maximum

effect'(Art 21(3) VCLT; Guideline 4.3.5 GPRT). Overall, the fundamental premise of the VCLT rules is that the parties are better placed to design rules on reservations which are appropriate for each treaty and safeguard their application.

However, the VCLT rules are not without ambiguities. Whilst the VCLT prohibits certain categories of reservations, it is silent about the legal consequences of impermissibility. What is more, the VCLT establishes a process that focuses on the reactions of individual parties without making clear whether this applies also to impermissible reservations. Besides, this process is premised upon the reciprocal denial of benefits on a bilateral basis which provides little incentive for State parties to object to reservations in some cases, most conspicuously, human rights or environmental treaties. As a result, from 1993 to 2011, the International Law Commission ('ILC') studied and expanded upon the law and practice of reservations. Although the 2011 ILC Guide to Practice ('GPRT') is not formally binding, it has received the commendation of the UN General Assembly (UNGA Resolutions 66/98 and 68/111) and does provide concrete guidance as to issues that have spun out of the interpretation of the VCLT rules.

2. Grounds for Impermissibility of Reservations

The law of treaties seeks to promote participation to multilateral treaties by allowing reservations as a default rule. At the same time, it anticipates situations where the formulation of reservations would constitute an abuse of that right. The most clear-cut case is where the treaty itself does not admit reservations (Art 19(a) VCLT; eg Art 120 ICC Statute; Art 309 UNCLOS). The VCLT further envisages the situation where 'the treaty provides that only specified reservations, which do not include the reservation in question, may be made' (Art 19(b) VCLT). Notably, a treaty may describe exhaustively which reservations are allowed (GPRT: 207; cf Art 57 ECHR). Less conspicuously, the interpretative principle of *inclusio unius est exclusio alterius* lends support to the argument that when a treaty authorises the formulation of specified reservations it implicitly prohibits all other reservations (DALT: 202 and 207; Fitzmaurice, 1956: 115). However, the GPRT seems to disfavour this interpretation (GPRT: 205-6). For instance, the → Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) explicitly provides for reservations with respect to Articles 20 and 30 but is otherwise silent on the permissibility of reservations (Arts 28 and 30(2)-(3) CAT). Whilst some States, including UK and USA, have asserted a right to formulate reservations apart from those expressly authorised, they are infrequent amongst the CAT parties (Sørensen and Dalton, 2004: 88-90).

Regardless of the specific treaty provisions, a State cannot formulate reservations that are incompatible with the object and purpose of the treaty (*Genocide Advisory Opinion*; *Armed Activities in the Territory of the Congo (New Application: 2002)*; Art 19(c) VCLT; Guideline 3.1.3-3.1.4 GPRT). This constitutes the 'fundamental criterion' for the permissibility of reservations, but also the most difficult to define (GPRT: 211). The GPRT's input rests on the clarification of two points. First, a reservation's permissibility depends on objective criteria, not on the subjective reactions of the parties (Milanovic and Sicilianos, 2013: 1057). Hence, the ILC opined that a reservation is impermissible if it 'affects an essential element of the treaty that is necessary to its general tenor, in such a way as to impair the *raison d'être* of the treaty' (Guideline 3.1.5 GPRT). This determination relies on basic principles of treaty interpretation (Guideline 3.1.5.1 GPRT). Second, this 'object and purpose' criterion applies to all treaties regardless of the specialty of their subject matter (Milanovic and Sicilianos, 2013: 1057). Thus, the ILC suggests that 'vague or general reservations' would be presumably impermissible to

the extent that they are not amenable to an assessment of compatibility with the object and purpose of the treaty (Guideline 3.1.5.2 GPRT). Furthermore, it lists specific *indicia* for assessing the essential character of the element to which the reservation relates according to general characteristics. These include whether the reservation relates to provisions that stipulate peremptory norms (GPRT, 223-4), or non-derogable (Guideline 3.1.5.4 GPRT) or interdependent rights and obligations (Guideline 3.1.5.6 GPRT). Whilst these criteria have been fleshed out principally from the practice of human rights bodies, such features appear in treaties governing diverse fields of international law such as the law of armed conflict, international environmental law, and the law of arms control.

