The purpose of international human rights law is to protect basic individual rights and provide to the victims of violations legal remedies against the authors of the abuses. One major difficulty faced in this context originates in the limiting clauses that states insert in international conventions. This paper looks at their compatibility with human rights agreements, in the view of strengthening the legal avenues open to the victims and the possibility for them to obtain redress. The crucial position of human rights at the core of the notion of international public order conditions the approach to adopt in relation to most issues that touch upon the scope and substance of protected rights, including withdrawal from treaties, reservations, implied limitations, overtly broad or inappropriate restrictions, misguided interpretations and failure to apply the relevant provisions. It is put forward that limiting clauses should be narrowly construed and most restrictions discarded altogether.

**Keywords:** human rights, restrictions, reservations, withdrawal from treaties

**Introduction**

The purpose of international human rights law is to protect basic individual rights and provide to the victims of human rights violations legal remedies against the authors of the abuses. One major difficulty faced by the
victims in this context originates in the limiting clauses that states insert in international conventions. This paper looks at their compatibility with human rights agreements, in the view of strengthening the legal avenues open to the victims and the possibility for them to obtain redress. While restrictive clauses can be found in most treaties, the specific object and purpose of human rights conventions raises particularly acutely the question of their validity. The *raison d'être* of any such instrument is the protection of individual rights. They do not benefit to states or organise arbitration for the conflicts which arise among them. Adherence to their object and purpose is, therefore, incompatible with state-centric restrictions. Reluctance to admit any limitation to these conventions is substantiated by their *erga omnes* and emerging *ius cogens* status (Reiter, 2008). The duties that international human rights law creates for states can be sanctioned by the entire international community. The crucial position of human rights at the core of the notion of international public order conditions the approach to adopt in relation to most issues that touch upon the scope and substance of protected rights, including withdrawal from treaties, reservations, implied limitations, overtly broad or inappropriate restrictions, misguided interpretations, failure to apply the relevant provisions and their violation. The paper is divided in four sections. The first classifies the different types of restrictions and the following three assess their admissibility. The second puts forward that treaties not foreseeing denunciation are immunised against it. Withdrawal from other conventions is submitted to strict conditions and its practical consequences are mitigated in the presence of other international duties. The third defends that a strict application of the test enshrined in the Vienna Convention would result in prohibiting reservations not expressly permitted in a treaty. Whereas the majority of human rights instruments explicitly authorise reservations, their acceptability depends on the specific empowering rules. The fourth argues that limiting clauses should be discarded for incompatibility with the aim of human rights agreements, with the exception of those motivated by the respect of the rights of others. This understanding of human rights restrictions would prevent states from denying legal remedies and satisfaction to many victims of human rights violations.
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Classification

Different limitations are usually combined and states’ duties are considerably reduced cumulatively. Certain clauses are dubious per se, independently of the kind of agreement in which they are inserted. Besides, the nature of human rights norms disqualifies some additional limitations. Article 31 of the 1969 Vienna Convention on the Law of Treaties states that “a treaty shall be interpreted […] in the light of its object and purpose”. The idea lying at the core of any international instrument ought to be insulated from adverse attacks in the shape of restrictions. A human rights convention is primarily “an instrument for the protection of individual human beings” and its terms need to be interpreted in this light: their interpretation should facilitate an effective protection of the rights consecrated and “promote the ideals and values of a democratic society”; here construed as a rights-respecting society. One can categorise restrictive clauses according to two criteria, the moment of their insertion in a treaty and the mechanisms employed to evade unwanted duties (Virally, 1982: 10-21).

First, the definition of the scope ratione materiae, personae, temporis or loci of a provision and references to indeterminate circumstances always leave some cases out of its reach (Dimitrijević, Opsahl, 1999: 642-643). Exceptions can be considered to be part of the definition of a rule or concept; leading to “the logical emptiness of the idea of an exception as an analytically distinct concept” (Schauer, 1991: 891-893). However, definitions and specifications are sometimes inserted in a treaty to limit states’ obligations as normally construed, like denunciations without any delay or a very strict non-retroactivity rule. The use of expressions as “in the measure possible” or “in appropriate cases” and the invitation of states to “take into consideration” a factor or give it a certain priority are even more flagrant examples. They rely on the goodwill of states interpreting them and generate uncertainty about the exact content of the rule affected. Second, the insertion of transitory or permanent exception expressly excludes some events or hypotheses from the application of a treaty’s general principles. Broad and imprecise ones give a purely facultative character to the convention. Third, “opting in” or “contracting in” clauses create optional obligations, conditioned to a specific acceptation.