3. Legal Effects of Impermissible Reservations

The notable blind spot of the VCLT rules on reservations are the consequences of impermissibility. Permissible reservations can modify or exclude certain provisions of a treaty with respect to the reserving State. Objections to these reservations do not change this situation, but allow objecting States the right to oppose the entry into force of the entire treaty in their relations with the reserving State. Early pronouncements of the → International Court of Justice (ICJ) lend support to the argument that the same procedure applies with respect to impermissible reservations producing the same effects (*Genocide Advisory Opinion*, 24). The key clarification introduced by the ILC is that impermissible reservations are null and void, devoid of any legal effect (Guideline 4.5.1 GPRT). Acceptance or objections by other parties is inconsequential; it only has a declaratory or evidentiary value attesting or denying the existence of the conditions of permissibility (Guideline 3.3.3 GPRT). This is especially crucial in the context of objections with 'super-maximum'. Such objections, mainly a European practice, formulated primarily by Nordic States and influenced by the 1999 Recommendation of the Council of Europe (CoE) (CoE, 1999), attempt to create an irrebuttable solution, that could have the effect to bind a State to 'contractual obligations it does not consider suitable' (Tomuschat, 1967: 466). However, the ILC stressed that the GPRT Guidelines were by no means an approval of such objections.

That said, the invalidity of impermissible reservations does not settle automatically the position of the reserving State with respect to the treaty (Pellet, 2010: 30-9). This issue was also discussed extensively in *Interhandel* and *Certain Norwegian Loans*, albeit in the different context of Art 36(2) ICJ Statute declarations. Various solutions have been proposed to resolve this quandary, however, since these are closely tied to the practice of human rights courts and treaty bodies, they are analysed in Section III.3.

III. The Relevance of Reservations Regarding Human Rights Treaties

1. Reservations to Human Rights Treaties

Not all human rights treaties have provisions detailing which reservations are permissible. Out of the nine core international human rights instruments

- two have no provision on reservations (→ International Covenant on Civil and Political Rights (ICCPR) and → International Covenant on Economic, Social and Cultural Rights (ICESCR));
- two allow for reservations with respect to dispute settlement (→ International Convention for the Protection of All Persons from Enforced Disappearance (CED), Art

42(2)) and the competence of the Committee (Arts 28(2) and 30(2) CAT), although they are silent on other reservations;

- and five have a provision, echoing the VCLT, prohibiting reservations incompatible with the treaty's object and purpose (→ International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Art 20; → Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Art 28; → Convention on the Rights of the Child (CRC), Art 51(2); → Convention on the Rights of Persons with Disabilities (CRPD), Art 46(1); → International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), Art 91(2)).

CERD merits particular mention, as Article 20 renders impermissible a reservation if it inhibits the operation of any of the bodies established by that Convention. In fact, CERD creates an irrebuttable presumption that a reservation is incompatible or inhibitive 'if at least two thirds of the States Parties to this Convention object to it'.

Out of the regional human rights instruments neither the → African Charter on Human and Peoples' Rights (AfCHPR), nor the → African Charter on the Rights and Welfare of the Child have any provision devoted to reservations, while the → American Convention on Human Rights (ACHR) directly refers to the VCLT (Art 75 ACHR). Finally, certain rights of the → the European Convention on Human Rights (ECHR) are non-derogable, while Article 57 provides that a State may make a reservation 'to the extent that any law then in force in its territory is not in conformity with the provision'. Under the same article, reservations of a general character are impermissible.

2. Assessment of Permissibility of Reservations by Treaty Bodies and International Courts

Dispute settlement or treaty monitoring bodies can assess the permissibility of reservations to the extent necessary for discharging their competences (Guideline 3.2.1 GPRT). For example, the Human Rights Committee (HRCttee) as provided in General Comment No 24 and in *Rawle Kennedy*, the ECtHR in *Belilos* and *Loizidou*, and the IACtHR in *Hilaire* have all determined reservations as impermissible. However, other human rights treaty bodies, such as the CEDAW Committee, although having expressed concerns regarding certain reservations, have refrained from declaring them impermissible (Salem, 2020: para. 22). In fact, the UN Secretary-General has expressed the view that the CEDAW Committee 'does not have the power to decide the incompatibility of reservations' (ECOSOC, 1996: para. 7), although Guideline 3.2.1 seems to take a different approach. Whether a monitoring body's opinion on a reservation's permissibility is binding or not is solely dependent on its constitutive instrument (Guideline 3.2.1 GRPT; Giegerich, 2010: para. 35). However, even if such an opinion is not binding, it may still carry a significant interpretative *gravitas*.

3. Impermissible Reservations in Human Rights Treaties

3.1. Approaches to Impermissible Reservations

The VCLT does not provide an answer as to the legal effect of impermissible reservations. Legal theory and practice have been dominated by two approaches, which mainly function on the basis of a presumption, a positive and a negative one. A positive presumption, ie that a State's consent is not affected by the invalidity of the impermissible reservation and thus remains bound by the treaty without benefitting from the reservation. This has become widely

known as the 'severability doctrine/approach' The negative presumption, contrarily, considers that the invalidity of the reservation poisons the consent to be bound of the State as a whole, and thus the State is not bound by the treaty (GPRT Guideline 4.5.3 Commentary; Simma and Hernández, 2011; Pellet and Müller, 2011; Gaja, 2008; de Frouville, 2004: 385-9; Coulée, 2004; Staff, 2018; McCall-Smith 2014; Moloney, 2004; Klabbers, 2000; Greig, 1995; Redgwell, 1993; Bowett, 1976).

Although the negative presumption seems in line with the principle of consent, in reality the positive presumption is in the ILC's view equally if not more so in line with that principle as it respects the consent not only of the reserving State, but also of all the other contracting States (GPRT Guideline 4.5.3 Commentary, paras. 35-7). According to Simma and Hernández, there are a number of reasons that lend credence to the appropriateness of the severability doctrine in the case of human rights treaties: transparency; the nature of human rights treaties, the nature of consent, the facilitation of the task of the monitoring bodies and/or adjudicators, and the removal of human rights treaties 'from the grip of the bilateralist paradigm' (Simma and Hernández, 2011: 81-4).

3.2. (Quasi-)Judicial Practice on Impermissible Reservations

In a series of cases in the 1980s and 1990s, such as *Temeltasch*, *Belilos*, *Chrysostomos* and *Loizidou*, the European Commission and the ECtHR developed what Simma dubbed the 'Strasbourg approach', essentially an application of the severability doctrine (Simma, 1998: 670-1; Cohen-Jonathan, 1996: 940). Both the HRCttee in *Rawle Kennedy*, and the IACtHR in *Hilaire* have adopted solutions consistent with this approach. Of import is also General Comment No 24, where the HRCttee opined that the '*normal* consequence of an unacceptable reservation is not that the [ICCPR] will not be in effect at all for a reserving party. Rather, such a reservation will generally be severable' (General Comment No 24, para. 18).

The above should not give the wrong impression that these bodies have adopted the severability approach in an unqualified manner. For instance, General Comment No 24 refers to severability as the 'normal' consequence, but not as the 'only' one, leaving open the possibility of 'abnormal' consequences occurring, without, however, offering guidance as to when that would be the case. Furthermore, several States (eg France, UK and USA) formulated objections to General Comment No 24's approach (Giegerich, 2010: para. 39). While when the HRCttee applied it in *Rawle Kennedy*, four members felt the need to dissent. Other human rights treaty bodies, such as the CERD and CEDAW Committees have opted for the softer approach of entering into dialogue with the reserving States (Giegerich, 2010: para. 40; CERD, 2003), an approach that also received the ILC's stamp of approval.