1 ECHR, Klass et al. v. FRG, 6 Sept. 1978, § 34; Soering v. UK, 7 July 1989, § 87; Mamatkulov and Abdurasulovic v. Turkey, 6 Feb. 2003, § 93.
This mechanism entrenches a system of multiple or variable geometry between member states and runs counter to the very idea of a world public order. Fourth, safety or derogation clauses allow the suspension of some rights in special circumstances. Chief examples are the adoption of states of emergency in truly exceptional situations and the rules preventing the abuse of individual rights to destroy the liberty of others. Fifth, states can rely on “potestative” clauses, which annihilate a disposition by tying it to a condition whose realisation will depend on their own will or actions. Reservations relying on conformity with domestic laws, honour or vital national interests, and exceptions defined in so vague and subjective terms that they allow states to interpret them as they wish to belong to this category. They are particularly pernicious because they empty an article of its content. As a result, “potestative” or automatic reservations are considered invalid.²

Limitations are introduced in the text of a treaty during its elaboration, in reservations before its approval or during its execution. The insertion of restrictions during the drafting of an agreement does not pose a problem per se. Their acceptability depends on the type of limitation chosen, its aim, content, degree of precision and conformity with the object of the treaty. One should always question the validity of open-ended or vague definitions and characterisations, wide or nebulous exceptions and “potestative” clauses. Bringing in restrictive clauses unilaterally through reservations is a more contentious move and often leads to conflicts. The incorporation of limitations by reliance on excuses during the implementation of a treaty already in force is even more problematic. When executing an international convention, states may limit their obligations by interpretation or by the invocation of domestic impediments, the rebus sic standibus principle, material impossibility or force majeure. The introduction of limitations at this stage can be avoided by the submission of disagreements to international arbitrage or a supervisory body. Otherwise, national authorities remain the competent organs to elucidate unclear articles. Yet, municipal rules cannot prevail over international agreements and limiting international duties on their basis is always inadmissible. Ultimately, an extreme solution open to governments is simply to denounce a treaty whose terms cannot be reconciled with states’ practice or domestic rules.

Denunciation

The validity of denunciations needs to be scrutinised with particular attention, due to their final character. Article 56 of the 1969 Vienna Convention on the Law of Treaties declares that “a treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless it is established that the parties intended to admit [such a possibility] or [it] may be implied by the nature of the treaty”. This rule applies to all international agreements. The ICCPR, the ICESCR, and the ICCPR Second Optional Protocol do not contain any such provision and cannot be denounced. Such a possibility was never suggested during the drafting of the two Covenants, or the Second Optional Protocol, and does not derive from the nature of these treaties; quite the contrary. Both Covenants were adopted by the same General Assembly resolution as the First Optional Protocol, which allows denunciation. The Human Rights Committee has recognised the illegality of denouncing the ICCPR and its Second Optional Protocol in a general comment on the continuity of states’ obligations. The general comment evokes the customary rule in Article 56, before specifying that states parties did not envisage the possibility of denouncing the Covenant. This “was not a mere oversight on their part”, as Article 41 § 2 enables states to withdraw their acceptance of the Committee’s competence to look at communications introduced by other parties. Besides, “the same conclusion applies to the Second Optional Protocol in the drafting of which a denunciation clause was deliberately omitted” and whose Article 6 § 1 declares that its provisions are to be considered additional dispositions to the Covenant. In relation to the second exception in Article 56, the Human Rights Committee underlines that the two international covenants formalise the rights already protected in the Universal Declaration and constitute an “International Bill of Human Rights”; hence, their nature is far from temporary. Individual rights devolve with the land and their beneficiaries can never be deprived of these rights. As a matter of logic and consistency, the same conclusion applies to the CEDAW, the two Additional Protocols to the Inter-American Convention on Human Right, and

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3 ICCPR Optional Protocol No 1, Article 12; UN General Assembly, Resolution 2200A (XXI), 16 Dec. 1966.

4 HR Committee, General Comment No 26 (61) on Continuity of Obligations, 6 Dec. 1997.
the African Charter on Human and Peoples’ Rights; which do not contain any denunciation clause either.

Withdrawal from the protocols to the European Convention on Human Rights is more complex. The protocols that introduce new rights include an attachment or integration clause, stipulating that their provisions are supplementary dispositions to the European Convention. A denunciation of the Convention would lead to an automatic denunciation of the protocols but they could not be denounced separately, since they are integrated in the same legal corpus from the moment of their ratification. Moreover, the European Convention on Human Rights can only be denounced in its entirety and not article by article, or paragraph by paragraph (Imbert, 1995: 951). Most other human rights conventions expressly permit denunciations, after a notification period varying from several months to one year. The 1949 Geneva Conventions and their two Additional Protocols restrict the possibility for states to withdraw from these treaties in time of armed conflict. In addition, the denunciation of the Geneva Conventions does not affect their obligation to respect the principle of humanity, entrenched in the Martens Clause; which belongs to customary international law or, at least, to the corpus of general principles of international law. The possibility to denote human rights conventions is largely restricted in practice. Indeed, “the denunciation of a treaty does not in any way impair the duty of the denouncing state to fulfil an obligation embodied in the treaty to which it would be subject under international law independently of the treaty” (Schwelb, 1976: 282). States remain bound to respect the rights protected under other conventions or general international law.

Due to the customary and emerging ius cogens nature of human rights provisions, the denunciation of treaties protecting individual rights would not considerably affect states’ duties in practice. It would only cancel their submission to international systems of reporting, monitoring and

5 ECvHR Protocol No 1, Article 5; Protocol No 4, Article 6 § 1; Protocol No 6, Article 6; Protocol No 7, Article 7 § 1; Protocol No 12, Article 3; Protocol No 13, Article 5.
7 GC I, Article 63, al. 3-4; GC II, Article 62, al. 3-4; GC III, Article 142, al. 3-4; GC IV, Article 158, al. 3-4; AP I, Article 99 § 1; AP II, Article 25 § 1.
8 ICJ, Corfu Channel, 9 Apr. 1949, p. 22; Legality of the Threat or Use of Nuclear Weapons, 8 July 1996, § 84.
adjudication, not the necessity to protect any right. Following Article 44 § 1 of the Vienna Convention, states cannot withdraw from supervisory mechanisms unless they denounce the treaty. One may judge these mechanisms an integral and non-dissociable part of the rights guaranteed, which would de facto consecrate the opposability of the entire treaty to denouncing states (de Frouville, 2004: 510). The Inter-American Commission considers that “a unilateral action by a state cannot divest an international court of jurisdiction that it has already asserted” and that “the American Convention contains no provision that would make it possible to withdraw recognition of the Court’s contentious jurisdiction, as such a provision would be antithetical to the Convention and have no foundation in law”. The Court endorses this vision: “the only avenue the state has to disengage itself from the Court’s binding contentious jurisdiction is to denounce the Convention as a whole”, with one year advance notice. To this effect, it also relies on the specificity of human rights instruments and on Article 29 (a) of the Convention, which rules that “no provision of this convention shall be interpreted as permitting any state party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognised in this convention or to restrict them to a greater extent than is provided for”. Authorising the denunciation of optional clauses would go against the object and purpose of the treaty, by depriving individuals of the guarantees offered by monitoring arrangements, and violate the rule that pacta sunt servanda.  

The OAS Charter requires that all member states comply with the American Declaration of the Rights and Duties of Man: it is “indirectly binding” because it reveals the rights guaranteed in the Charter. Governments denouncing the Inter-American Convention remain bound by the Declaration. This construction