If one looks closely at the relevant jurisprudence, it becomes evident that human rights courts have applied a nuanced approach, whereby they attempt to reconstruct the reserving State's intention without, however, relying blindly on mere formal declarations (Schabas, 1995: 322). In doing so, they have had recourse to a number of factors, eg the position of the State (*Belilos*, para. 60); it knowingly running the risk of the reservation being impermissible (*Loizidou*, para. 95); the content and context of the provision to which the reservation relates, the special nature and 'object and purpose' of human rights treaties (*Belilos*, para. 93; *Hilaire*, paras. 93-4), as well as the State's subsequent practice, its position on similar provisions of *in pari materia* treaties and the reaction of other States (GPRT Guideline 4.5.3 Commentary, paras. 45-6).

This nuanced approach was supported in the Inter-Committee Meetings of the human rights treaty bodies and the Meetings of the Chairpersons of these bodies. There it was acknowledged that there was no need for a separate reservations regime for human rights treaties. The existing regime sufficed as long as it was applied in 'an appropriate and suitably adapted manner' (Pellet, 2009: para. 27; cf Simma and Hernández, 2011: 62, 68; Giegerich, 2010). It was further highlighted that despite growing support for the severability approach, this was not an 'automatic conclusion … but only a presumption' (UN, 2005: para. 37). In fact, in their view the correct solution was determined by the intention of the State at the time it entered its reservation, with a rebuttable presumption that a State would prefer to remain a party to the treaty. In order for that presumption to be reversed a 'contrary intention [had to be] incontrovertibly established' (UN, 2007: para. 18; UN, 2006: para. 16(7)). The Sixth Committee as well, despite disagreements as to which presumption should be opted for, was also of the view that the intention of the reserving State was the 'key criterion' (GPRT Guideline 4.5.3 Commentary, paras. 20-1).

3.3. The ILC's Approach

In the end the ILC qualified the 'reserving State's intention' as the key criterion. For reasons of legal certainty, it opted for a *rebuttable positive presumption* in Guideline 4.5.3, although it intentionally omitted the term 'incontrovertibly', as it appeared to set too strict of a criterion (GPRT Guideline 4.5.3 Commentary, para. 31). It also cautioned that such a rebuttable presumption was by no means an approval of objections with 'super-maximum' effect.

Furthermore, the ILC envisaged this approach to be applicable to all treaties irrespective of their nature. This is not to say that this was designed to be the final word on the issue of impermissible reservations. The ILC was keenly aware that this presumption is not customary law but rather a 'cautious progressive development of international law' (GPRT Guideline 4.5.3 Commentary, para. 49; Baratta 2000).

IV. Conclusion

Formulating reservations is crucial in treaty-making. It can entice States to join a treaty, but also lead to a kaleidoscope of different versions of treaty obligations. Human rights treaties are no exception to this. Despite voices to the contrary, the ILC opined that no special regime of reservations for human rights treaties was required. This notwithstanding a critical issue was and remains that of the legal effect of impermissible reservations. Should a State remain bound by the treaty without benefitting from the impermissible reservation (severability approach) or does the reservation's voidness poison the State's consent as a whole? Although in human rights jurisprudence there seems to be a tendency for the severability approach, this is by no means an automatic or irrebuttable application. Rather, it is the reserving State's intention that is the key criterion for resolving the riddle of impermissible reservations.

In Guideline 4.5.3, in order to promote legal certainty and strike a middle ground between a theory of 'integral' consent and that of the 'super-maximum' effect of severability, the ILC opted for a rebuttable positive presumption, ie that a State would be bound by the treaty as a whole, unless a contrary intention was shown. This, however, as the ILC candidly admitted is not customary law but rather a 'cautious progressive development of international law'. Only time will tell whether Guideline 4.5.3 meets with the approval of States and international organs and matures into customary law.