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applies mutatis mutandis to the denunciation of other human rights treaties. States parties remain bound by the human rights enshrined in the constitutive charter of the relevant international organisation even after withdrawing from their conventional obligations. At the global level, this consecrates the rights in the United Nations Charter and the Universal Declaration. The existence of a general principle of irreversibility in international constitutive statutes has equally been defended, with the result that denunciation would not relieve states from respecting fundamental rights (de Frouville, 2004: 500). Some authors also view the denunciation of a convention “as a series of reservations on all provisions of [this] treaty”. As a result, withdrawal from an international agreement would be subjected to the same timing constraints as reservations and need to be adopted at the moment of its signature, accession to, or ratification (Garrigues, Kroke, Weissbrodt, 1998: 233). Yet, while this theory has the merit to prevent states from opting out of their international obligations, the initial assimilation between denunciation and multiple reservations is analytically farfetched. Last but not least, the type of escape clauses used is not fully determinative of the validity of limitations. The reasons why public authorities invoke them also matter and human rights treaties enable international organs to control the aim and extent of restrictions. Denunciations cannot cover abusive practices, like backdoor adoption of late reservations under the guise of withdrawal and re-accession.12

Reservations

Following Article 2 § 1 (d) of the Vienna Convention, reservations are limitations, which are neither inserted in the text of an agreement during its elaboration nor applicable to all parties to the accord but are unilaterally added by some signatories at the moment of approval or ratification of the treaty. This creates some problems at a purely contractual level, like the imbalance of obligations between member states. Articles 19 to 23 of the Vienna Convention regulate the acceptability of reservations and their effects. As a rule, all reservations are permitted, unless a treaty forbids them or merely accepts those it expressly recognises. Examples of explicit prohibitions have

12 HR Committee, Rawle Kennedy v. Trinidad and Tobago, 2 Nov. 1999.
been inserted in many human rights treaties.\textsuperscript{13} Reservations not specifically outlawed are only valid as long as they are not “incompatible with the object and purpose of the treaty”. The purpose and object test has several corollaries. Reservations need to affect the particular article to which they are attached, not other norms, and states cannot restrict the scope of provisions not allowing any reservations or modify their content by pretending that said reservations affect another disposition. Such a fiction can \textit{a fortiori} not circumvent an interdiction grounded in another treaty or general international law: customary norms, “by their very nature, must have equal force for all members of the international community, and cannot therefore be the subject of any right of unilateral exclusion exercisable at will by any one of them in its own favour”;\textsuperscript{14} “no right is conferred to make unilateral reservations to articles which are declaratory of established principles of international law” and “customary rules belonging to the category of \textit{ius cogens} cannot be subjected to unilateral reservations”.\textsuperscript{15} Reservations to these norms will always be quashed as null and void.\textsuperscript{16} In addition, reservations valid at the time of their formulation will not necessarily remain so with the passing of time. Questioning the continuing legality of reservations is particularly relevant in the case of human rights instruments, due to the principles of progressive effectiveness of these treaties and irreversibility or intangibility of individual rights. Reservations must be withdrawn after a reasonable delay, needed to adopt necessary modifications of conflicting municipal rules and practice, and permanent ones are invalid.\textsuperscript{17} In a nutshell, reservations merely “allow a state to give itself, as a purely temporary measure, ‘at the time of’ the signature or ratification of the Convention, a brief space in which to bring into line any laws ‘then in force in its territory’ which do not yet sufficiently respect and protect the fundamental rights recognised”.\textsuperscript{18}

The acceptability of any reservation to agreements aiming at the construction of a common public order is highly questionable, due to the

\textsuperscript{13} See, for a total ban on reservations: Supplementary Convention on the Abolition of Slavery, Article 9; Convention Against Discrimination in Education, Article 9; European Convention for the Prevention of Torture, Article 21; ECvHR Protocol No 6, Article 4; Protocol No 13, Article 3; CEDAW Optional Protocol, Article 17.


\textsuperscript{17} HR Committee, \textit{General Comment No 24 (52) on Reservations}, 2 Nov. 1994, § 20.

irreconcilable opposition between the ‘objective’ character of integral treaties and the reciprocity principle at the root of the reservation system (Dupuy, 2003: 145-146). The *erga omnes* nature of human rights instruments casts doubt on the admissibility of any one-sided curtailment of these norms and, following the object and purpose test, reservations to the protection of basic rights can be considered illegal *per se*. In effect, “it may even be thought that such reservations, and the provisions permitting them, are incompatible with the *ius cogens* and therefore null and void, unless they relate only to arrangements for implementation, without impairing the actual substance of the rights in question”.19 Far from being divorced from the Vienna Convention, this solution adjusts its criteria to the specific aims of international human rights law. The compatibility of any reservation not explicitly foreseen in the text of human rights treaties is doubtful. However, most human rights agreements contain dispositions that specifically provide for reservations. In such cases, the admissibility of reservations will have to be analysed, in each instance, according to the rules inserted in the convention and the need to respect the irreducible core of the treaty. Moreover, state practice and international organs generally recognise the admissibility of unforeseen reservations to human rights instruments. Although this position is regrettable, supervisory bodies are competent to interpret international agreements and their view on what contradicts their aim is binding, since determining the object and purpose of a convention is “a preliminary legal issue to be solved as a matter of treaty interpretation” (Coccia, 1985: 24; Lijnzaad, 1995: 41, 91). A respectful supervision of humanitarian treaties still suggests a stricter monitoring of the situation and the refusal of reservations not expressly permitted. Lastly, “when a treaty is a constituent instrument of an international organisation and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organisation”. Following Article 20 § 3 of the Vienna Convention, reservations to human rights instruments cannot be adopted without the consent of international monitoring organs. This would pertain to regional conventions and UN agreements assorted of treaty bodies, with the exception of the ICESCR whose supervisory committee was not created in the treaty itself. The supervisory organs of these treaties could refuse any reservation they dislike, without further motivation.

Compatibility with the aim of the conventions and ban on abuses of power

The aim of human rights treaties is the enhancement of the fundamental rights of each and every single human being qua human being. In this view, the rights of a person may only be, legally and legitimately, infringed in order to guarantee the competing rights of others. Conversely, the reliance of municipal courts or legislation on purely external motives never qualifies. A more restriction-permissive understanding would conflict with the object and purpose of human rights instruments. The insertion of clauses relative to public order or policy, public safety and national security in human rights treaties has been sharply criticised as factors of vagueness and uncertainty, grounds for far-reaching limitations and menaces in the shape of unreasonable restrictions (Daes, 1983: 121, 177). Whereas one might claim that all legal norms are somewhat vague and vulnerable to interpretation, these concepts are particularly prone to divergent readings and abuses by state actors. The Inter-American Court of Human Rights stigmatises “the difficulty inherent in the attempt of defining with precision” such notions and emphasises that they “may under no circumstances be invoked as a means of denying a right guaranteed by the Convention or to impair or deprive it of its true content”, in breach of Article 29 (a) of the Convention.\(^{20}\) The concept of morals is equally uncertain and varies widely both in time and space.\(^{21}\) Its recognition would grant an extremely large margin of appreciation to state authorities and undermine any meaningful international control of its application, which makes it an even greater jeopardy to the rights it affects.

The specificity of the safety clauses is crucial in that their goal is compatible with the aim of human rights instruments. While other types of limitations purports to minimise states’ obligations, the safety clauses are meant to guarantee in fine a wider application of individual rights. These rules include the derogating clauses sensu stricto, which allow the suspension of some disposions in states of emergency or in the presence of abusive uses of rights, and ‘claw-back’ clauses protecting the rights of others. The existence


and the survival of a genuinely democratic state are the first conditions of the respect of human rights. The prevalence of the normality of a legal order over the life of the nation may, in emergency situations, lead to the annihilation of this democratic society, or to a substantial and sometimes irreparable damage. Such emergencies may also ruin the very basis of the subsistence of human rights. Under these circumstances, the preservation of the shell may become vital to ensure the life of its contents; claiming a priority over the strict application of some individual rights. In this perspective, the European Commission of Human Rights has declared that the ultimate aim of all restrictions is the protection of a democratic social order and the rule of law.\(^\text{22}\) Even this type of restrictions can neither be exercised in an arbitrary or over-extensive fashion, nor be based on a pure maximisation of the aggregated rights of all members of a given society. Safety provisions should comply with the conditions and safeguards, listed in the conventions and the case law of their supervisory organs, to ensure that measures departing from states’ ordinary obligations affect fundamental rights as minimally as possible.\(^\text{23}\) The inherent contradiction of restricting a right for the sake of its protection appears in any safety-net provision. The only way to secure that this fragile balance is respected passes through the establishment of supranational mechanisms of control.