V. Bibliography

1. Table of Cases

- *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide* (Advisory Opinion) [1951] ICJ Rep 15 ('*Genocide Advisory Opinion*')
- *Certain Norwegian Loans (France v Norway)* Dissenting Opinion of Judge Sir Hersch Lauterpacht [1957] ICJ Rep 34
- *Interhandel (Switzerland v United States of America)* Dissenting Opinion of President Klaestad [1959] ICJ Rep 75
- *Interhandel (Switzerland v United States of America)* Dissenting Opinion of Judge Armand-Ugon [1959] ICJ Rep 85
- *Interhandel (Switzerland v United States of America)* Dissenting Opinion of Judge Lauterpacht [1959] ICJ Rep 95
- *Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic (UK/France)* [1977] XVIII RIAA 3
- *Aegean Sea Continental Shelf (Greece v Turkey)* [1978] ICJ Rep 3
- European Commission of Human Rights, *Temeltasch v Switzerland* (5 May 1982) App No 9116/80
- ECtHR, *Belilos v Switzerland* (24 April 1988) App No 10328/83
- European Commission of Human Rights, *Chrysostomos et al v Turkey* (4 March 1991) App Nos 15299-15300/89
- ECtHR, *Loizidou v Turkey (Preliminary Objections)* (23 March 1995) App No 15318/89
- *Legality of Use of Force (Yugoslavia v Spain)* Provisional Measures [1999] ICJ Rep 761
- *Legality of Use of Force (Yugoslavia v United States of America)* Provisional Measures [1999] ICJ Rep 916
- IACtHR, *Hilaire v Trinidad and Tobago (Preliminary Objections)* (1 September 2001) Series C No 80
- HRCttee, *Rawle Kennedy v Trinidad and Tobago* (26 March 2002) Comm No 845/1998, UN Doc CCPR/C/74/D/845/1998
- *Armed Activities in the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v Rwanda)* Jurisdiction and Admissibility [2006] ICJ Rep 6

2. Table of Instruments

- 'Reservations to Treaties' UNGA Resolution 66/98 (9 December 2011)
- 'Reservations to Treaties' UNGA Resolution 68/111 (16 December 2013)
- African Charter on Human and Peoples' Rights (signed 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217 ('AfCHPR')
- African Charter on the Rights and Welfare of the Child (signed 11 July1990, entered into force 29 November 1999) OAU Doc CAB/LEG/24.9/49
- American Convention on Human Rights (signed 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123 ('ACHR')
- Brierly JL, 'Report on the Law of Treaties' (1950) II YBbILC 222
- CERD, 'Preliminary Opinion on the Issue of Reservations to Treaties on Human Rights' (13 March 2003) UN Doc CERD/C/62/Misc.20/Rev.3

- CoE, 'Recommendation No R (99) 13 of the Committee of Ministers to Member States on Responses to Inadmissible Reservations to International Treaties' (18 May 1999) available at https://rm.coe.int/on-responses-to-inadmissible-reservations-to-international-treaties/16804ed273
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (signed 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 ('CAT')
- Convention for the Protection of Human Rights and Fundamental Freedoms (signed 4 November 1950, entered into force 3 September 1953) 213 UNTS 221 ('ECHR')
- Convention on the Elimination of All Forms of Discrimination against Women (signed 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 ('CEDAW')
- Convention on the Rights of Persons with Disabilities (signed 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 ('CRPD')
- Convention on the Rights of the Child (signed 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 ('CRC')
- ECOSOC, 'The Implementation of the Human Rights of Women' (11 June 1996) UN Doc E/CN.4/Sub.2/1996/20
- Fitzmaurice GG, 'Report on the Law of Treaties' (1956) II YBbILC 104
- ILC, 'Draft Articles on the Law of Treaties with Commentaries' (1966) II YBbILC 187 ('DALT')
- ILC, 'Guide to Practice on Reservations to Treaties' (2011) II(3) YBbILC 23 ('GPRT')
- International Convention for the Protection of All Persons from Enforced Disappearance (signed 20 December 2006, entered into force 23 December 2010) 2716 UNTS 3 ('CED')
- International Convention on the Elimination of All Forms of Racial Discrimination (signed 7 March 1966, entered into force 4 January 1969) 660 UNTS 195 ('CERD')
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (18 December 1990, entered into force 1 July 2003) 2220 UNTS 3 ('CMW')
- International Covenant on Civil and Political Rights (signed 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 ('ICCPR')
- International Covenant on Economic, Social and Cultural Rights (signed 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 ('ICESCR')
- Lauterpacht H, 'Report on the Law of Treaties' (1953) II YBbILC 90
- Pellet A, 'Fifteenth Report on Reservations to Treaties' (2010) II(1) YBbILC 3
- Pellet A, 'Fourteenth Report on Reservations to Treaties' (2009), A/CN.4/614
- UN, 'Report of the Meeting of the Working Group on Reservations' (18-22 June 2007) UN Doc HRI/MC/2007/5
- UN, 'Report of the Meeting of the Working Group on Reservations' (22-23 June 2006) UN Doc HRI/MC/2006/5
- UN, 'The Practice of Human Rights Treaty Bodies with Respect to Reservations to International Human Rights Treaties' (20-24 June 2005) UN Doc HRI/MC/2005/5
- Vienna Convention on the Law of Treaties (signed 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 ('VCLT')
- Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (signed 21 March 1986, not yet into force) UN Doc A/CONF.129/15 ('VCLT 1986')

3. Select Bibliography

- Baratta R, 'Should Invalid Reservations to Human Rights Treaties be Disregarded?' (2000) 11 EJIL 419
- Bishop W, 'Reservations to Treaties' (1961) 103 RdC 245
- Bowett DW, 'Reservations to Non-Restricted Multilateral Treaties' (1976) 48 BYBIL 67
- Cohen-Jonathan G, 'Les réserves dans les traités institutionnels relatifs aux droits de l'homme', (1996) 4 RGDIP (1996) 915
- Coulée Fr, 'À propos d'une controverse autour d'une codification en cours: les réactions aux reserves incompatibles avec l'objet et le but des traités de protection des droits de l'homme' in P Amselek et al (eds), *Libertés, justice, tolérance: Mélanges en hommage au Doyen Gérard Cohen-Jonathan, Vol I* (Bruylant 2004) 501
- de Frouville O, *L'intangibilité des droits de l'homme en droit international: Régime conventionnel des droits de l'homme et droit des traités* (Pedone 2004)
- Edwards RW, 'Reservations to Treaties' (1989) 10 MJIL 362
- Gaja G, 'Il regime della Convenzione di Vienna concernente le riserve inammissibili', in *Studi in onore di Vincenzo Starace* (Editoriale Scientifica 2008) 349
- Gaja G, 'Unruly Treaty Reservations' in *Le droit international à l'heure de sa codification: études en l'honneur de Roberto Ago–Il diritto internationale al tempo della sua codificazione: studi in onore di Roberto Ago–International Law at the Time of its Codification: Essays in Honour of Roberto Ago* vol 1 (Giuffrè 1987) 307
- Giegerich Th, 'Treaties, Multilateral, Reservations to' (2010) MPEPIL 1680
- Goodman R, 'Human Rights Treaties, Invalid Reservations, and State Consent' (2002) 96 AJIL 531
- Greig DW, 'Reservations: Equity as a Balancing Factor?' (1995) 16 AustYBIL 21
- Higgins R, 'Human Rights: Some Questions of Integrity' (1989) 52 MLR 1
- Horn F, *Reservations and Interpretative Declarations to Multilateral Treaties* (TMC Asser 1988)
- Klabbers J, 'Accepting the Unacceptable? A New Nordic Approach to Reservations to Multilateral Treaties' (2000) 60 NordJIntlL 179
- Lijnzaad L, *Reservations to UN-Human Rights Treaties: Ratify and Ruin?* (TMC Asser 1995)
- Malkin HW, 'Reservations to Multilateral Conventions' (1926) 7 BYBIL 141
- McCall-Smith KL, 'Severing Reservations' (2014) 63 ICLQ 599
- McNair A, *The Law of Treaties* (first published 1961, OUP 1986) 158-78
- Milanovic M and Sicilianos L-A, 'Reservations to Treaties: An Introduction' (2013) 24 EJIL 1055
- Moloney R, 'Incompatible Reservations to Human Rights Treaties: Severability and the Problem of State Consent' (2004) 5/1 Melbourne Journal of International Law 155
- *Oppenheim's International Law* vol 1*: Peace* (RY Jennings and A Watts, 9th edn, first published 1996, OUP 2008) ch 14
- Owen M, 'Reservations to Multilateral Treaties' (1929) 38 YLJ 1086
- Pellet A and Müller D, 'Reservations to Treaties: An Objection to a Reservation is Definitely not an Acceptance' in E Cannizzaro (ed), *The Law of Treaties Beyond the Vienna Convention* (OUP 2011) 37
- Pellet A, 'Article 19: 1969 Vienna Convention' in O Corten and P Klein, *The Vienna Convention on the Law of Treaties* vol 1 (OUP 2011) 405
- Pellet A, 'The ILC Guide to Practice on Reservations to Treaties: A General Presentation by the Special Rapporteur' (2013) 24 EJIL 1061