The general clauses prohibiting abuses of rights and powers\(^\text{24}\) are the foremost guarantees on which the conventions rest and the decisive test of the legitimacy of a restrictive measure. They help in determining if the core and essence of international instruments have been respected, ban the use of any provision to destroy or limit human rights more than allowed and outlaw the exploitation of restrictions for invalid aims. Each and every other disposition must be submitted to a check of their conformity with these provisions and reinterpreted accordingly. This entails a much more radical and activist approach to human rights supervision than is generally envisaged, at odds with the margin of appreciation doctrine developed by the European Court of Human Rights. Human rights bodies rely on the articles forbidding abuses of power as a rule of interpretation to delimit the

\(^\text{22}\) EComHR, G v. FRG, req. No 9228/80, 11 May 1984, pp. 22 and 27, §§ 89 and 110.


\(^\text{24}\) ECvHR, Articles 17-18; ESC, Article 31 § 2; ICCPR/ICESCR, Article 5 § 1; ACvHR, Articles 29 (a)-30.
scope of states’ undertakings *ratione materiae* and *ratione loci*. The European Court of Human Rights judges that, whereas states are allowed “to maintain or establish a distinction between criminal law and disciplinary law, and to draw the dividing line”, this can only be done in the respect of certain conditions and the Court is competent “to satisfy itself that the disciplinary does not improperly encroach upon the criminal”.

Likewise, public agents should never infringe internationally protected rights on the territory of another state, whether the government of the other country acquiesced or was opposed to the violations. Besides, the provisions on abuses of power rule out larger limitations than those explicitly authorised. They serve as a directive regarding the appreciation of the necessity of restrictive measures “in a democratic society”, which implies that states are solely permitted to use the least invasive means accessible. They proscribe the increase of the number of legitimate exceptions listed in any article and permit to invalidate the doctrinal theory of implied limitations (Alston, Quinn, 1987: 207). Finally, no specific restriction ought to be allowed in the absence of a threat to the rights of others. Dispositions mentioning public order, public security or morals must be interpreted to include human rights and never extended outside the scope of their protection.

Emergency provisions are only valid as a protection of the population of a country or region against graver violations of their basic rights. This understanding of states of emergency can be explained on the basis of the technical conditions inserted in the derogation clauses. It outlaws derogative measures causing a profound alteration of the existing legal order, with the result that fundamental rights would not only be suspended but also destroyed (Ergeç, 1987: 181-182), attacks to their core or substance, their

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29 ACHR, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, 13 Nov. 1985, § 79.
30 ECvHR, Article 15; ESC, Article 30; ICCPR, Article 4; ACvHR, Article 27.
suppression or the total interdiction to exercise them. Some basic rights should remain untouched in the most dramatic circumstances; giving them a privileged position in the architecture of international treaties and priority when adjudicating conflicts of rights. States are not allowed to file notices of derogation under the emergency clauses to escape from the consequences of a judgement or perpetrate a comparable détournement of the articles of other international instruments. Derogations not fulfilling the prescriptions of the emergency clauses are prohibited, even when justified by circumstances whose exceptionality is not foreseen in the suspension rule (Ergeç, 1987: 178-179). Particular restrictions can never absorb the powers of derogation, in the absence of a declaration of emergency; which defeats the creation of ‘quasi-emergency’ situations in anti-terrorist settings (Harris, O’Boyle, Warbrick, 1995: 497; Van Dijk, Van Hoof, 1990: 587-588). Lastly, the dispositions on abuses of power rule out extraordinary norms in emergencies falling short of war, when the national legal system solely admits states of exception to be pronounced during armed conflicts, and proscribe declarations of emergency in countries whose constitution cannot be suspended in time of crisis.

**Conclusion**

Inserting limiting clauses in human rights treaties is a contradiction in terms. The most radical way out for states unwilling to comply with their conventional duties is the denunciation of the treaty. Article 56 of the Vienna Convention precludes exit from the ICCPR, the ICESCR, the Second Optional Protocol to the ICCPR, the CEDAW, the Protocols to the Inter-American Convention and the African Charter. Other agreements do not benefit from such a total protection but their denunciation is still submitted to strict conditions, if not forbidden. Withdrawal from human rights treaties leaves unaffected states’ obligations under other conventions or general international law. Public authorities remain bound to protect basic rights, albeit without having to submit themselves to international supervisory mechanisms, and even this caveat is becoming increasingly contentious, due to the integral and non-dissociable nature of

human rights instruments. Short of repealing the agreement, states can reduce their undertakings through interpretation, invocation of internal obstacles, the *rebus sic standibus* rule, material unfeasibility or *force majeure*. However, international treaties have a higher status and priority over domestic norms. Therefore, governments cannot escape from international duties in the name of municipal laws or public policies.