- Redgwell C, 'Reservations to Treaties and Human Rights Committee General Comment No.24(52)' (1997) 46 ICLQ 390
- Redgwell C, 'Universality or Integrity? Some Reflections on Reservations to General Multilateral Treaties' (1993) 64 BYBIL 245
- Ruda JM, 'Reservations to Treaties' (1975) 146 RdC 98
- Salem N, 'Sharia Reservations to Human Rights Treaties' (2020) MPEPIL 2149
- Schabas WA, 'Invalid Reservations to the International Covenant on Civil and Political Rights: Is the United States Still a Party?' (1995) 21/2 Brooklyn Journal of International Law 277
- Schabas WA, 'Reservations to Human Rights Treaties: Time for Innovation and Reform' (1994) 32 Canadian Yearbook of International Law 39
- Simma Br and Hernández Gl, 'Legal Consequences of an Impermissible Reservation to a Human Rights Treaty: Where Do We Stand?', in E Cannizzaro (ed), *The Law of Treaties Beyond the Vienna Convention* (OUP 2011) 60
- Simma Br, 'Reservations to Human Rights Treaties – Some Recent Developments' in G Hafner (ed*), Liber Amicorum, Professor Ignaz Seidl-Hohenveldern in Honour of his 80th Birthday* (Kluwer 1998) 659
- Simma Br, 'Reservations to Human Rights Treaties: Some Recent Developments', in G Hafner, G Loibl, A Rest, L. Sucharipa-Behrmann, and K Zemanek (eds), *Liber Amicorum Professor Ignaz Seidl-Hohenveldern in Honour of his 80th birthday* (Kluwer Law International 1998) 659
- Sinclair I, *The Vienna Convention on the Law of Treaties* (2nd edn MUP 1984)
- Sørensen B and Dalton P, 'The Convention against Torture, and Other Cruel, Inhumane or Degrading Treatment or Punishment – Limitations, Restrictions and Reservations' in I Ziemele (ed), *Reservations to Human Rights Treaties and the Vienna Convention Regime: Conflict, Harmony or Reconciliation* (Springer 2004) 79
- Staff N, 'The Severability Regime and Its Customary Elements: A Presumption Rebuttable "at Any Time"' (2018) 87/2 NordJIntlL 89
- Swaine ET, 'Treaty Reservations' in D Hollis (ed), *The Oxford Guide to Treaties* (2nd edn OUP 2020) 285
- Tomuschat C, 'Admissibility and Legal Effects of Reservations to Multilateral Treaties: Comments on Arts 16 and 17 of the ILC's 1966 Draft Articles on the Law of Treaties' (1967) 27 ZaÖRV (1967) 463
- Tyagi Y, 'The Conflict of Law and Policy on Reservations to Human Rights Treaties' (2001) 71 BYBIL 181
- Ziemele I (ed), *Reservations to Human Rights Treaties and the Vienna Convention Regime: Conflict, Harmony or Reconciliation* (Springer 2004)
- Ziemele I and Liede L, 'Reservations to Human Rights Treaties: From Draft Guideline 3.1.12 to Guideline 3.5.1.6' (2013) 24 EJIL 1135