States can introduce unilateral reservations before becoming parties to a treaty. A strict application of the test enshrined in the Vienna Convention exclude reservations not expressly permitted and treaties that allow a particular type of reservations do not admit others. Unhappily, the majority of human rights instruments explicitly authorise reservations. The acceptability of reservations to these treaties depends on the specific empowering rules. Worse, state practice and supervisory organs often admit additional reservations. International monitoring bodies have the power to elucidate treaty lacunas, obscurities and ambiguities. Their interpretation cannot be dismissed and the wording of the conventions needs to be analysed along with the views of the competent bodies. A respectful interpretation of these conventions still conjures up a more rigorous control of the reservations and the interdictin of those not clearly allowed in their text. The European Social Charter, the two International Covenants, the African Charter and the *Apartheid* Convention do not mention reservations. The CAT merely permits states to opt out of some facultative clauses and does not refer to the possibility of other reservations. Subsequently, these instruments must stay free from reservations. The opposite decisions taken by several supervisory bodies ought to be disapproved of for their lack of activism. The CEDAW, the Convention on the Rights of the Child, the Inter-American Convention on Human Rights, the Inter-American Convention for the Prevention of Torture and the Additional Protocol to the Inter-American Convention on Human Rights in the Area of Economic, Social and Cultural Rights integrate the purpose and object test of the Vienna Convention. In contrast, the European Convention on Human Rights and the CERD contain original rules concerning reservations. Yet, these instruments remain subordinated to the standards of the Vienna Convention. These two categories of treaties can solely accommodate marginal reservations. General, vague, unclear and ambiguous reservations are outlawed in any case, as well as those affecting core or inalienable rights.

Finally, the scope of international agreements can be limited at the drafting stage. This method is not *per se* problematic but some specific
limitations stay unacceptable. The legality of a restrictive clause depends on the kind of limitation it introduces, its motive and ultimate goal, substance, extent, precision and compatibility with the aim of the treaty. Ambiguous definitions and qualifications, extensive or ill-defined exceptions and ‘potestative’ provisions are never valid. Besides, the particular nature and status of international human rights law shelter related treaties from any limitation not aimed at better protecting individual rights. In this light, most limiting provisions should be deemed unlawful and contrary to the aim of the agreements. Only restrictions motivated by the respect of the rights of others gain legitimacy when this rationale is respected and a series of safeguards are established. This narrows the pool of acceptable limitations to individual rights and enhances the legal remedies available to the victims of human rights violations against the authors of the abuses.

Bibliography


**Axelle Reiter**

**Žrtve kršenja i ograničavanja ljudskih prava**

Svrha međunarodnog prava ljudskih prava je zaštita osnovnih individualnih prava i obezbeđivanje pravnih sredstava protiv počinioca žrtvama kršenja ljudskih prava. Velika teškoća sa kojom se žrtve u ovom kontekstu sreću potiče od ograničavajućih klauzula koje države implementiraju u međunarodne konvencije. Ovaj rad razmatra njihovu kompatibilnost sa sporazumima o ljudskim pravima, u pogledu jačanja pravnih puteva otvorenih žrtvama i njihove mogućnosti da dobiju obeštećenje. Ključni položaj ljudskih prava u osnovi koncepta međunarodnog javnog reda uslovljava usvajanje pristupa u vezi sa većinom pitanja koji se osvrću na područje i suštini zaštićenih prava, uključujući povlačenje iz ugovora, rezervisanost, implicirana ograničenja, široka ili neodgovarajuća ograničenja, pogrešna tumačenja, neuspeh primene relevantnih odredbi. Istaknuto je da bi ograničavajuće klauzule trebalo uže postavljati i većinu ograničenja odbačiti zajedno.

**Ključne reči:** ljudska prava, ograničenja, rezervisanost, povlačenje iz ugovora